

Note Verbale
regarding the fourth intersessional meeting of the Working Group on prevention of corruption
established by the Conference of States Parties to the United Nations Convention against
Corruption in its resolution 3/2 entitled “Preventive Measures”

With reference to United Nations Office on Drugs and Crime note verbale no. CU 2013/41(A)/DTA/CEB concerning the recommendations of the third intersessional meeting of the Open-ended Intergovernmental Working Group on Prevention established by the Conference of States Parties to the United Nations Convention against Corruption in its resolution 3/2 entitled “Preventive Measures” and the topics for discussion at its fourth intersessional meeting.

With reference to the fact that in the body of the note verbale of the United Nations Office on Drugs and Crime it is stated that the topics to be discussed at the fourth intersessional meeting of the Open-ended Intergovernmental Working Group on Prevention to be held in Vienna from 26 to 28 August 2013 will be as follows:

- Integrity in the judiciary, judicial administration and prosecution services (in accordance with article 11 of the United Nations Convention against Corruption).
- Public education, in particular the engagement of children and young people and the role of mass media and the Internet (in the light of article 13 of the United Nations Convention against Corruption).

Annex I of the note verbale indicates that the Secretariat of the States Parties to the United Nations Convention against Corruption would like the States Parties to the United Nations Convention against Corruption to share their experience of implementing the provisions of the Convention concerning the aforementioned subjects under consideration by using the self-assessment checklist of the United Nations Convention against Corruption. For that purpose the Secretariat of the States Parties to the Convention asked a set of questions according to the self-assessment checklist.

Examination of the topics of the fourth intersessional meeting of the Open-ended Intergovernmental Working Group on Prevention shows that, according to the above, one of them concerns the judicial and justice field, while the other concerns public education and the mass media. This study will therefore concern specifically and according to competence presentation of pertinent information on the judicial and justice system, without turning its attention to the question of public education or the mass media in view of the fact that these fields fall outside the scope of the missions and responsibilities of the Ministry of Justice.

In light of the above, the Ministry provides the esteemed Foreign Ministry, the Secretariat of the States Parties and thus the Open-ended Intergovernmental Working Group on Prevention with information and replies — in the light of the national competence of the Ministry — on strengthening integrity in the judiciary, judicial administration and prosecution services (in accordance with article 11 of the United Nations Convention against Corruption), as follows.

I. International measures pursued by the State of Kuwait in the context of the response to international efforts to combat corruption

1. On 4 December 2006 Law No. 47 of the year 2006 was promulgated approving the State of Kuwait’s accession to the United Nations Convention against Corruption, by virtue of which the articles of the Convention became part of the domestic law of the State of Kuwait in accordance with article 70 of the Kuwaiti Constitution.
2. The Ministry of Justice took the initiative of recommending to the Council of Ministers the formation of a national committee with the task of preparing the process of replying to the self-assessment

checklist requested of the State of Kuwait that falls within the context of preparation of the periodic review of the State of Kuwait's compliance with the provisions of the United Nations Convention against Corruption under resolution 3/1 of the Conference of the States Parties to the Convention and the requirement for each State Party to the Convention to provide the Secretariat of the Conference of States Parties with the information the Conference requests concerning compliance with implementation of the provisions of the UN Convention.

3. On 19 July 2010 the Council of Ministers at their meeting no. 37/2010 issued decision no. 1086 (implementation of which was promulgated by decision of His Excellency the Minister of Justice no. 380/2010), paragraph 4 of which included, "the Ministry of Justice in coordination with the Foreign Ministry shall be entrusted with preparation of the reply to the self-assessment checklist requested of the State of Kuwait, and also with the studies and research and all the relevant data and information in the context of preparation of the periodic review on compliance of the State of Kuwait with the provisions of the United Nations Convention against Corruption".

4. On 17 October 2011 the State of Kuwait sent its final reply to the self-assessment checklist of the United Nations Convention against Corruption to the Secretariat of the States Parties in preparation for its discussion of it and subsequently forming an opinion on the extent of the State of Kuwait's national commitment to implementing the provisions of Chapters Four and Five of the United Nations Convention against Corruption, after which the State of Kuwait was discussed by the Implementation Review Group (IRG), as well as representatives of Ethiopia and Sri Lanka, when the United Nations Group and the groups of the two reviewing States (Ethiopia and Sri Lanka) praised the State of Kuwait's replies to the self-assessment checklist and the domestic measures taken by the Government of the State of Kuwait with regard to combating corruption.

