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First-tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04728/2018

THE IMMIGRATION ACTS

Heard at Harmondsworth

On 10, 11 & 12 September 2018

Decision & Reasons Promulgated

5 OCT 2018

Before

JUDGE OF THE FIRST-TIER TRIBUNAL HODGKINSON

Between

HAH

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Laughton (Counsel instructed by Charles Douglas).
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer.

DECISION AND REASONS

Background, nature of appeal and preliminary matter

1. The appellant is a citizen of Kuwait, born on 30 September 1977, who appeals against the decision of the respondent on 26 March 2018 (amended and re-issued on 12 June 2018) to refuse his protection and human rights claims.

2. I extend the anonymity order made at the earlier directions hearing on 14 May 2018.

3. The appellant last arrived in the United Kingdom, with the benefit of a multiple entry visit visa, on 23 April 2015. He claimed asylum on 22 October 2015 and it is the refusal of that application which has triggered the present appeal. He has no dependents in respect of his claim.

4. In essence, the appellant's claim is founded upon the Refugee Convention reason of political opinion/imputed political opinion. He relies upon humanitarian protection and Articles 3 & 6 in the alternative to asylum. He does not rely upon Article 8, as confirmed by Ms Laughton at the hearing.

5. In brief summary, the appellant's claimed fears are as follows:

   1) He fears that, if removed to Kuwait, he would be imprisoned, following certain convictions, in respect of which charges the appellant claims to be innocent and which charges, he claims, were politically motivated;

   2) The appellant also claims to fear that he might arbitrarily be deprived of his Kuwaiti citizenship, should he be removed there, with the risk that he would then be removed to Jordan, in which country he has also been charged with certain criminal offences, in respect of which alleged offences he also claims to be innocent and which charges, he asserts, are also politically motivated.

   3) Additionally, he fears that, should he return to Kuwait, he is at risk of treatment contrary to Article 3 at the hands of the Kuwaiti police, prior to him being transferred to prison, the conditions in the prisons in Kuwait also being sufficiently poor, such as to result in treatment contrary to Article 3;

   4) It is also the appellant's case that he has suffered a flagrant denial of his Article 6 rights in Kuwait.

6. Thus, the appellant claims to be a refugee, whose removal from the United Kingdom would breach the United Kingdom's obligations under the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Qualification Regulations"). Alternatively, he claims that he is entitled to be granted humanitarian protection, in accordance with the amended Immigration Rules (CM6918), and that his removal to Kuwait would infringe his said protected human rights.

7. In brief, the respondent's position is that the appellant should be excluded from Refugee Convention protection with reference to Article 1F(b), that he falls to be excluded from humanitarian protection and that his removal to Kuwait would not result in an infringement of his Articles 3 & 6 rights.

8. The issues in this appeal are multi-faceted and complex. Following the said oral directions hearing on 14 May 2018, various directions were made, requiring the parties to undertake various tasks prior to the date of the substantive hearing. One of those requirements was for the parties to file and serve skeleton arguments. The

respondent's skeleton argument, prepared by Mr Clarke, was served in breach of directions, in that Ms Laughton did not have sight of that document until the evening before the substantive hearing was due to commence. The Tribunal was put in possession of the respondent's skeleton argument on the first morning of the hearing; 10 September 2018. That skeleton raises various specific arguments, not previously raised by the respondent, in what, as I have indicated, is a complex case.

9. In the circumstances, Ms Laughton, as a preliminary point, indicated that I should give the content of the respondent's skeleton argument only limited weight. I indicated that the Tribunal was not prepared to be constrained in that regard, as it was obviously essential for me to consider the arguments being put forward by both representatives in full and then to arrive at my conclusions based upon the totality of the admitted evidence. I did not seek to exclude the respondent's skeleton argument, nor was this requested by Ms Laughton, as it clearly contained relevant arguments and was relied upon by Mr Clarke. I gave indication that, if Ms Laughton considered that she were disadvantaged by the late production of the respondent's skeleton argument, then it was open to her to apply for an adjournment. I would add that, had one been requested at that stage, I would have granted it in the circumstances. However, after Ms Laughton had had the opportunity to take instructions, she indicated that no adjournment was being requested and that she was content that the appeal proceed.

The appellant's claim

10. The appellant's claim is set out, inter-alia, in a screening interview record (SIR) dated 16 November 2015, in an asylum interview record (AIR) dated 9 February 2016, in his grounds of appeal, in the lengthy initial submissions of Blokh Solicitors dated 11 April 2016 ("the April 2016 submissions"), in the appellant's four statements, dated 8 April 2016 (96 pages long) ("WS1"), 17 March 2017 (3 pages long) ("WS2"), 11 July 2017 (4 pages long) ("WS3") and 7 August 2018 (28 pages long) ("WS4"), in Ms Laughton's skeleton argument and produced chronology, in the statements of various supporting witnesses and in the oral evidence heard by me.

11. I have set out below, in relative summary, the key salient elements of the appellant's claim. For ease of reference, I have divided the summary into various sections, although it should be borne in mind that there are overlaps in terms of events and issues.

Background/commercial disputes with the Al Kharafi family

12. The appellant was born in Kuwait and was now nearly 41 years old. On 23 December 2003, he married Nouf Jaber Sabah Al Sabah ("the appellant's wife"), who is a member of the Kuwaiti royal family, holding a diplomatic (special) passport. She is a relative of the current Kuwaiti Emir. They have four children together.

13. The appellant was a successful banker and businessman in Kuwait and Qatar. He had a background in finance and built up a successful career. On 20 March 2006, he established a company in Qatar by the name of Tatweer Infrastructure Company

("Tatweer"), which was, and is, part of the Ettizan Group ("Ettizan") based in Doha in Qatar. Tatweer was established in order to implement Build Operate Transfers (BLTs) in Gulf States. The appellant was the managing director of Tatweer and the majority shareholder, through his controlling shareholding in Ettizan. He was, until his subsequent resignation, the chairman of Ettizan. A colleague and business partner of the appellant, by the name of Ali Abdulqader S A Al Yafei ("Mr Al Yafei"), whom the appellant had known since 2004, was the chairman. The appellant held 85% of the shares in Ettizan and the balance was owned by his business partner, Mr Al Yafei. Loay (aka Louay) Al Kharafi, a member of the Kuwaiti Al Kharafi family, was the vice-chairman of Ettizan.

14. The Al Kharafi family also held a stake in Tatweer. The Al Kharafi family, which was (and is) an extremely wealthy and influential Kuwaiti family, subsequently attempted to 'squeeze' Tatweer for money, due to their wealth having diminished during the financial crisis and the Arab Spring, which attempt was vetoed by the appellant.

15. In retaliation, Loay Al Kharafi fraudulently changed the make-up of the board of directors of Tatweer, in order to oust the appellant from his position. This was later found to be unlawful by the Qatari Court of Cassation. After the appellant came into conflict with the Al Kharafi family, at the end of 2012 he began to receive death threats from a person called Dhaidan Al Mutairi, an associate of Loay Al Kharafi. These threats were overheard by Rozan Al Amri, a Jordanian citizen and a vice president for marketing and PR at Tatweer, and were reported to the police. Dhaidan Al Mutairi was arrested but released the same day, on financial guarantee.

16. On 27 December 2012, the appellant brought a fraud case against Loay Al Kharafi, in respect of forging the minutes of the Board of Directors of Tatweer, as a result of which forgery the appellant had been fraudulently removed from office. On 25 February 2015, the Cassation Court of Qatar held that the meeting of the Board of Directors in question was invalid, as were all resolutions passed.

17. The history of enmity between the appellant and the Al Kharafi family was (and is) relevant to other events which subsequently occurred. Specifically, the appellant later came into political conflict with Jassem Al Kharafi (Loay's father) and Loay Al Kharafi, who brought claims against the appellant in respect of mishandling and embezzlement of company funds in relation to companies called Ijara House Holding Company and United Aviation. They were commercial disputes dressed up as criminal complaints, in order further to discredit the appellant and to prevent him from leaving Kuwait. The Al Kharafis were also connected to certain criminal proceedings in Kuwait, as referred to further below.

Videotapes, the 'Trekell' arbitration and the Swiss criminal proceedings

(It should be noted that the name Al-Sabah or Al Sabah denotes a member of the Kuwaiti royal family)

18. In 2011, Kuwait was hit with a corruption scandal, in which the leader of the opposition, Musallam Al-Barrak, accused high-ranking government officials of laundering money. This resulted in the resignation of several key members of the Cabinet, including the then Prime Minister, Sheikh Nasser Mohammed Ahmad Al-

Jaber Al-Sabah ("Sheikh Nasser"). Since then, Musallam Al Barrak had subsequently been charged with numerous offences, including undermining or insulting the Emir, for which he was sentenced to 5 years' imprisonment; later reduced to 2 years.

19. Divisions became clearly apparent, with Sheikh Ahmed Al-Fahad Al-Ahmed Al-Sabah ("Sheikh Ahmed") (who resigned in protest at the ongoing corruption) and his brother, Sheikh Athbi Fahad al-Sabah ("Sheikh Athbi"), on the one side, and individuals such as Sheikh Nasser and the former Speaker, Jassem Al Kharafi, on the other side. Sheikh Nasser and Sheikh Ahmed were the main contenders ultimately to succeed the current Emir, following the ultimate demise of the current Crown Prince of Kuwait.

20. In January/February 2013, the appellant was approached by Sheikh Ahmed and Sheikh Athbi, they asking the appellant to assist, as part of an investigative team, in verifying videotape evidence of corruption by various individuals, including Sheikh Nasser, Jassem Al Kharafi and certain senior judges, which videotapes demonstrated corruption which might affect national security. Sheikh Ahmed had decided to form an investigative team, in order to examine the allegations and the videotape evidence.

