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Human rights situations that require the Council's attention

Written statement* submitted by the Conseil International pour le soutien à des procès équitables et aux Droits de l'Homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 May 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The campaign of judicial harassment against the Kuwaiti MP, lawyer and human rights defender Dr. Abdulhameed Dashti

ICSFT president Dr Abdul Hamid Abbas Dashti is an MP in Kuwait, chair of the Human Rights Commission of the Kuwaiti Parliament from June 2014 until October 2015. He is also a lawyer and a human rights activist.

As MP and as President of a human rights NGO, Dr Dashti took a clear position on the peaceful peoples' protest in Bahrain and the military intervention by Saudi Arabia against this movement. He advocates a peaceful solution for the situation in Yemen and opposes the foreign intervention in that country, especially the Saudi led military operation and the massive violations of human rights resulting from it. He criticises the regional role of Saudi Arabia and especially the responsibility of Saudi Arabia in spreading extremist ideologies distorting Islam, promoting sectarianism and supporting the destabilisation of neighbouring countries. His positions and statements have always been strictly within the limits of the freedom of expression as guaranteed by both the Constitution and the law of Kuwait and international instruments such as the International Covenant on Civil and Political Rights ratified by Kuwait in 1996.

As a result of his stance Dr. Dashti is subject to a gradually escalating campaign of judicial harassment with the clear aim to exert pressure on him to force him to restrain from expressing freely his critical opinion on regional matters. This campaign is triggered and instigated by the authorities of the Kingdom of Bahrain and the Kingdom of Saudi Arabia. Unfortunately, some forces in Kuwait yielded to this pressure and relayed it through the Kuwaiti judicial institutions, ignoring thereby the constitutional and legal traditions of Kuwait.

The parliamentary immunity of Dr. Dashti was lifted in several cases and he is criminally prosecuted before Kuwaiti Courts in more than 10 instances. All cases are at this time pending before Kuwaiti courts. In one case Dr. Dashti was also sentenced in absentia by a Court in Bahrain to two years of imprisonment on false accusations of collecting money for the families of imprisoned members of the opposition. Amnesty International has denounced that the evidence against Dr. Dashti in this case was obtained under torture.

The criminal cases initiated by the Kuwaiti Public Prosecutor against Dr. Dashti were started after official complaints sent to the Minister of Foreign Affairs of Kuwait by the Kingdoms of Saudi Arabia and Bahrain. These complaints are exclusively based on interventions in media and social media as well as public statements attributed to Dr. Dashti. An analysis of these statements, interviews, posts etc. clearly demonstrates that their content is strictly within the limits of the freedom of expression. At no point Dr. Dashti has spread hate or incited to violence, on the contrary.

All cases brought against Dr. Dashti are referred to as related to "State Security". In all cases the charges are based on article number 4/1 of the Law Number 31/1970 regarding the amendment of certain provisions of the Penal Code Number 16 of 1960 which states:

"Is punishable by temporary imprisonment - which is at least two to three years – everyone who assembles without the permission of the government military personnel or commits another hostile action against a foreign country that could expose Kuwait to the risk of war or cutting of political relations. If the act results in war or cutting political relations punishment would be life imprisonment."

Despite the fact that the Kuwaiti Constitutional Court in two recent decisions emphasised that this provision of the law refers to "hostile actions" and not to critical statements, the Public Prosecutor has not yet announced to abandon the prosecutions against Dr. Dashti which are based on this provision. On the contrary, in a recent case based on a complaint by Saudi Arabia that refers once more to mere statements made by Dr. Dashti in the press and on social media criticising Saudi violations of human rights law and international law, the Public Prosecutor requested and obtained the removal of the parliamentary immunity of Dr. Dashti to prosecute him on aforesaid art. 4/1 but also on several other provisions of criminal law, including some provisions related to cybercrime.

The prosecution against Dr. Dashti violates the Kuwaiti Constitution and law as well as the principles and provisions of the Universal Declaration of Human Rights as elaborated further in international legal human rights instruments such as the International Covenant on Civil and Political Rights Adopted by UN General Assembly resolution 2200A (XXI) of 16 December 1966 (hereafter ICCPR). In particular Article 19 of the Universal Declaration of Human Rights and Article 19 of the ICCPR guarantee the freedom of thought and the freedom of expression. The State of Kuwait ratified

and acceded to the ICCPR in 1996. It has made no declarations or reservations regarding art. 19. Freedom of expression is also guaranteed by art. 36 of the Constitution of the State of Kuwait and by its laws. The freedom of expression of elected members of parliament has moreover a special significance for the democratic debate and the functioning of democratic institutions of a country and transcends therefor the mere individual rights.

ICSFT calls upon the Human Rights Council

To assist and support the State of Kuwait in upholding its obligations under international law, in particular to fully respect the rights of freedom of expression and organisation enshrined in international legal instruments to which Kuwait adhered as well as in its Constitution and national laws, to uphold and protect the constitutional and legal framework and tradition of the State of Kuwait and to resist all international pressure to depart from it.

To invite the State of Kuwait to restore the parliamentary immunity of members of parliament, in particular that of Dr. Dashti, as an essential guarantee for the protection of freedom of expression and a necessary condition to protect democratic debate and political life in the country

To invite the Government of the State of Kuwait, in accordance with the laws of Kuwait, to terminate immediately all criminal prosecutions against Dr. Dashti in all cases pending against him which were initiated by denunciation to the Public Prosecutor by the Kuwaiti authorities on instigation of Saudi Arabia and Bahrain.