II. Reply concerning the information requested of States Parties to the United Nations Convention against Corruption on the State of Kuwait's commitment to implementing the provision of article 11 of the United Nations Convention against Corruption on measures relating to the judiciary and prosecution services

1. **Article 11 of the United Nations Convention, Measures relating to the judiciary and prosecution services, is worded as follows:** "1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary. 2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service".

2. **If one looks at the general constitutional framework, all the constitutional provisions that establish and strengthen the integrity of the judiciary, guaranteeing the rights of litigation and ensuring justice and impartiality in the Kuwaiti judicial services should be noted with regard to the State of Kuwait's adoption and implementation of the provision of article 11 of the United Nations Convention against Corruption.** These are detailed below:

- Article 162 of the Kuwaiti Constitution stipulates that, "The honour of the Judiciary and the integrity and impartiality of judges are the bases of rule and a guarantee of rights and liberties".
- Article 163 of the Kuwaiti Constitution stipulates that, "In administering justice, judges are not subject to any authority. No interference whatsoever is allowed with the conduct of justice. Law guarantees the independence of the Judiciary and states the guarantees and provisions relating to judges and the conditions of their irrevocability".

- Article 165 of the Kuwaiti Constitution stipulates that, “Sittings of the Courts are to be public, except for the cases prescribed otherwise by law”.
- Article 166 of the Kuwaiti Constitution stipulates that, “The right of recourse to the Courts is guaranteed to all people. Law prescribes the procedure and manner necessary for the exercise of this right”.
- Article 167 of the Kuwaiti Constitution stipulates that, “(1) The Public Prosecution Office conducts penal charges on behalf of society. It supervises the affairs of the judicial police, the enforcement of penal laws, the pursuit of offenders, and the execution of judgments. Law regulates this body, lays down its duties, and defines the conditions and guarantees for those who assume its functions...”.

3. With regard to legislation, it is possible to rely on the provisions of Legislative Decree No. 23 of the year 1990 amending certain provisions of the Organization of the Judiciary Law, Minister of Justice Decision no. 3 of 1989 on the organization of judicial investigations, and chapter seven of Legislative Decree No. 38 of the year 1980 on the Civil and Commercial Proceedings Law, as these texts set out the work members of the judiciary may not undertake, such as trade or any other work that may prejudice the independence or integrity of the judiciary.

The provisions of this legislation also contain criminal liability measures regarding the commission by any such persons of an offence punishable by law.

As regards the provisions of chapter seven of the Civil and Commercial Proceedings Law, they detail the cases in which judges do not have absolute authority and in which they must be disqualified by force of law. The provisions also set out the cases in which they do not have relative authority and in which a judge is disqualified if one of the adversaries so requests. They also guarantee the impartiality and integrity of judicial verdicts.

In the same framework, there are several cases in which those working in the judicial services, including judges and members of the prosecution service, are subject to disciplinary liability. In some cases such disciplinary liability may lead to the dismissal of the judge or member of the prosecution service. It is also possible in law for members of the judiciary and the prosecution service to incur criminal liability when criminal abuse is proven against them. This has only occurred in a few cases as a result of the integrity, transparency and impartiality with which the Kuwaiti judiciary and prosecution service are blessed.

4. **With regard to policies implemented and measures taken to strengthen integrity and prevent opportunities for corruption by members of the judiciary and the prosecution service**, some of the legal texts that strengthen transparency and guarantee judicial integrity can be enumerated, as follows:

- Article 25 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree No. 23 of the year 1990 on the organization of the judiciary stipulates that, “Judges and members of the prosecution service may not be awarded decorations, medals, honours or any other thing while they are in office, and judicial office may not be combined with the pursuit of trade or any other work incompatible with the dignity and independence of the judiciary. The Supreme Judicial Council may decide to forbid the performance of any work pursuit of which it deems incompatible with the duties and performance of office”.
- Article 26 of the Legislative Decree organizing the judiciary (23/1990) stipulates the, “A judge may not, without the agreement of the Supreme Judicial Council, be an arbitrator even unpaid and even if the dispute is not submitted to the judiciary, if one of the parties to the dispute is related to him by blood or by marriage up to the fourth degree”.
- Article 27 of the Legislative Decree organizing the judiciary (23/1990) stipulates that, “Judges and members of the prosecution service shall be prohibited from expressing political opinions and from standing as candidates at public elections”.