21. Sheikh Ahmed chose the appellant to be part of the investigative team, because of his network with different law firms internationally. In November 2013, Sheikh Ahmed expanded the investigative team, to include Sheikh Athbi, Sheikh Khalifa Al Abdullah Al Jaber Al Sabah ("Sheikh Khalifa") (who was at the time editor-in-chief of Al Watan newspaper and TV channel in Kuwait), Falah Al Hajraf (vice-chairman of Grand Real Estate Projects, a lawyer and co-founder and owner of RHA law firm in Kuwait) ("Mr Al Hajraf"), Abdul Mohsen Al-Ateeqi (also a lawyer and partner at RHA law firm) ("Mr Al-Ateeqi"), Fawaz Abdullah Al-Sabah (a Major in the Kuwait Military Intelligence), Sheikh Ahmed Dawood Al-Sabah ("Sheikh Ahmed Dawood") - not to be confused with the Sheikh Ahmed referred to above) and Yousef Al-Essa ("Mr Al-Essa").

22. The appellant's role in the investigation was to receive certain videotapes from Sheikh Ahmed's lawyers. The appellant was to hire forensic organisations, first to investigate whether the videos had been tampered with and, second, to enhance the videos. Those videos comprised four types. First, certain of the tapes showed discussions between Sheikh Nasser and the ex-Speaker, Jassem Al Kharafi, in respect of bribing senior judges and how Sheikh Nasser could succeed the Emir of Kuwait. The second type showed Sheikh Nasser discussing with bankers how to secure, manipulate and hide sovereign wealth. The third type showed Sheikh Nasser and Jassem Al Kharafi in a meeting with a representative of the Iranian regime, discussing the laundering of US$6-7 billion through companies owned by Jassem Al Kharafi. The fourth type showed the Under Secretary of the Royal Court and the Assistant Under Secretary of Political Affairs giving the head of the Kuwaiti judiciary "bags of cash". The fifth type showed Sheikh Nasser having a warm relationship with a person of the same sex. There were 14-20 videotapes in all.

23. The videos had been offered to Sheikh Ahmed by means of an approach made to Sheikh Ahmed by members of Sheikh Nasser's entourage, through a Swiss lawyer

who was offering the videos for sale. The appellant took on the role of communicating with that lawyer and a meeting was arranged in spring 2013. The appellant was subsequently shown a video clip by the lawyer in question, who then offered to sell the appellant "sex tapes" involving Sheikh Nasser for $7 million.

24. In May/June 2013, the appellant was shown further tapes and, two days later, Sheikh Ahmed gave the appellant the green light to negotiate, execute and manage the authentication process in relation to the videotapes. Between the end of 2013 and early 2015, the appellant purchased 11 tapes, for US$11 million, on behalf of Sheikh Ahmed, and he met the Swiss lawyer several times.

25. The tapes were purchased in different tranches and the purchase was organised by the appellant on behalf Sheikh Ahmed. They showed various highly damning events relating to Sheikh Nasser and Jassem Al Kharafi. One of the tapes strongly suggested that there was an ongoing relationship with Iran, the strong inference being that it was in order to launder money.

26. There were tapes relating to meetings being held with different bankers. The first set referred to Sheikh Nasser bringing in US$150 million and referring to a transfer to Tel Aviv. The second set also related to money being transferred between Israel and Kuwait. Kuwait had no diplomatic relations with Israel and the tape suggested that the transfer of money was in contravention of this. One of the most incendiary tapes referred to the possibility of unseating the current Emir, who had health problems, and replacing him. There were also references to having "organised" everything with the judges who would supervise the elections and of having bribed the various tribes. The final tranche of tapes showed various judges taking bribes, including the head of the judiciary and his second-in-command. Thus, the tapes showed political, economic and judicial corruption striking at the very heart of the political elite in Kuwait.

27. From the time that the tapes were purchased, the appellant and the investigative team began having them transcribed. They also managed to improve the audio quality and arranged for facial mapping and extensive forensic analysis to be undertaken.

28. In order to facilitate the investigation, a Special Purpose Vehicle (SPV) company was used. That company was Trekell Group LLC ("Trekell"). Trekell was created by an associate of the appellant, Matthew Parish, who was a lawyer working at that time at Holman Fenwick Willans (HFW) lawyers in Geneva. Trekell was created to protect and to camouflage the investigators and was chosen by Sheikh Ahmed from a list of companies created by Matthew Parish. Trekell was initially controlled by an employee of the appellant, by the name of Babu Jayarajsalian ("Babu"), before Trekell was subsequently transferred to the investigators, as a part of their remuneration for undertaking the investigation of the tapes. The investigators were different from, and should be distinguished from, the investigative team formed by Sheikh Ahmed, of which the appellant was one.

29. The authenticity of the tapes was key. Arbitration proceedings were brought in Switzerland for the sole purpose of proving their authenticity ("the Trekell

arbitration"). The appellant helped to organise these arbitration proceedings, due to his experience in legal proceedings, and in arbitration in Switzerland in particular.

30. On 28 March 2014, Sheikh Ahmed signed a contract with Trekell. On 28 April 2018, an addendum clause was added to that contract, which stated:

> "A difference having arisen between the parties undersigned concerning the Consultancy and Advisory Agreement between the parties dated 28 March 2014, and in particular the authenticity and content of the video clips transferred pursuant thereto, the parties hereby agree that the difference shall be referred to and finally resolved by arbitration. ..."

31. As a result of the arbitration clause, Trekell brought a claim again Sheikh Ahmed before a sole Swiss arbitrator by the name of Stoyen Baumeyer (SB), who was specified as the sole arbitrator under the terms of the contract. The parties instructed joint experts, as part of the investigation into the question of whether the videotapes were, or were not, genuine. Three expert reports were commissioned; one from a company called CY40R (otherwise known as 'CYFOR'), dated 29 April 2014, in respect of the possibility of tampering. Another report was from Afentis Forensics, dated 13 May 2014, also in relation to tampering. A third report was from Emmerson Associates, dated 22 May 2014, in relation to facial mapping. The CY40R report was also checked by the Security Police in Switzerland, in collaboration with the Federal Polytechnic University of Lausanne.

32. In the Trekell arbitration, which was on the papers, rather than by way of an oral hearing, SB considered the expert reports and concluded, in an arbitration award dated 28 May 2014, that the content of the experts' reports established the authenticity of the tapes examined. He concluded that the presented video footage was genuine and had not been tampered with.

33. On 5 June 2014, leave to enforce the arbitration judgment was ordered by Field J in the High Court of Justice, Commercial Court in the UK.

34. When the corruption in Kuwait was originally uncovered, and as the initial investigation was ongoing, the Emir of Kuwait appeared to be open to a real and transparent investigation. He initially set up an investigatory Royal committee, in late 2013 or early 2014. However, the tide soon changed. Sheikh Nasser was still politically powerful. Although he had resigned as Prime Minister in 2011, he still controlled the government, due both to his position in the ruling family and because his deputy, Jaber Al-Mubarak Al-Hamad Al-Sabah, became the Prime Minister. Jassem Al Kharafi, who subsequently died on 21 May 2015, was still extremely important, both economically and politically, being part of one of the richest families in the world and having controlling interests in companies across the Middle East and North African (MENA) region.

35. On 15 April 2014, the Prime Minister of Kuwait told the National Assembly that the videotapes in question had been "tampered with". The Speaker of the National Assembly, Marzouk al-Ghanem, Jassem Al Kharafi's nephew, said that the Prime Minister had conducted a secret session, and had shown them the videotapes and expert reports, confirming that the recordings had been tampered with and that they did not represent genuine and reliable copies. The government informed the

National Assembly that it would turn over the tapes and documents to the Kuwaiti Public Prosecutor (elsewhere referred to as the "PPO") for investigation.

36. In January 2014, a tweeter, who published supposed details of the videotapes, was arrested and his case was conducted as a state security lawsuit. On 6 April 2014, Sheikh Ahmed was interrogated by the Public Prosecutor for five hours, as a witness in relation to the videotapes. Information relating to the tapes was published by Al Watan and Alam Al Yawm newspapers. In April 2014, both newspapers were suspended for two weeks, as punishment for publishing Sheikh Ahmed's comments, and again in June 2014.

37. On 10 June 2014, there was a mass demonstration in Kuwait, in which Musallam Al-Barrak accused Sheikh Nasser and Jassem Al Kharafi of stealing $50 billion and depositing those funds with foreign banks. He showed bank statements allegedly showing transfers from Sheikh Nasser to high-ranking judiciary in Kuwait.

38. On 14 June 2014, Sheikh Ahmed appeared on Al Watan TV, in order to discuss the videotapes scandal. That same month, he began giving evidence to the Attorney General about the plot. He filed some of the evidence that had been obtained, including the Trekell arbitration award and the UK High Court's enforcement order of 5 June 2014. On 16 June 2014, Sheikh Ahmed filed a lawsuit in relation to the allegations.

39. In September 2014, Sheikh Nasser and Jassem Al Kharafi were summoned by the Kuwaiti Attorney General to respond to Sheikh Ahmed's accusations.

40. In October 2014, Sheikh Khalifa testified in support of Sheikh Ahmed's allegations, despite having received threats that Al Watan would be shut down if he did. In retaliation, his newspaper, Al Watan, was closed down in January 2015.