Article 28 of the Legislative Decree organizing the judiciary (23/1990) prohibits the judiciary from disclosing the secrecy of deliberations.

- In order to guarantee judicial impartiality, article 29 of the Legislative Decree organizing the judiciary (23/1990) stipulates that, “Judges who are related by blood or by marriage up to the fourth degree shall not sit in a single chamber of a court”.

Moreover a representative of the prosecution service or a representative or defender or one of the parties may not be related in this way to any of the judges considering a case.

- With a view to bringing about judicial supervision and inspection of the work of judges and members of the prosecution service, article 30 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree 23/1990 on organization of the judiciary, stipulates that, “A directorate shall be established for the judicial inspection of the lawyers and judges working in the first instance court. It shall be composed of a president and a sufficient number of counsellors. A directorate shall also be established for the judicial inspection of the work of the presidents and lawyers of the prosecution service, composed of a president of the rank of advocate-general and a sufficient number of attorneys-general and the president of the prosecution service. An inspection system for the courts and the prosecution service shall be issued in a decision of the Supreme Judicial Council”.
- Article 31 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree 23/1990 on organization of the judiciary, stipulates that, “An inspection shall be conducted at least once every two years ...”.
- Article 32 of Legislative Decree 23/1990 on organization of the judiciary, stipulates that, “The Minister of Justice shall submit an information to the Supreme Judicial Council concerning lawyers of the first instance court, judges and members of the prosecution service of similar rank who have obtained two consecutive reports of less than average level. After examining their cases, the Council shall either retire them, terminate their contracts or transfer them to another, non-judicial post”.
- Article 36 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree 23/1990 on organization of the judiciary, stipulates, “The president of the court shall, of his own motion or on the basis of a decision of the General Assembly, have the right to warn judges of anything they have done that is contrary to their duties or the requirements of their post after hearing their statements. The warning may be oral or in writing ... The Council shall conduct an investigation into the facts that were the subject of the warning and form an opinion and may endorse or cancel the it. In all cases, if the contravention is repeated or continues after the warning has become final, a disciplinary lawsuit shall be filed”.
- With regard to criminal matters, article 37 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree 23/1990 on organization of the judiciary stipulates that, “Other than in cases of flagrante delicto, no investigatory measures, arrest or referral of a prosecution of a judge or a member of the public prosecution may take place in misdemeanours or felonies without the authorization of the Supreme Judicial Council on the basis of a request by the prosecutor-general. In cases of flagrante delicto, the prosecutor-general shall, when arresting or detaining a judge or member of the prosecution service, submit a memorandum to the Supreme Judicial Council within twenty-four hours to decide upon the matter. The judge or member of the prosecution service may request that he be heard by the Council in this case. The prosecution service alone shall have authority to investigate and prosecute misdemeanours and felonies perpetrated by or against a judge or member of the prosecution service”.
- Also with regard to criminal matters, article 38 of the Legislative Decree on the organization of the judiciary (23/1990) stipulates that, “The Supreme Judicial Council shall be competent to detain on remand a judge or member of the prosecution service and to renew his detention or order other measures to be taken, taking into account the guarantees provided for in articles 69, 70 and 71 of

the Code of Criminal Procedure, unless the matter is examined by the competent criminal court in which case it will be competent to do so”.

- Again in the criminal context, article 39 of the Legislative Decree on the organization of the judiciary (23/1990) stipulates that, “The imprisonment of a judge or member of the prosecution service on the basis of an order or judgement automatically terminates performance of the duties of his office for the duration of his imprisonment.

“The Supreme Judicial Council may order a judge or member of the prosecution service to cease to perform the duties of his office during investigatory procedures concerning an offence committed by him, and may do so of its own motion or on the basis of a request by the prosecutor-general or the president of the court or on the basis of a decision of its General Assembly, and shall notify the Minister of Justice of that ...”.

- From the disciplinary point of view, article 40 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree 23/1990 on the organization of the judiciary stipulates that, “The disciplining of judges of all ranks shall be within the competence of a disciplinary committee composed of three counsellors of the Court of Cassation and two counsellors of the Appeal Court, provided that they do not include the president or members of the Supreme Judicial Council ...”.
- In the same context, article 41 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree 23/1990 on the organization of the judiciary stipulates that, “The disciplinary case shall be conducted by the president of the judicial inspectorate on the basis of a request by the Minister of Justice or a request by the president of the court to which the judge is attached or the prosecutor-general, according to circumstance. A case shall also be brought against a judge or member of the prosecution service if he has lost trust or esteem or lost authority for non-health reasons on the basis of a complaint lodged concerning that. The case shall be transferred to the disciplinary committee for examination of the question of his dismissal from service. A case shall not be brought unless a criminal or administrative investigation has been conducted by the judicial inspectorate or on its behalf by the Supreme Judicial Council if the person under investigation is more senior than president. The president of the judicial inspectorate shall bring the case within thirty days of the date of the request”.
- Also from a disciplinary point of view, article 42 of Legislative Decree 23/1990 on the organization of the judiciary stipulates that, “The disciplinary action shall be brought in a paper containing the charge and the supporting evidence and shall be submitted to the disciplinary committee for a decision to serve it on the judge in order to summon him to appear before it if it believes there is reason to proceed with disciplinary proceedings. The summons shall be issued at least one week before the appointed time.

“In this case the committee shall decide to suspend the judge from performance of his duties or to consider him to be on forced vacation pending completion of the proceedings ...”.

- With regard to members of the prosecution service, article 65 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree 23/1990 on the organization of the judiciary stipulates that, “The prosecutor-general shall, after hearing his statement, address an oral or written warning to a member of the prosecution service who infringes the duties of his office. A member of the prosecution service may complain of the written warning to the Supreme Judicial Council within fifteen days of the date on which the warning was served on him. The decision of the Council shall be final”.
- In the same framework, article 66 of Legislative Decree 23/1990 on the organization of the judiciary stipulates that, “The provisions and measures laid down for the discipline of judges contained in articles 40 to 49 of this law shall apply to disciplinary proceedings concerning members of the prosecution service, with the exception of the paper announcing the disciplinary proceedings and the announcement of the content of the verdict issued by the disciplinary committee, as this is done through the prosecutor-general. The disciplinary proceedings shall be

entrusted to the prosecutor-general by the Minister of Justice. In this case the Minister shall supervise all the proceedings”.

5. With regard to the measures taken to guarantee transparency and responsibility in the selection, appointment and training of officers and the administrative performance and removal of members of the judiciary and the prosecution service, reference may be made to what was explained in detail in the previous section. Certain legislative texts contained in the provisions of the Civil Code and the Commercial Code may also be listed, including the following:

- Article 19 of Legislative Decree 23/1990 on the organization of the judiciary stipulates that, anyone who holds judicial office:
 - shall be Moslem;
 - shall be Kuwaiti, as it shall not be permissible to appoint anyone who is a national of one of the Arab States;
 - shall be completely free of any judicial conviction or disciplinary measure for breach of honour or probity;
 - shall be of good reputation;
 - shall hold a degree in law, sharia or an equivalent higher qualification.
- With regard to the appointment of members of the prosecution service, article 61 of Law No. 10 of the year 1996 amending certain provisions of Legislative Decree 23/1990 on the organization of the judiciary stipulates that, “... all the conditions of appointment laid down for the judiciary contained in article 19 of this law shall apply to members of the prosecution service”.

6. With regard to the policies or practices aimed at enhancing the transparency of the work of the courts, for example the public and the media have access to court proceedings, and access to court judgments and raising general awareness are facilitated by information sharing and awareness programmes. The following texts are worthy of note:

- Article 165 of the Kuwaiti Constitution, which states that the basic principle of the courts is that they are public, as the article stipulates that, “Sittings of the Courts are to be public, except for the cases prescribed otherwise by law”.
- Confirming the principle of the publicity of trials, article 13 of Legislative Decree 23/1990 on the organization of the judiciary stipulates that, “Sittings of the courts shall be public, but a court may decide to hold a sitting in private if that is required by public order or maintenance of decency. Verdicts shall be pronounced in public in all cases”.

7. Chapter seven of Legislative Decree No. 38 of the year 1980 promulgating the Civil and Commercial Codes contains a set of provisions on strengthening integrity and transparency in the judiciary, including in relation to specifying the conditions for disqualification and challenging of judges, as follows:

- Article 102 of the Decree stipulates that, “A judge shall be disqualified from considering a case and forbidden to hear it if he is rejected by one of the parties in the following circumstances:
- If he is the spouse of one of the parties or related by marriage or by blood to him or her up to the fourth degree.
- If he or his wife is in dispute with one of the parties or their spouse;
- If he is the lawyer of one of the parties in his private work or his/her trustee or guardian or presumed heir or if he is the spouse of a trustee or guardian of one of the parties or is related by blood or by marriage up to the fourth degree to such a trustee or guardian or to a member of the

board of directors or a manager of a company that is one of the parties and that board member or manager has a personal interest in the case.