41. Despite the huge amount of evidence amassed, in March 2015 the case brought by Sheikh Ahmed was dismissed, without it ever being brought to court. Sheikh Ahmed accused the legal system of collaboration. As a result, he, his family and his team were threatened and he was coerced by the Emir, who at that stage was firmly siding with Sheikh Nasser and Jassem Al Kharafi, into issuing a public apology on 26 March 2015, during which apology he, incorrectly, stated that the videotapes were false. That apology was aired on national television and widely printed in Kuwait media outlets.

The Fintas Group prosecution and surrounding circumstances

42. On 11 February 2015, a travel ban was issued in respect of the appellant, in relation to the said case involving Ijara House Holding Company, a company controlled by National Investments Company that, in turn, was owned by the Al Kharafi family. The ban was imposed, in order to try to prevent the appellant from leaving Kuwait, in the light of his investigations of corruption into Sheikh Nasser and Jassem Al Kharafi. However, the ban was lifted on 1 March 2015 and the appellant left Kuwait on 29 March 2015. Despite this, proceedings were subsequently brought against him, and against three immigration officers accused of helping him to leave Kuwait, regardless of the fact that he had left entirely legally.

43. In late 2014/early 2015, Loay Al Kharafi admitted to Mr Al Yafei that he was fabricating material against the appellant and offered to give US$150 million to the appellant if he agreed to work against Sheikh Ahmed and to provide false information.

44. One of the defendants, Mr Al-Essa, was informed, by Loay Al Kharafi, that he would escape prosecution if he wrote a false statement. No action was taken by the Kuwaiti court, when this was brought to their attention.

45. On 23 March 2015, Mr Al-Ateeqi was arrested at a rally outside the National Assembly and his mobile telephones were subsequently confiscated whilst he was in custody. A month later, Al Rai newspaper claimed that it had found communications between Mr Al-Ateeqi and other members of Sheikh Ahmed's team, in a WhatsApp conversation which had been found on his phone, which conversation referred to fabricating videos against the judiciary in Kuwait. The appellant's position was that the WhatsApp group conversation had been fabricated.

46. The appellant having left Kuwait on 29 March 2015, he passed through Saudi Arabia and Dubai. Whilst he was in Saudi Arabia, the Kuwaiti authorities contacted the Jordanian authorities. When the appellant arrived in Dubai, he was stopped at passport control, where he was eventually met by a first-class Lieutenant named Khaled, who was the Interpol liaison, and who informed the appellant that the appellant had been 'flagged' by Jordan (*this would appear to have a link to certain criminal proceedings in Jordan, arising from a second Swiss arbitration, the 'KRIC arbitration', as referred to further below - my words*). However, the Dubai authorities having received the file from the Jordanians, could see that it was a clear case of political and economic persecution and permitted the appellant to leave Dubai.

47. There were subsequent reports that Kuwait had also sent a request for the appellant's arrest to Interpol, on the basis of him being involved in fabricating tapes that would have led to sedition in Kuwait, and because he was the main accused in respect of the manipulation of videotapes and sedition.

48. In Kuwait, Sheikh Ahmed's apology was all the ammunition which his opponents needed. One of the investigative team members, Mr Al-Ateeqi, who was a Kuwaiti lawyer with RHA lawyers based in Kuwait, had already been arrested. As indicated, during his arrest, one of his phones was confiscated and, as a result of a fabricated WhatsApp group conversation, devised out of the contents of his phone, in April 2015 the Criminal Investigation Department instigated criminal proceedings against 13 individuals; namely, the appellant, Mr Al-Ateeqi, Mr Hajraf, Sheikh Khalifa, Sheikh Ahmed Dawood (also spelt 'Daoud'), Sheikh Athbi, Mr Al Essa, Fawaz Abdullah Al-Sabah Al-Sabah, Mr Alhaji, Ahmed Mohsen Sayar Al Anzi, Mohamed Abdel Qader Al Jassim, Mishari Nasser Nafil and Jarah Mohammad Lafta Al Dhufairi; (*known as, and referred to collectively as, the Fintas Group, the relevant trial being referred to as the Fintas trial*). Sheikh Ahmed was not one of the Fintas Group but was charged separately for defaming the judiciary, in respect of which he was subsequently made the subject of a suspended sentence of imprisonment.

49. In June 2015, arrest warrants were issued against the members of the Fintas Group and travel bans were also imposed on 7 June 2015 against all 13 accused.

50. On 6 September 2015, Mr Al Hajraf, one of the legal counsel to the team, was arrested and detained until 1 October 2015. He was subjected to psychological abuse, in an attempt to force him to give false incriminating evidence against the appellant. In November 2015, a third case was brought against Mr Al Hajraf and another arrest warrant was issued.

51. It would appear, from reports in the media, that the appellant was (and is) seen as a key figure in respect of the Fintas Group charges, there being multiple references in the international media referring to him being wanted for sedition. Reference is made to him being a forger.

52. As indicated, on 20 January 2015, Al Watan newspaper was closed down in retaliation for Sheikh Khalifa's testimony.

53. On 11 February 2015, a travel ban was issued against the appellant in relation to the Ijara House Holding Company case.

54. On 12 February 2015, the appellant returned to Kuwait from London. On 1 March 2015, the travel ban against him was lifted.

55. On 18 March 2015, the Kuwaiti Public Prosecutor stated that no charges would be brought against Sheikh Nasser or against Jassem Al Kharafi.

56. On 3 April 2015, the appellant's wife, who did not leave Kuwait with the appellant, began to receive threats over the telephone.

57. On 7 April 2015, the appellant arrived in the UK.

58. On 17 April 2015, Peters and Peters solicitors made representations on the appellant's behalf to Interpol. On 28 April 2015, they wrote a second letter to Interpol.

59. On 18 April 2015, media reports asserted that Kuwait had requested Interpol to issue a global warrant for the appellant for creating a seditious videotape. Those media reports referred to the appellant as being a key suspect.

60. On 22 April 2015, the appellant travelled to Malta via Switzerland, in order to enquire about the possibility of residence in Malta. He returned to the UK on 23 April 2015.

61. In June 2015, arrest warrants were issued against the members of the Fintas Group. On 7 June 2015, travel bans were imposed against all 13 accused members of the Fintas Group. In June 2015, Al Watan TV was shut down.

62. On 4 August 2015, threats which the appellant had been receiving in the UK were reported to the police by Peters and Peters.

63. On 13 August 2015, the charges themselves, relating to the Fintas Group, were laid in Kuwait. The appellant was referred to in the charges as being "*imprisoned in absentia*" and he was charged with six offences; namely:

- publicly challenging, degrading and dishonouring on social media and on the Internet by writing about the rights of the Emir and his authority and power and manipulating on the datum of the emirate by writing the phrases mentioned and indicated;
- insulting the honour of Justice Feisal Abdul Aziz Al Marshid and Justice Yousef Jassim Al Matawa'a and others from the judiciary;
- deliberately spreading false news and malicious rumours abroad about the internal situation of the country and that he synthesised a video claiming that Nayef Abdullah al Rukaibi had given Yousef Jassim Al Matawa'a a bag of cash in order to weaken the prestige of the state and to shake the confidence in the judicial authority and call into question the integrity of one of its members;
- abusing publicly the due respect to the judges by publishing facts and documents on Twitter and other social networking sites, questioning the judges integrity, their interest in their work and their commitment to the provisions of law;
- publishing and writing facts and documents on Twitter and other international social networking sites about Yousef Jassim Al Matawa'a which damages his reputation;
- deliberately abusing mobile phone devices.

64. In September 2015, the Kuwaiti court began to hear the Fintas Group case. A fight broke out between the Fintas Group team and the Al Kharafi team. On 1 October 2015, a request was made to add a further charge due to that incident. The appellant's name was included on the request, despite the fact that he was not present.

65. On 22 October 2015, the appellant claimed asylum.

66. On 5 January 2016, he was convicted in absentia of leaving Kuwait contrary to a travel ban, despite the fact that the travel ban had been lifted prior to his departure, and he was sentenced to 10 years' imprisonment.

67. On 11 May 2016, there was confirmation that an Interpol Red Notice had been issued by Kuwait in respect of the appellant.

68. On 30 May 2016, the appellant was convicted in absentia in relation to the Fintas Group case and sentenced to 10 years' imprisonment for deliberately circulating false or malicious news abroad to weaken the prestige of the state, undermining confidence in the judiciary and deliberately misusing his phone.

69. On 19 January 2017, an appeal against the decision in the Fintas Group case was dismissed.

70. On 25 January 2017, the appellant was sentenced to 7 years' imprisonment, in absentia, for forging official documents in relation to *Unicapita*. Those charges were instigated by the Al Kharafi family and related to commercial proceedings in Qatar concerning Unicapita Consultancy, of which the appellant was chairman.

71. On 15 May 2017, the Court of Cassation, the highest court in Kuwait, dismissed the Fintas Group case appeal.

72. On 26 November 2017, the appellant, together with Sheikh Khalifa, Sheikh Athbi, Mr Al Ateeqi, Sheikh Ahmed Dawood and Mr Al Hajraf, were convicted and sentenced to 1 and 2 years' imprisonment for possessing tapping devices and recording phone conversations of Marzouk Al-Ghanem (the current Speaker of the Kuwait National Assembly), faking the calls and posting them on YouTube, slandering Marzouk Al-Ghanem and intentionally abusing phone calls.

The Swiss criminal prosecution

73. On 27 December 2016, the Swiss Prosecutor issued an arrest warrant against the appellant, in respect of criminal charges levelled against him, and others, in Switzerland, arising from the contention that the Trekell arbitration was, in fact, a sham. That warrant triggered extradition proceedings against the appellant (*those proceedings are, as I understand it, to be heard in the UK on 6 November 2018. The Swiss charges are set out in the said arrest warrant, which document is at section H of the respondent's bundle of documents and need not be set out herein at this stage*).

74. On 20 July 2017, the appellant's lawyers wrote to the respondent, requesting permission for him to travel to Switzerland, in order to take part in the criminal investigation there, without his asylum claim being treated as withdrawn. There was no response.

75. On 27 July 2017, the lawyer for the Al-Kharafi family made reference to the appellant's British asylum claim. On 1 August 2017, the appellant's lawyers wrote to the respondent, asking how that information had been disclosed to third parties. There was no response.

76. On 3 August 2017, the appellant lodged a judicial review (JR) claim against the respondent's delay in making a decision in relation to his asylum claim. Those proceedings were disposed of via a consent order and his claim was, of course, subsequently refused on 26 March 2018.

77. On 13 September 2017, the appellant disclosed to the Swiss Prosecutor that he had claimed asylum in the UK and he requested confidentiality. That was refused, the result being that the fact that he had made an asylum claim was accessible to the complainants in the Swiss criminal proceedings; namely, Sheikh Nasser and the Al Kharafi family.

The KRIC/SSIF arbitration and criminal charges in Jordan

78. The appellant became involved in further arbitration proceedings in Switzerland, arising out of the proposed purchase of shares in the Jordanian Housing Bank for Trade and Finance (HBTF). HBTF was established in Jordan in 1973, as a public shareholding limited company. The primary focus of HBTF was to provide housing finance. Since its inception, it had diversified its scope, becoming a comprehensive bank, providing full commercial banking services. At the end of 2014, the Bank's total equity amounted to US$1.5 billion. Its shares were owned by various factions. The Qatari National Bank (QNB) owned 34.48% of the shares, the Kuwaiti Investment Authority held 18.61%, Libyan Foreign Bank held 16.18% and the Jordanian Social Security Investment Fund (SSIF)/Jordan owned 15.39%. The SSIF was (and is) a national institution and is partly owned by the Jordanian government. Every employee in Jordan was (and is) required by law to pay 7% of their salary into the SSIF, and their employer is also required to make a contribution. The SSIF also owns the majority of the media in Jordan.

79. Parallel negotiations commenced over the purchase of the HBTF shares, with both Kuwait and Qatar eager to purchase them. Ettizan, the company in which the appellant was a majority shareholder and chairman, was involved in negotiations on behalf of the Qataris. Ettizan contracted with QNB, on 20 January 2010 and 14 June 2011, to acquire a percentage of the HBTF shares for QNB. At that stage, the appellant was based in Doha in Qatar. As a result of Ettizan's contracts with QNB, the appellant resigned from his post as chairman, due to concerns over potential conflicts of interest. Sheikh Ahmed Dawood (one of the Fintas Group defendants), through Kuwait Capital Holdings (KCH), was involved in the negotiations on behalf of the Kuwaitis.

80. The appellant had a good relationship with the Jordanians, including the now former Jordanian Prime Minister, Samir Zaid Al Rifai ("Mr Al Rifai"). Inter-alia, Mr Al Rifai was on the board of directors of the HBTF.

81. In order to acquire the HBTF shareholding, Ettizan engaged its sister company, the Initiator Group (TIG), which established an SPV based in Belize; namely, a company called KRIC, to seek to purchase the shares for QNB through its holding company in Qatar. Mr Al Yafei (referred to above) was the chairman and director of KRIC.

82. In April 2012, Sheikh Ahmed Dawood asked the appellant to check the progress of the deal between the Qataris and the SSIF. The appellant was informed, by Mr Al Yafei, that the deal selling the shares to the QNB had been completed. However, Sheikh Ahmed Dawood remain unconvinced, bearing in mind that the SSIF appeared still to be negotiating with him. A further meeting between Sheikh Ahmed Dawood, on behalf of the Kuwaitis, was arranged for 11 June 2012. That meeting was attended by the appellant, amongst others, and Dr Yaser Adwan ("Dr Adwan"), the then chairman of the SSIF. At that meeting, Dr Adwan neither confirmed nor denied that the shares had already been sold, he stating that it was "classified". The refusal to deny whether the sales had been sold made it clear to Sheikh Ahmed Dawood that the shares had, in fact, been sold to the Qataris.

83. In fact, on 18 March 2012, an agreement had been signed between the SSIF and KRIC, in which KRIC agreed to purchase 38,782,800 ordinary shares in HBTF for US$469,271,880. The agreement mandated that the shares were to be transferred over a period of one year after the signing of the agreement, by way of two tranches. The first tranche was supposed to be transferred between 60 and 90 days from the date of the agreement. The second tranche was to be transferred within 12 months of the date of the agreement. Dr Adwan signed the agreement on behalf of the SSIF and Mr Al Yafei signed it on behalf of KRIC.

84. In June 2012, the appellant was informed by the QNB, and by individuals called Yazed Eljazara (also referred to as 'Al Jazarah'), and by Khaled Al Fayez from the SSIF, that the agreement to buy the shares had been signed.

85. On 13 November 2013, KRIC brought an arbitration case in Switzerland against SSIF, for its failure to transfer the HBTF shares, with reference to the terms of the contract entered into on 18 March 2012 ("the KRIC arbitration"). This resulted in negative publicity in Jordan, with Dr Adwan claiming that the deal for the sale of the HBTF shares was a 'fraud' and a 'scam'. The appellant gave evidence in the proceedings on 1 September 2014 and was a critical witness in those proceedings, as he had knowledge of, and was able to give evidence about, the negotiations held with both the Qataris and the Kuwaitis. Prior to this, on 7 July 2014, the appellant lodged a written statement, he being heavily involved in this litigation.

86. On 10 October 2014, an email was sent to the Swiss arbitrator, and to all parties to the arbitration proceedings, from an SSIF account, showing a financial transfer to the Arbitral Tribunal-appointed expert, Dr Nauer-Meier. Dr Nauer-Meier subsequently found in her report that the signature of Dr Adwan was forged.

87. On 19 October 2014, an email was sent, appearing to show Dr Adwan and Mr Al Yafei in a cafe on 17 March 2012 and in a conference room on 18 March 2012. On 10 November 2014, further emails were sent attaching videos and the said money transfer.

88. On 11 November 2014, Nader Al Amri ("Mr Al Amri"), a brother of the appellant's said colleague at Tatweer, Rozan Al Amri, was detained by the Jordanian authorities. He was tortured. He was informed that he would be released if he agreed with all the allegations, essentially to the effect that the contract between KRIC and SSIF was a forgery, and if he signed a confession. The terms of the requested confession were to the effect that Mr Al Amri should confirm that he was instructed by the appellant, and financed by Mr Eljazara, to make actual wire transfers to the arbitrator-appointed expert, Dr Nauer-Meier, in order to make it appear as if she was accepting a bribe from a Jordanian source, and that he had been instructed to send these wire transfers by email to the SSIF system, by hacking their emails.

89. On 18 November 2014, charges were laid in Jordan against the appellant, Mr Eljazara, Mr Al Amri and several other individuals. On 24 November 2014, a formal bill of indictment was laid in the Criminal Court in Amman against the appellant and the others. The charges were:

- premeditated illicit access to websites affecting the national security with a view to commit fraud in complicity;
- premeditated access to websites with a view to have access to information not available to the public affecting national security;
- undue assumption of a website capacity or the personality of the owner thereof in complicity;
- international use of forged private papers x 2;
- interference in forgery of private paper in complicity x 3;
- use of personal identity card for illegal purpose in complicity;
- offer of an unaccepted bribe in complicity.

90. The charges raised in Jordan against the appellant were fabricated and were raised in order to discredit him and his evidence with reference to the KRIC arbitration. The appellant believed that Jordan and Kuwait were working in tandem, having similar goals; namely, the complete discrediting and persecution of the appellant.

91. On 9 November 2014, KRIC filed criminal complaints against Dr Adwan and Dr Nauer-Meier.

92. On 30 November 2014, the Jordanian trial, involving the appellant, Mr Eljazara, Mr Al Amri and others, commenced and was still ongoing, nearly 4 years later.

93. In April 2015, details of the Jordanian charges were sent to the arbitrator by the SSIF. In July 2015, Tamer Khreis ("Mr Khreis"), a Jordanian lawyer, who represented Mr Al Amri in the Jordanian criminal case, came to London and showed the appellant the Jordan charges and materials.

94. On 20 August 2015, the arbitrator refused KRIC's claim against the SSIF. On 21 September 2015, KRIC appealed against the Arbitrator's decision. In February 2017, the Federal Court in Switzerland dismissed KRIC's appeal.

Reasons for refusal

95. The detailed reasons for the respondent's decision are set out in the respondent's reasons for refusal letter (RFRL) dated 26 March 2018, as amended and reissued on 12 June 2018 (RFRL), and in an exclusion note annexed thereto and dated 12 June 2018 ("the exclusion note"), as relied upon, and amplified, by Mr Clarke in his oral submissions. The relevant elements may be summarised as follows.