- If he or his wife or one of his relatives by blood or by marriage is a trustee or guardian of a person with an interest in the current case.
- If he is related by blood or by marriage up to the fourth degree to one of the judges of the chamber or if he is related by blood or by marriage up to the second degree to the representative of the prosecution service or the lawyer of one of the parties.
- If he has issued a formal legal opinion or pleaded in court concerning one of the parties to the case or written concerning it, even before he became a judge, or if he has previously examined the case in his capacity as judge or as an expert or lawyer or given testimony in the case.
- If he has brought an action for compensation against the petitioner who has challenged him or if he has submitted to the competent authority a declaration against that person.
- Article 103 of the same decree stipulates that, “The work of the judge or his decision shall be void in the cases referred to in the previous article, even if the party has agreed to them. If such nullity pertains to a decision issued by one of the chambers of the Court of Cassation, the parties may request that the decision be quashed and the appeal heard again by a chamber of the Court of Cassation in which the counsellor who was the cause of the nullity does not sit”.
- Article 104 of the aforementioned decree sets out the mechanism for challenging a judge, stipulating that, “A judge may be challenged on one of the following grounds:
 - If he or his wife is involved in a case similar to the case under consideration or if one of them enters into a dispute with one of the parties or their spouse after the case has been brought before the judge, unless that dispute has been brought with the intention of rejecting the judge in relation to the case brought before him.
 - If his divorced wife by whom he has a son or one of his relatives by blood or by marriage is currently involved in a court case with one of the parties to the case or their spouse, unless that case was brought after the dispute was brought before the judge with the intention of challenging him.
 - If one of the parties works with him.
 - If he has been a confidant of one of the parties or has shared living quarters with him or received a gift from him either before or after the case was brought before him.
 - If there is enmity or affection between him and one of the parties likely to make him unable to judge impartially”.
- If it would be inappropriate for a judge to consider a case or if there are grounds for challenging him, article 105 of the Decree requires the judge to notify the president of the court so that he may authorize him to withdraw. This is recorded in a special memorandum kept in the court. The judge may, if he wishes not to consider a case for any reason, even if it would be appropriate for him to do so and there are no grounds for challenging him, submit a memorandum to the president of the court so that he may consider approving his withdrawal”.
- Article 106 of the decree stipulates that, if there is reason to challenge a judge and he does not withdraw, the parties may request his withdrawal.
- Moreover, article 109 of the decree stipulates that, “Submission of a request to withdraw shall result in the suspension of the case pending a final decision. The court may, in the event of urgency and on the basis of a request by the other parties, assign a judge to replace the one whose withdrawal has been requested, and a substitute judge may be requested if the request to withdraw has been refused at first instance and an appeal has been lodged”.

8. With regard to the effective use of mechanisms for reporting acts of corruption in the courts and the prosecution service, the following legal texts may be presented:

- Article 2 of Legislative Decree No. 24 of the year 2012 establishing the General Anti-Corruption Authority and provisions on financial disclosure, makes all members of the judiciary and the prosecution service and the like subject to the provisions of that decree.
- In the framework of establishing the mechanism for reporting corruption and protection of whistle-blowers, Legislative Decree No. 24 of the year 2012 establishing the General Anti-Corruption Authority and provisions on financial disclosure contains a number of provisions in this regard, including the following:
- Article 36 of the decree stipulates that, “It is the duty of every person to report corruption offences, and the freedom, security and tranquillity of persons reporting is guaranteed in accordance with the provisions of this law or of any other law establishing other guarantees in this regard. There may be no prejudice of any kind whatsoever to a person for reporting such offences”.
- Article 37 of the same decree stipulates that, “Reporting under the provisions of this law requires that the person reporting has serious evidence to justify his belief in the veracity of the facts he reports”.
- Article 39 of the decree stipulates that, “The person reporting shall be afforded protection from the time he or she submits the report, and, when necessary, the protection shall extend to his or her spouse, relatives and other persons closely connected to him or her”.
- In the same context, article 40 of the decree stipulates that, “The protection of the reporting person shall comprise the following: (1) the provision of personal protection of the reporting person by not disclosing his/her identity or whereabouts and the provision of personal guards or a new place of residence if circumstances so require; (2) the provision of administrative protection of the reporting person by preventing any administrative measures being taken against him or her, and guaranteeing the validity of his or her civil service salary, rights and advantages during the period decided by the Board; (3) provision of legal protection of the reporting person by not bringing a criminal, civil or disciplinary case against him or her when the report fulfils the conditions contained in article 37 of this law”.
- Furthermore, article 42 of the same decree stipulates that, “The State shall compensate the reporting person for any material or moral harm suffered as a result of submission of the report meeting the conditions contained in article 37 of this law. The executive statute shall set out the material and moral incentives that may be granted to reporting persons and the conditions for granting them”.
- Moreover, the State of Kuwait has been most eager to strengthen freedom to report acts and crimes of corruption and to protect people reporting corruption and corruption offences in relation to all authorities, ministries and institutions of the State, naturally including the judiciary and the prosecution service.