96. In effect, and in brief summary, the respondent:

1) Acknowledged that the relevant Refugee Convention reason was that of imputed political opinion/political opinion and accepted the appellant's identity and nationality;

2) Certified the appellant's asylum claim with reference to s. 55 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act"), as it was considered that the appellant was not entitled to the protection of Article 33(1) of the Convention, and contended that the appellant should be excluded from the protection of the Refugee Convention under Article 1F(b), due to *"the arrest warrant and extradition request issued by the Swiss Prosecutor and circumstantial evidence concerning criminal proceedings against him for fraudulent practices in other jurisdictions"*;

3) In any event, considered that the appellant had not established that his removal would result in his persecution;

4) Contended that the appellant was also excluded from a grant of humanitarian protection with reference to [339D] of the Immigration Rules;

5) Rejected, as lacking credibility, material elements of the appellant's account, for reasons set out at [44]-[56] of the RFRL;

6) Contended that s.8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ("the 2004 Act") was engaged with reference to the appellant's delay in claiming asylum and with reference to his failure to claim asylum in a safe country *en route* to the UK (namely Switzerland and Malta);

7) Considered that the appellant actually feared prosecution in Kuwait, rather than persecution, did not accept that the charges against him were politically motivated, considered that judicial independence in Kuwait was generally respected and that conditions in Kuwaiti prisons generally met international standards;

8) In the circumstances, considered that the appellant's removal to Kuwait would not infringe his Article 3 rights;

9) Concluded that the appellant was not entitled to the grants of asylum or humanitarian protection and that his removal to Kuwait did not infringe his Articles 3 or 6 rights.

97. As indicated, the appellant does not rely upon Article 8.

Evidence

98. I heard oral evidence by the appellant, by the appellant's wife, by Sheikh Khalifa (the former editor-in-chief of Al Watan and a co-defendant in the Fintas Group trial), by Dr Sean Yom (expert witness) ("Dr Yom") and by Mr Khreis (the Jordanian lawyer referred to above), all in English, and detailed oral submissions from both representatives, all of which are set out fully in my record of proceedings.

99. I have also taken into account the following documents placed before me:

1) The respondent's main bundle (RB);

2) The amended RFRL, together with an additional note, dated 12 June 2018, headed: *Clarification of the purported offences relied upon at paragraphs 21 to 33 of the Reasons for refusal letter for the exclusion of the Appellant from the Refugee Convention under Article 1F(b)*; namely, the exclusion note;

3) The appellant's indexed and paginated core bundle ("CB"), authorities bundle, plus bundles numbered 1 through to 11 ("B1-B11");

4) Ms Laughton's skeleton argument plus Annex A thereto;

5) A chronology with reference to corroborative evidence produced by Ms Laughton ("the chronology");

6) The respondent's skeleton argument;

7) A copy of the Court of Appeal's judgment in AH (Algeria) v SSHD [2012] EWCA Civ 395, lodged by Mr Clarke;

8) A copy of the respondent's relevant guidance entitled *Exclusion (Article 1F) and Article 33(2) of the Refugee Convention* ("the respondent's Article 1F guidance");

9) A few assorted additional documents lodged and relied upon by Ms Laughton; namely, a document entitled *Arbitration in Switzerland - the Fine Art of Dispute Resolution*, a photocopied original (in French) and translation of a Swiss police letter dated 15 May 2014 (the untranslated version is contained in the appellant's bundles); a *Bucks Herald* article relating to CYFOR, which refers to Michelle Bowman, the writer of the said CY40R report referred to above; a document relating to O2 and the appellant's telephone number.

100. Certain documents were lodged at the hearing. I admitted all of those documents into evidence as being relevant to the issues to be determined. Apart from my indication above, with reference to the respondent's skeleton argument, there was no objection to the late adduction of such documentation, and entirely properly in my view, neither party being prejudiced thereby.

101. The documents in relation to this appeal are voluminous. Consequently, in relation to documents, I shall set out the evidence only so far as is necessary to give my findings of fact and reasons for them. However, I confirm that I have taken into account all of the admitted extensive documentary evidence, the extensive oral evidence and the detailed and able submissions made by both representatives, even if I do not refer to all of it or them.

102. At the end of the hearing I reserved my decision, which I now give with my reasons.

103. For ease of reference, I confirm at this stage that, inter-alia, the appellant relies upon the evidence of two experts. The first expert is Dr Kristian Coates Ulrichsen ("Dr Ulrichsen"), whose report is dated 6 April 2016 (CB Tab 12), which report was

prepared prior to the Fintas Group convictions. The second expert is Dr Yom, to whom I have briefly referred above and whose report is dated 5 August 2018 (CB Tab 19). As indicated, Dr Yom gave oral evidence before the Tribunal.

Burden and Standard of Proof

104. The burden is on the appellant to show that, as at the date hereof, and applying the lower standard of proof, he meets the requirements of the Qualification Regulations and, further, that he is entitled to be granted humanitarian protection in accordance with paragraph 339C of the Immigration Rules, and that returning him to Kuwait will cause the United Kingdom to be in breach thereof and/or the decision appealed against constitutes a breach of his protected human rights under the ECHR; in the present instance with particular reference to Articles 3 & 6.

105. With reference to potential exclusion from Refugee Convention protection, by Article 1A(2) of the Refugee Convention, a person qualifies for refugee status if -

" .... *owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,* [he] *is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country* ...."

106. The operative provision in this case is Article 1F(b). So far as relevant to the current appeal, Article 1F provides:

"*The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: ...*

(b) he has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee... "

107. Section 55 of the 2006 Act, so far as relevant, states:

"(1) This section applies to an asylum appeal where the Secretary of State issues a certificate that the appellant is not entitled to the protection of Article 33(1) of the Refugee Convention because—

(a) Article 1(F) applies to him (whether or not he would otherwise be entitled to protection) ...

(2) In this section—

(a) "asylum appeal" means an appeal—

(i) which is brought under section 82 of the Nationality, Immigration and Asylum Act 2002 (c. 41) or section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68), and

(ii) which is brought on the ground mentioned in section 84(1)(a) or (3)(a) of that Act (breach of United Kingdom's obligations under the Refugee Convention);

(b) "the Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951.

(3) The First-tier Tribunal or the Special Immigration Appeals Commission must begin substantive deliberations on the asylum appeal by considering the statements in the Secretary of State's certificate.

(4) If the Tribunal or Commission agrees with those statements it must dismiss such part of the asylum appeal as amounts to an asylum claim (before considering any other aspect of the case)."

108. The wording set out at Regulation 7 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 is also relevant, which follows:

"7.—(1) A person is not a refugee, if he falls within the scope of Article 1D, 1E or 1F of the Geneva Convention.

(2) In the construction and application of Article 1F(b) of the Geneva Convention:

(a) the reference to serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective;

(b) the reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall be taken to mean the time up to and including the day on which a residence permit is issued.

(3) Article 1F(a) and (b) of the Geneva Convention shall apply to a person who instigates or otherwise participates in the commission of the crimes or acts specified in those provisions."

109. The evidential burden of proof rests with the respondent to show that Article 1F applies, not for the appellant to show that it does not. Article 1F applies if there are serious reasons for considering that the person concerned has committed certain crimes or acts. This is lower than the high standard of proof needed for a criminal conviction ('beyond reasonable doubt'). In JS (Sri Lanka) v SSHD [2010] UKSC 15, the Supreme Court confirmed that the phrase *'there are serious reasons for considering'* in the Refugee Convention (and similarly in the Qualification Directive (QD)), set a standard above mere suspicion and had to be treated as meaning what it says.

110. At [75] of the Supreme Court's judgment in Al-Sirri v SSHD [2012] UKSC 54, the following is stated:

"75. We are, it is clear, attempting to discern the autonomous meaning of the words "serious reasons for considering". We do so in the light of the UNHCR view, with which we agree, that the exclusion clauses in the Refugee Convention must be restrictively interpreted and cautiously applied. This leads us to draw the following conclusions:

(1) "Serious reasons" is stronger than "reasonable grounds".

(2) The evidence from which those reasons are derived must be "clear and credible" or "strong".

(3) "Considering" is stronger than "suspecting". In our view it is also stronger than "believing". It requires the considered judgment of the decision-maker.

(4) The decision-maker need not be satisfied beyond reasonable doubt or to the standard required in criminal law.

(5) It is unnecessary to import our domestic standards of proof into the question. The circumstances of refugee claims, and the nature of the evidence available, are so variable. However, if the decision-maker is satisfied that it is more likely than *not* that the applicant

has *not* committed the crimes in question or has not been guilty of acts contrary to the purposes and principles of the United Nations, it is difficult to see how there could be serious reasons for considering that he had done so. The reality is that there are unlikely to be sufficiently serious reasons for considering the applicant to be guilty unless the decision-maker can be satisfied on the balance of probabilities that he is. But the task of the decision-maker is to apply the words of the Convention (and the Directive) in the particular case."

Humanitarian protection

"339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

(i) they are in the United Kingdom or have arrived at a port of entry in the United Kingdom;

(ii) they do not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;

(iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country; and

(iv) they are not excluded from a grant of humanitarian protection.

339CA. For the purposes of paragraph 339C, serious harm consists of:

(i) the death penalty or execution;

(ii) unlawful killing;

(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or

(iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

339D. A person is excluded from a grant of humanitarian protection for the purposes of paragraph 339C (iv) where the Secretary of State is satisfied that:

(i) there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;

(ii) there are serious reasons for considering that they have guilty of acts contrary to the purposes and principles of the United Nations or have committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate such acts;

(iii) there are serious reasons for considering that they constitute a danger to the community or to the security of the United Kingdom; or

(iv) there are serious reasons for considering that they have committed a serious crime; or

(v) prior to their admission to the United Kingdom the person committed a crime outside the scope of (i) and (iv) that would be punishable by imprisonment were it committed in the United Kingdom and the person left their country of origin solely in order to avoid sanctions resulting from the crime."

111. In the present instance it is, of course, 339D(iv) upon which the respondent relies. Again, the burden of proving that the appellant should be excluded from

entitlement to a grant of humanitarian protection lies upon the respondent, the standard of proof again being the balance of probability.

Discussion and findings

112. I have set out above the various strands to the appellant's case, and his indicated fears, which do not require repetition.

113. As I am required to do, I first address the question of whether the appellant should be excluded from a grant of asylum with reference to Article 1F(b) of the Refugee Convention. I have set out above the relevant burden and standard of proof, which similarly does not require repetition. A similar standard and burden applies to the question of whether the appellant should, or should not, be excluded from the benefit of humanitarian protection.

114. As indicated, the appellant's asylum claim is based upon the Convention reason of political opinion/imputed political opinion. The respondent seeks to exclude him from such protection, with reference to s. 55 of the 2006 Act, on the basis that there are serious grounds for considering that the appellant has committed a serious non-political crime outside the UK and prior to his admission to the UK.

115. It is common ground, with reference to the respondent's exclusion note of 12 June 2018, that the alleged serious non-political crimes relied upon are the pending charges for forgery/deception in Switzerland, arising from the allegation that the Trekell arbitration was a sham, although the respondent also makes reference to the additional overseas criminal proceedings in Jordan and the convictions in Kuwait as constituting circumstantial evidence supporting the respondent's position that the crimes in other jurisdictions constitute evidence of a pattern of offending by the appellant ([5] exclusion note & [53] of Mr Clarke's skeleton argument). Indeed, at [22] of the exclusion note, the respondent states as follows:

> "22. Further, the appellant has been subject to criminal proceedings in a number of jurisdictions, namely Switzerland, Jordan and Kuwait. Whilst it is assessed that the other criminal cases against him do not currently meet the evidential threshold for exclusion under 1F on their own account, the fact that a number of different jurisdictions have criminal proceedings against the appellant in respect of irregular financial activity, when considered in the round, contribute to the view that there are serious reasons for considering that the appellant has committed a serious crime."

116. I reiterate that the reference to other criminal cases, in other jurisdictions, is evidently a reference to the criminal convictions in Kuwait and the ongoing criminal proceedings in Jordan, bearing in mind that the respondent relies upon the Swiss criminal proceedings when seeking to exclude the appellant from Convention protection under Article 1F.

117. At footnote 6 to her skeleton argument, Ms Laughton seeks to argue that the wording of [22] of the exclusion note suggests that the respondent also considers that the Swiss criminal proceedings do not meet the requisite 1F evidential threshold. I disagree with that interpretation. It is clear that [22] of the exclusion note requires to be read in combination with [5] of the same note. However, the

respondent acknowledges that the criminal proceedings in Jordan and Kuwait do not of themselves meet the requisite Article 1F evidential threshold.

118. The Swiss criminal proceedings have been referred to above and they arise from a criminal prosecution brought against the appellant, and two others, for the reason indicated above. The appellant's position is that he did not commit the offences in question and that he wishes strenuously to defend the relevant charges. It is common ground that he has not been convicted of any criminal offence to date in Switzerland.

119. In order to exclude the appellant from Convention protection under Article 1F(b), it is clear that the burden is on the respondent to establish, on a balance of probability, first, that there are serious reasons for considering that the appellant has committed a crime prior to his admission to the UK as a refugee; second, that the crime is serious; and third, that the crime is non-political. Such indication appears to be non-contentious.

120. As noted by Ms Laughton, the provisions of Article 1F must be "*interpreted narrowly and applied restrictively*" and "*used cautiously*", bearing in mind the serious consequences of excluding a person from the protection of the Refugee Convention, if they are entitled to such protection ([12] Al Sirri and [2] of JS (Sri Lanka)).

121. As noted by Ms Laughton, at [20] of her skeleton argument, the respondent's own Article 1F guidance is pertinent. As indicated, I have a copy of that guidance, which is dated 1 July 2016. Ms Laughton notes that, at page 13 thereof, the following is stated:

> "Decision makers must keep in mind the possibility that an asylum claimant who was a known opponent of their country's authorities may be the victim of false charges and that a criminal prosecution or conviction in their country of origin may in fact constitute evidence of persecution, especially in countries where standards of judicial fairness fall well short of internationally accepted standards."

122. Ms Laughton's contention, as set out at [20] of her skeleton argument, is that the respondent "*has not actually considered, or properly considered this issue*". Clearly, "*this issue*" is one which I am in a position to consider as part of my decision. I bear in mind that it is the appellant's case that he has been falsely charged/convicted in relation to all of the criminal cases which have been brought against him, in Kuwait, in Jordan and in Switzerland, his argument being that all of those convictions/charges have arisen due to enmity arising, at least in part, for political motives.

123. The respondent is required to establish, inter-alia, that the appellant has committed the crimes in respect of which he has been charged in Switzerland, it being those alleged crimes which, the respondent acknowledges, are the material alleged offences relied upon specifically in seeking to exclude the appellant from Article 1F protection ([5] of the exclusion note). The respondent is arguably not assisted in establishing that the appellant has committed the offences in question, due to the fact that, at this stage, the appellant denies guilt and has not been convicted of any offences in Switzerland.

124. In terms of the evidence relied upon by the respondent, in seeking to establish that the appellant has committed the said crimes in Switzerland, the respondent relies upon certain, I find limited, evidence with reference specifically to the alleged Swiss crimes. First, the respondent seeks to rely upon the arrest warrant issued by the Swiss authorities against the appellant on 27 December 2016, following the issue of which the Swiss authorities are seeking to extradite the appellant to Switzerland. The respondent also relies upon the fact of the existence of the extradition proceedings as evidence of the appellant's commission of the Swiss crimes.

125. A copy of that arrest warrant, with translation thereof, appears at B9 Tab 9 and also at H1-8 of RB. The "*Facts*" relied upon in pursuing the prosecution state as follows in relation to the appellant:

"The above-named accused is charged with having participated, in 2014, in the setting up of a simulated arbitration between TREKELL GROUP LLC and Ahmad FAHAD AL-AHMED AL-SABAH resulting in an arbitral award dated 28 May 2014, which does not reflect reality.

His actions mostly focused on the following:

- Participating in the use of the TREKELL GROUP LLC company by Babu JAYARAJSALIAN, in April and May 2014, at a time when the said company could not engage in any kind of activity.
- Having Babu JAYARAJSALIAN and Ahmad FAHAD AL-AHMED AL-SABAH sign an agreement dated 28 March 2014, which did not reflect reality.
- Having Babu JAYARAJSALIAN and Ahmad FAHAD AL-AHMED AL-SABAH sign an arbitration clause dated 28 April 2014, which was antedated and did not reflect reality.
- Participating in the setting up of fictitious arbitration proceedings, resulting in the signing of a false arbitral award dated 28 May 2014, between TREKELL GROUP LLC and Ahmad FAHAD AL-AHMED AL-SABAH, by Stoyen BAUMEYER.
- Participating in the recognition of the said false arbitral award before the London High Court of Justice on 5 June 2014.

[redacted] HAH [redacted] acted jointly with Matthew PARISH, an English lawyer, accused in the criminal proceedings, Vitally KOZACHENKO, a Ukrainian lawyer, accused in the criminal proceedings, Stoyen BAUMEYER, a lawyer in Geneva, accused in the criminal proceedings, Oleg SHYPILOV, a Ukrainian lawyer, accused in the criminal proceedings, Sergiy FEDOROVSKY, a Ukrainian lawyer, accused in the criminal proceedings, Ahmad FAHAD AL-AHMAD AL-SABAH, accused in the criminal proceedings, Babu JAYARAJSALIAN, accused in the criminal proceedings.

[redacted] HAH [redacted] acted intentionally, with a view to causing damage to the rights of others, namely Nasser Mohammed Al Ahmed AL-SABAH and Jasim Mohamed Abdel Mohsin ALKHARAFI. He also acted with a view to serving the interests of Ahmad FAHAD AL-AHMAD AL-SABAH, in order to substantiate the charges of abuse of authority laid by the latter, in Kuwait, against political figures.

He actively participated in the production of several forged documents ("faux intellectuals"; Translator's note: documents containing false allegations implying legal consequences), namely an agreement dated 28 March 2014, an arbitration clause dated 28 April 2014 and an arbitral award dated 28 May 2014. He also participated in the use of the said forged documents, in Switzerland, in particular in Geneva, as well as in Great Britain and Kuwait.

[redacted] HAH [redacted] acted intentionally or at least could not be unaware of the illegality and unlawfulness of his actions and their consequences."

126. The warrant then proceeds to make reference to the evidence relied upon. Reference is made to: *"Many documents, namely e-mails, seized in the premises of SFM Group, Stoyen BAUMEYER, Matthew PARISH, GENTIUM LAW and HOLMAN FENWICK, as a result of searches carried out in accordance with Swiss law"*. I would add that Gentium Law is Matthew Parish's Swiss law firm, Matthew Parish previously being a lawyer with Holman Fenwick Willan (HFW). The warrant appears to suggest that certain hearings have occurred at the behest of the Public Prosecutor in Geneva, reference being made to various individuals' names. However, from the information available, it is wholly unclear precisely what documents were seized and are relied upon by the Swiss prosecutor and there is no evidence which indicates what might have been said in any of the hearings referred to. In short, it is impossible, from the summary of the relevant evidence referred to in the warrant, to form any view as to what evidence is relied upon in relation to the Swiss prosecution. I reiterate that the burden of proof lies upon the respondent and the respondent has produced no documentation to clarify this issue.

127. Thus, in simple terms, the Swiss prosecution arises from the contention that the appellant was a party to setting up a false arbitration, namely the Trekell arbitration, with a view to establishing the genuineness of the said videotapes. I bear in mind that the appellant's unchallenged evidence is that that prosecution was initiated at the request of Sheikh Nasser and the Al Kharafis who, according to the appellant's extensive evidence, hold personal enmity against the appellant, for both political and economic reasons; for political reasons, because of the videotapes, and for economic reasons, bearing in mind the appellant's evidence, which is to the effect that he has previously gone against the Al Kharafi family in business matters.