9. With regard to the successful implementation of education and training programmes for judges and members of the prosecution service, including initial and continuing training, it can be said that the activities of the Kuwait Institute of Judicial and Legal Studies include training lawyers working in various ministries, authorities and agencies of the civil state, including the judiciary, in the context of strengthening human development requirements.

In coordination with the Ministry of Justice, the Kuwait Institute of Judicial and Legal Studies also organizes training courses and workshops for agencies in the light of international documents and instruments and national laws in force in the State of Kuwait, and judges, members of the prosecution service and law researchers in the State participate in the activities of these courses.

10. **With regard to the question as to whether there had been assessment of the effectiveness of the measures taken to implement article 11 of the United Nations Convention against Corruption**, it is worth mentioning that the State of Kuwait had prepared — in accordance with the above statement — full replies to the self-assessment checklist for the United Nations Convention against Corruption (starting with chapter two and up to chapter five), although the assessment required of the State of Kuwait at that time concerned specifically the provisions of chapters three and four of the Convention. Reference may be made to the report of the State of Kuwait on the reply to the self-assessment checklist of the Convention officially published on the website of the United Nations Office on Drugs and Crime (IRG).

III. Promulgation by the State of Kuwait of Legislative Decree No. 24 of the year 2012 establishing the General Anti-Corruption Authority and provisions on financial disclosure

The international and national efforts of the State of Kuwait in the area of combating corruption, strengthening transparency and consolidating integrity frameworks culminated in the promulgation of Legislative Decree No. 24 of the year 2012 establishing the General Anti-Corruption Authority and provisions on financial disclosure, article 2 of which stipulates that, “The provisions of this law shall apply to the following categories:

1. The president and vice-president of the Council of Ministers, ministers and those who occupy an office of the rank of minister.
2. The president, vice-president and members of the National Assembly.
3. The president and members of the Supreme Judicial Council, judges, members of the prosecution service, the president and members of the Legal Opinions and Legislation Directorate, the directors-general and members of the General Directorate for Investigations in the Ministry of Interior and the Legal Directorate of the Municipality of Kuwait, arbitrators, experts, liquidators, judicial guards and bailiffs.
4. The president, vice-president and members of the municipal council.
5. The presidents and members of the councils, authorities and committees the formation or appointment of members of which is governed by decree.
6. Leading figures, whatever the title of their post, working at first class rank, undersecretaries and assistant undersecretaries, managers of directorates, and people of their level occupying supervisory posts designated by executive regulation as regards soldiers or civilians in ministries, governmental directorates, authorities, public institutions and agencies with an additional or independent budget.
7. The president, senior officials and officers of the Audit Commission.
8. The members of the board of directors, executive directors and their deputies and assistants, directors of administration and those of similar level in companies in which the State or a governmental agency holds more than 25 per cent of the capital.
9. Members of the boards of cooperative associations and sports authorities.

Article 4 of the aforementioned Decree sets out the vision and aims of the Authority that it established, stipulating that, “The Authority shall aim to achieve the following :

- (1) Establish the principle of transparency and integrity in economic and administrative transactions in order to ensure the achievement of good governance and optimal use of the finances, resources and properties of the State.
- (2) Apply the United Nations Convention against Corruption acceded to by virtue of Law No. 47 of the year 2006.

- (3) Work towards preventing corruption, warding off its risks and effects, prosecuting its perpetrators, and seizing and recovering the proceeds resulting from it in accordance with the law.
- (4) Protect the organs of State from bribery, trading in influence, misuse of power in order to obtain private benefits and prevent cronyism and nepotism.
- (5) Protect corruption whistle-blowers.
- (6) Strengthen the principle of cooperation and participation with States and regional and international organizations in the fields of combating corruption.
- (7) Encourage and make effective the role of civil society institutions and organizations in combating corruption, make individuals in society aware of its risks, and expand the scope of knowledge of ways and means of guarding against it.

Confirming and consolidating the provision of article 4 of the Decree, article 5 contains details of the missions and responsibilities of the Anti -Corruption authority, stipulating that, “The Authority shall have the following missions and responsibilities :

- (1) Draw up a comprehensive national strategy on integrity, transparency and combating corruption, prepare mechanisms, plans and programmes to implement it, and follow up its implementation with the relevant agencies.
- (2) Receive reports, complaints and information concerning corruption offences submitted to it, study them and, if they confirm suspicion of an offence, transfer them to the competent investigative agency.
- (3) Receive financial disclosure declarations and form committees to examine them.
- (4) Protect corruption whistle-blowers in coordination with the competent agencies.
- (5) Notify the competent agencies in order to implement the necessary legal measures to revoke any contract to which the State is a party or to withdraw a privilege or any other commitment if it appears that it has been entered into on the basis of a violation of the provisions of the law or is implemented in violation of the contract concluded, in coordination with the competent agencies.
- (6) Follow up the measures taken by the competent agencies to recover the moneys and proceeds resulting from corruption offences.
- (7) Study periodically the legislation and legal apparatus relating to combating corruption and recommend the necessary amendments to them in order to keep pace with the international conventions and treaties that Kuwait has ratified or acceded to, develop the necessary measures to safeguard against corruption and update the mechanisms and means of combating it in coordination with all international agencies.
- (8) Cooperate and coordinate with Gulf, Arab and international States and organizations connected with combating corruption, participate in programmes aimed at preventing corruption and represent Kuwait at international conferences and forums connected with combating corruption.
- (9) Study and assess the reports published by local, regional and international organizations connected with combating corruption, examine the position of Kuwait on them and take appropriate measures regarding them.
- (10) Coordinate with the media in order to raise the awareness of society to the risks of corruption and corrupt practices, their effects and how to guard against them.

- (11) Take steps to guarantee the participation of civil society organizations in presenting the risks and effects of corruption to society and extend the role of society in action to combat corruption.
- (12) Request the competent agencies to investigate the facts of financial and administrative corruption, to disclose violations and abuses, and to gather evidence relating to it.
- (13) Prepare databases and information systems, and exchange information with agencies and organizations concerned with corruption cases at home and abroad in accordance with the legislation in force.
- (14) Request the competent authorities to institute the necessary administrative and civil proceedings.
- (15) Transfer the evidence of suspected criminal offences to the competent investigative agency with all the documents.
- (16) Any other missions or responsibilities vested in it”.

With regard to the listing of corruption offences, article 22 of the Decree defines the offences that come under the description corruption, stipulating that, “The following offences shall be considered corruption offences within the scope of application of the provisions of this law:

- (1) The offences of unlawful use of public funds provided for in the aforementioned Law No. 1 of the year 1993, including offences relating to public tenders, auctions and negotiations.
- (2) Bribery and abuse of influence provided for in the aforementioned Law No. 31 of the year 1970 amending certain provisions of the Criminal Code.
- (3) The money laundering offences provided for in the aforementioned Law No. 35 of the year 2002.
- (4) The forgery and counterfeiting offences provided for in the Criminal Code.
- (5) The offences concerning the administration of justice provided for in the Criminal Code.
- (6) The unlawful earnings offences provided for in this law.
- (7) The smuggling offences provided for in the aforementioned Law No. 10 of the year 2003.
- (8) The contraband offences provided for in the aforementioned Decree No. 3 of the year 1955.
- (9) The offences of obstructing the work of the Authority in order to hamper its performance or interfering with its responsibilities or failing to provide it with information requested provided for in this law.
- (10) The offences provided for in the aforementioned Competition Protection Law.
- (11) Any other offences provided for in other laws that are considered corruption offences”.