128. The Swiss extradition request, which is dated 13 January 2017, is at pp I1-2 of the respondent's bundle. It is a brief document and it adds nothing substantive to the evidence.

129. For the sake of completeness, I would add that RB contains copies of certain newspaper articles, which make reference to the appellant and the Fintas Group. One of those articles, in particular, from the Arab Times, dated 13 May 2016, is headed: *"Interpol in hunt for Kuwaiti stirring sedition, cash fraud - [illegible]HAH[illegible] flees country in disguise"*. Of course, none of these articles is evidence that the appellant committed the offences in Switzerland and the appellant has provided extensive evidence, to the effect that he did not flee Kuwait in disguise, or indeed at all, and to the effect that he is not guilty of any of the offences with which he has been charged or convicted in any country.

130. I recognise, and take into account, the fact that the respondent also relies upon the other convictions and prosecutions with reference to Kuwait and Jordan, to which I have referred below, and which I have taken into account when assessing whether it has been established that the appellant has committed the claimed crimes in Switzerland. That said, I find that, what in reality the respondent is asking the Tribunal to do, is to make a finding on the appellant's guilt, in relation to the Swiss charges, on a balance of probability. The Tribunal appears to be being asked by the respondent to make such finding, in circumstances where the appellant vehemently denies his guilt and in circumstances where, as referred to in oral

submissions, the Tribunal is not even in possession of the evidence upon which the Swiss Prosecutor relies in seeking to secure the appellant's conviction in Switzerland. Additionally, of course, the appellant has not been convicted of the said offences in Switzerland, there having been no trial as yet.

131. Not irrelevant to a consideration of whether the appellant has committed the offences for which he has been charged in Switzerland, I bear in mind that his unchallenged evidence is, first, that he cannot travel to Switzerland in order to participate fully in those criminal proceedings, as to do so may result in his asylum application being deemed to be abandoned (s. 92(8) NIAA 2002). Second, the appellant's unchallenged evidence is that those representing him have written to the respondent, upon two occasions, asking for permission for the appellant to travel to Switzerland, whilst his asylum application and appeal is pending, in order to take part in the investigation in Switzerland, but that no reply has been received from the respondent to such request (B9 Tabs 26-27). Third, the appellant has produced corroborative evidence, in the form of a statement of his Swiss solicitor, Carla Reyas, in support of his indication that he wishes, and is willing, to travel to Switzerland, in order to cooperate with the Swiss investigation (CB Tab 14). These factors are of some relevance to a consideration of whether the appellant has actually "committed" the alleged offences in Switzerland and to the issue of whether there are serious reasons for considering that he has.

132. I refer again to the respondent's contention that the charges in Jordan, and the convictions in Kuwait, are evidence supportive of the claim that the appellant is guilty of the charges in Switzerland, on the basis that the Jordanian and Kuwaiti criminal matters demonstrate a pattern of behaviour on the part of the appellant. In her skeleton argument, at [29], Ms Laughton sets out arguments to counter such position, which I consider might usefully be set out verbatim, rather than seeking to paraphrase those arguments:

"(a) the criminal proceedings in Kuwait and Jordan form the bedrock of A's asylum claim and are paradigm examples of politically and/or economically motivated proceedings. If it is accepted that they are politically/economically motivated they cannot be used to bolster the "evidence" relating to the Swiss charges;

(b) R accepts that these charges/convictions cannot meet the evidential threshold. If they are accepted as potentially unreliable (or at least not sufficiently reliable), they cannot be used as probative evidence in relation to different and separate charges;

(c) A was unrepresented in all of the proceedings, had no access to any of the prosecution papers and was unable to put forward a defence. In two of the Kuwaiti convictions, he was unaware that the proceedings were even ongoing until after he was convicted in absentia;

(d) The overburdening of an individual with various different criminal charges is a common method of persecution/punishment of political enemies in Kuwait. Amnesty International in "The Iron Fist Policy" (B8/TabHR1) considers that "*the use of repeated and multiple charges against activists and opposition figures forms part of a government strategy to muffle dissenting voices and deter others*". For example, Musallam al-Barrack was at one point facing 94 separate criminal prosecutions. The same example is given by Dr Sean Yom in his expert report;

(e) There is clear evidence that his co-defendant in the Jordanian proceedings, Nader Al Amri, was tortured in order to obtain a confession (see statements of Tamer Khreis (CB/Tab6,Tab17), report and letter from NCHR dated 24, 26 November 2014 (B10/Tab20-21), report from Dr Basil

Abu Sabha dated 19 November 2014 (B3/Tab45) and handwritten statement from Nader Al Amri (B3/Tab44)."

133. Clearly, in the context of the above, it is necessary for me to consider whether the charges and convictions in Jordan and Kuwait are reasonably likely to be politically motivated, before arriving at a final conclusion with reference to the proposed Article 1F exclusion, as they are pertinent to the respondent's reasoning in seeking to exclude the appellant from that protection. The proceedings, of which the appellant claims to have been unaware, so far as I can ascertain, are those referred to at [30] of WS4 (CB Tab 13). I note that, at [26]-[29] of that statement, the appellant makes reference to the Ijara House Holding Company case, and to the United Aviation case, in terms of him having been acquitted of charges wrongly brought against him in those instances at the instance of the Al Kharafi family. Musallam al-Barrak is, of course, the opposition MP in Kuwait, who was active in seeking the removal of Sheikh Nasser as Prime Minister in 2011 and who, according to the appellant's evidence, is known in Kuwait as a dissident.

134. One of the two expert reports available to me is that of Dr Yom, who is an Associate Professor of Political Science at Temple University in Philadelphia. He is a specialist in Middle East politics and I have his impressive *curriculum vitae*. I refer in further detail, later in this decision, to material elements of Dr Yom's evidence. However, with reference to the reference set out above, this can be found at [33b.iii] of Dr Yom's report, wherein he states, with reference to Kuwait, as follows:

"Under Kuwaiti law, the PPO (*Public Prosecution Office*) can simply overwhelm defendants with multiple simultaneous charges, each based upon a specific and narrowly construed interpretation of a criminal statute. For example, before his February 2015 conviction that resulted in two years' imprisonment, former MP Musallam al-Barrak was required to defend himself against 94 separate charges based upon his delivery of a single public speech criticizing the Emir and government. After his April 2017 release, it is also telling that the PPO chose to resuscitate felonious charges related to an old event that had been all but forgotten by the public - a November 2011 protest."

135. I take note of the fact that the November 2011 protest related to the corruption issues surrounding Sheikh Nasser's then government, which subsequently led to Sheikh Nasser's resignation as Prime Minister, along with members of his government.

136. Tamer Khreis, referred to above, is, of course, Nader Al Amri's lawyer in Jordan. I heard oral evidence by Mr Khreis, to which I have referred further below, he having produced two statements, both of which are contained in CB. In those statements, he makes reference to Nader Al Amri having been tortured in Jordan, in order to provide a confession, which confession was subsequently used to instigate the Jordanian criminal proceedings against the appellant, and others.

137. The above reference, by Ms Laughton, to NCHR, is a reference to The National Centre for Human Rights, based in Jordan. At B10, Tab 20 is a report of the NCHR, relating to a visit made by the NCHR, in order to see Mr Al Amri at the Juwaidah Correction Centre in Jordan on 24 November 2014. That report indicates that the purpose of the visit was to verify the validity of the claims received from Mr Khreis, who had claimed that Mr Al Amri had been attacked and beaten whilst in detention. The report recites, in some detail, what the NCHR were told by Mr Al Amri, in terms of his ill-treatment whilst in detention. The report makes reference to NCHR seeing

various bruises and marks on Mr Al Amri's body. The NCHR document at Tab 21 of the same bundle is dated 17 September 2017. I have referred to these documents in detail below when considering the evidence of the appellant's witness, Mr Khreis.

138. As referred to above, at B3 Tab 45, is a brief medical report of a Dr Basil Abu Sabha, dated 19 November 2014. Dr Sabha describes himself as being a government doctor. His brief report refers to Nader Al Amri suffering from bruises and contusions on his left shoulder area and left thigh, scratches in the left flank area and redness in the facial area. Again, I have referred to that medical report in further detail below.

139. If the said NCHR documentation, and Dr Sabha's report, are reliable, and I have no good reason to conclude that they are not, then they are clearly material to the question of the reliability of, and motivation behind, the Jordanian prosecution of the appellant and others. I have given them appropriate weight. Such is relevant to the question of whether the respondent can legitimately seek to rely upon the Jordanian charges as being indicative of the appellant's claimed propensity to commit criminal offences.

140. Also referred to by Ms Laughton above is the said handwritten statement of Mr Al Amri, which appears at B3 Tab 44. There is a translation of that document, from the Arabic original, undertaken by Mr Khreis. The content of the statement is consistent with the appellant's evidence, in terms of the torture suffered by Mr Al Amri whilst in Jordanian detention and the claim that he was forced to sign a confession under such torture. As indicated by the appellant, that statement is not signed, for what I consider to be plausible reasons given by the appellant.

141. At this stage, it is appropriate for me to confirm, as Mr Clarke submitted in his oral submissions that I should, that I have considered all documents in accordance with *Tanveer Ahmed* principles, by considering the reliability of all documents as part of my consideration of the evidence in the round and in its totality (Ahmed * [2002] UKIAT 00439).