Article 31 and subsequent articles of the Legislative Decree establishing the General Anti-Corruption Authority and provisions on financial disclosure (24/2012) require all those listed in the provision of article 2 of the Decree, who include judges and members of the prosecution service and the like, to submit regular reports on their financial accounts in order to strengthen transparency and integrity and combat corruption in Kuwaiti society consistent with the provisions of the United Nations Convention against Corruption .

IV. Opinion

In the light of the above and previous statements detailing constitutional and legislative provisions, it is clear, unequivocal and unambiguous that the Kuwaiti judicial system enjoys and is characterized by an

abundance of integrity, justice, impartiality and transparency, and in this framework, in the light of the wish to enrich the discussions at the fourth meeting, a set of conclusions can be enumerated drawn from everything reported in this constitutional data, as follows:

- That the honour, integrity and fairness of judges is the foundation of rule and the guarantee of rights and freedoms.
- That no authority has any authority over the judge when giving his verdict and may in no circumstances interfere in the administration of justice.
- The principle is that court sessions are public in order to strengthen the framework of judicial transparency.
- The right to litigate is a general right guaranteed to all people without discrimination between nationals and residents.
- The prosecution service is the national authority responsible for bringing public prosecutions as the representative of society. In this respect It has a constitutional obligation to ensure that the criminal law is applied.
- Judges may not be awarded medals, decorations, awards, or any other thing while they are in post in order not to influence their judgement or interfere in the administration of justice.
- Judges may not conduct any work that is considered to be in conflict with the duties and good conduct of their office.
- Judges may not, without the agreement of the Supreme Judicial Council, be arbitrators, even if unpaid and even if the dispute is not submitted to the judiciary, except in a limited number of exceptional cases.
- Judges and members of the prosecution service are prohibited from expressing political opinions and from standing as candidates at public elections in order to guarantee the transparency of the judiciary and the prosecuting authorities.
- Judges are prohibited from disclosing the secrecy of deliberations in order to guarantee the impartiality and integrity of the judiciary.
- Judges who are related by blood or by marriage up to the fourth degree may not sit in a single chamber of a court in order to avoid conflict of interest.
- A representative of the prosecution service or a representative or defender or one of the parties may not be related in this way to any of the judges considering the case in order to prevent conflict of interest.
- Frameworks and mechanisms for the inspection of the work of judges and members of the prosecution service have been established in order to ensure that they are bound by the rules of integrity and the principles of justice and impartiality.
- Judges may be warned of anything they do that is a violation of their duties or the requirements of their office.
- Any investigatory measures, arrest or referral of a prosecution of a judge or a member of the public prosecution may be conducted if his involvement in the commission of an offence liable to criminal prosecution has been proven.
- The Supreme Judicial Council may consider the detention on remand of a judge or member of the prosecution service and renew his detention or order other measures to be taken in this framework.
- The detention of a judge or member of the prosecution service on the basis of an order or judgement automatically terminates performance of the duties of his office for the duration of his detention.

- Judges and members of the prosecution service of every rank may be disciplined. In this case, the Supreme Judicial Council may decide to suspend a judge from performing the duties of his office or decide to consider him to be on forced vacation pending the completion of disciplinary proceedings.
- The prosecutor-general may issue an oral or written warning to a member of the prosecution service who has violated the duties of his office.
- The appointment of judges and members of the prosecution service shall be subject to conditions and regulations such as to guarantee their integrity, impartiality and fairness.
- If it appears inappropriate for a judge to examine a case, he is forbidden to hear it even if he is not challenged by one of the parties to it.
- A judge may be challenged if there is any circumstance at all that amounts to a conflict of interest.
- If a judge finds that it is inappropriate for him to consider a case or if there are grounds for challenging him, he is required to inform the president of the court in order to be permitted to withdraw from the case before him.
- Submission of a petition to challenge results in the suspension of the case pending a final decision on the petition.
- All judges and members of the prosecution service and the like are subject to the provisions on financial disclosure contained in Legislative Decree No. 24 of the year 2012.
- It is the duty of every person to report corruption offences, and the freedom, security and tranquillity of whistle-blowers is guaranteed in accordance with the provisions of the law.
- There may be no prejudice of any kind whatsoever to a person for reporting such offences.
- A person reporting corruption offences is afforded protection from the time he or she submits the report and, when necessary, the protection extends to his or her spouse, relatives and other persons closely connected to him or her.
- The State compensates a person who has reported corruption offences for any material or moral harm suffered as a result of submission of the report.

International Relations Directorate