142. In all the circumstances, Ms Laughton's contention is that the respondent's decision to exclude the appellant from Article 1F protection is premature, bearing in mind that the appellant has not been convicted of any offences in Switzerland and that a grant of refugee status to him would not prevent his extradition to Switzerland in the future. She adds that, should the appellant be convicted of a crime in Switzerland, and should the respondent then consider that he should be excluded from Convention protection, then it would be open to the respondent, at that stage, should he wish to do so, to seek to revoke the appellant's refugee status.

Seriousness

143. The appellant also seeks to challenge the respondent's decision, to exclude the appellant from Convention protection, on the additional basis that, even if the appellant had committed the offences in Switzerland as claimed, which he denies, then the offences in question are not sufficiently serious to justify exclusion on Article 1F grounds. At [32] of her skeleton argument, Ms Laughton refers to [38] of the UNHCR's *Background Note on the Application of the Exclusion Clauses: Article*

1F of the 1951 Convention relating to the Status of Refugees. In particular, she makes reference to, and places reliance upon, [38]-[40] thereof, which follow:

"38. The term "serious crime" obviously has different connotations in different legal systems. It is evident that the drafters of the 1951 Convention did not intend to exclude individuals in need of international protection simply for committing minor crimes. Moreover, the gravity of the crime should be judged against international standards, not simply by its characterisation in the host State or country of origin. Indeed, the prohibition of activities guaranteed by international human rights law (for example, freedom of speech) should not be considered a "crime", much less one of a serious nature.

39. In determining the seriousness of the crime the following factors are relevant:

- the nature of the act;
- the actual harm inflicted;
- the form of procedure used to prosecute the crime;
- the nature of the penalty for such a crime;
- whether most jurisdictions would consider the act in question as a serious crime.

40. The guidance in the Handbook that a "serious" crime refers to a "capital crime or a very grave punishable act" should be read in the light of the factors listed above. Examples of "serious" crimes include murder, rape, arson and armed robbery. Certain other offences could also be deemed serious if they are accompanied by the use of deadly weapons, involve serious injury to persons, or there is evidence of serious habitual criminal conduct and other similar factors. On the other hand, crimes such as petty theft or the possession for personal use of illicit narcotic substances would not meet the seriousness threshold of Article 1F(b)."

144. At [33] of her skeleton argument, Ms Laughton refers to the judgment of Rix LJ, at [54] of the judgment in AH (Algeria) v SSHD [2012] EWCA Civ 395, wherein he states:

"I certainly do not find it helpful to determine the level of seriousness by the precise sentence of imprisonment that may have been imposed upon the accused. Sentence is, of course, a material factor but it is not a benchmark. In deciding whether the crime is serious enough to justify his loss of protection, the Tribunal must take all facts and matters into account, with regard to the nature of the crime, the part played by the accused in its commission, any mitigating or aggravating features and the eventual penalty imposed. I would leave that decision to the good sense of the Tribunal."

145. Ms Laughton notes that, at [12] of the RFRL, the respondent indicates that Articles 1F(a) and (c) illustrate the level of seriousness required to engage Article 1F(b). Specifically, I note that, at [12] of the RFRL, the respondent indicates reliance, via a footnote, upon the Upper Tribunal's reported decision in AH (Article 1F(b) – 'serious') Algeria [2013] UKUT 00382 (IAC), with specific reference to [86] thereof, wherein it is stated:

"86. We think that limbs 1F(a) and (c) serve to illustrate the level of seriousness required to engage Article 1F(b); the genus of seriousness is at a common level throughout. Those who commit war crimes and acts against the principles and purposes of the United Nations are clear examples of people who are unworthy of protection."

146. In other words, Ms Laughton contends, at [34] of her skeleton argument, that the respondent acknowledges that the crime must be of equivalent seriousness to "*a crime against peace, war crime, or a crime against humanity*" or "*acts contrary to the purposes and principles of the United Nations*". Ms Laughton's contention is that it is clear that the crimes that the appellant is accused of committing cannot possibly

reach that equivalent level of seriousness. She notes that, according to Carla Reyes' said statement (CB Tab 14), who is a Swiss criminal lawyer, even if the appellant were to be found guilty, it is unlikely that he would be imprisoned for the crime. I note that the respondent has produced no evidence to gainsay that indication and has not challenged it.

147. I bear in mind that the respondent specifically acknowledges that the charges and convictions in Kuwait cannot in themselves be relied upon to justify exclusion under Article 1F(b), bearing in mind that the relevant offences in Kuwait would not be deemed to be offences in the UK, I bearing in mind that those offences are very arguably contrary to the principle of freedom of speech. Such is relevant to a consideration of the criteria set out in the UNHCR Note, wherein it is stated that "*serious" crimes include murder, rape, arson and armed robbery*" and that certain "*other offences could also be deemed serious if they are accompanied by the use of deadly weapons, involve serious injury to persons, or there is evidence of serious habitual criminal conduct and other similar factors*". Of course, the question of whether the convictions in Kuwait, and the ongoing criminal trial in Jordan, are politically motivated is a material consideration, in terms of the question of whether the appellant has engaged in "*habitual criminal conduct*", which he denies.

148. Ms Laughton's contention, taking into account her above submissions, is that the respondent cannot demonstrate that the alleged crime committed by the appellant in Switzerland meets the necessary high threshold of seriousness.

149. In the respondent's skeleton argument, Mr Clarke addresses, at [54]-[57], the question of whether the appellant can be deemed to have committed a serious crime. I consider it appropriate to set out those written submissions in their entirety, which follow:

"54. In the second Court of Appeal case of AH [2015] EWCA Civ 1003 (no2), it was held:

> *32. The moral force of the refugee's plight has in my opinion led some writers and authorities, including with respect the UNHCR, to contemplate a construction of Article 1F(b) which travels well beyond the proper territory of interpretation. Upon this construction the meaning of the term "serious" in the expression "serious non-political crime" is elucidated by reference to factors which have nothing whatever to do with the crime itself; and Article 1F(b) is mutated from a definition to a prescription for strategic evaluation by the decision-maker. These initiatives make bad law, for they are not rooted in the law's proper source, which is the terms of the Convention. They invite the court to legislate. It is elementary that we have no business to do so. The imperative of high authority such as Al-Sirri – "the exclusion clauses in the Refugee Convention must be restrictively interpreted and cautiously applied" – is certainly no mandate for such an approach.*

55. In the first Court of Appeal case of AH [2012] EWCA Civ 395 (no1), it was held,

> *50. Being an international convention, it must be given an autonomous meaning. They are ordinary words and should be given their ordinary universal meaning. "Crime" surely means any illegal act punishable at law.*
>
> *51. Furthermore, in my judgment, "serious" needs no further qualification. Where further qualification is required, the Convention gives it: compare Article 1F(b) with Article 33.2 which refers to "a refugee ... who, having been convicted by a final judgment of a*

particularly serious crime, constitutes a danger to the community of that country", with the emphasis added by me. The same distinction is drawn in the EU Qualification Directive 2004/83/EC between Article 17 ("committed a serious crime") and Article 21 ("convicted ... of a particularly serious crime").

52. Although an ordinary word, "serious" has shades of meaning and the appropriate colour is given by the context in which the word is used. What may be serious for one purpose may not be serious for another. The context here is that the crime which the refugee has committed must be serious enough to justify the withholding of the protection he would otherwise enjoy as a person having a well-founded fear of persecution and owing to such fear is unwilling to avail himself of the protection of the country of his nationality or to return to the country of his former habitual residence. This seems to be the view of the Grand Chamber in Bundesrepublik Deutschland v B (C-57/09) and D (C-101/09) [2011] Imm AR 190 expressed with regard to Articles 12(2)(b) and (c) of the European Directive but, it seems to me, equally apposite for the Refugee Convention:

> *"108. Exclusion from refugee status on one of the grounds laid down in Article 12(2)(b) or (c) of Directive 2004/83 ... is linked to the seriousness of the acts committed, which must be of such a degree that the person concerned cannot legitimately claim the protection attaching to refugee status under Article 2(d) of that Directive."*

56. It is submitted that Parliament has deemed crimes analogous to those identified within the Swiss arrest warrant as serious crimes under the *Serious Crimes Act 2007* Schedule 1 para 7

Fraud

An offence under section 17 of the Theft Act 1968 (c. 60) (false accounting).

An offence under any of the following provisions of the Fraud Act 2006 (c. 35)—

section 1 (fraud by false representation, failing to disclose information or abuse of position);

section 6 (possession etc. of articles for use in frauds);

section 7 (making or supplying articles for use in frauds);

section 9 (participating in fraudulent business carried on by sole trader etc.);

section 11 (obtaining services dishonestly).

57. As noted by the Court of Appeal @51 of ***AH*** no. 1 *"What may be serious for one purpose may not be serious for another. The context here is that the crime which the refugee has committed must be serious enough to justify the withholding of the protection he would otherwise enjoy as a person having a well-founded fear of persecution."* It is submitted that the poisonous consequences of the fraud committed in Switzerland are of sufficient seriousness to justify withholding protection."

150. Mr Clarke's reference, at [57] of his skeleton argument, to [51] of AH no. 1 should, in fact, be a reference to [52] of that judgment.

151. In oral submissions, the question of the appellant's prospective exclusion from Refugee Convention protection was addressed by both representatives. I confirm that I have taken those submissions fully into account as part of the evidence to be considered by me, both with regard to the issue of 'seriousness' and in relation to the other elements relevant to a consideration of Article 1F.

152. I consider that the focus requires to be upon the Swiss charges themselves, in terms of determining whether the alleged crimes committed by the appellant in Switzerland are sufficiently serious to justify the appellant's exclusion from

Convention protection. I reiterate that there is no challenge to the evidence of Carla Reyes, as set out above. I bear in mind what might be termed the respondent's acknowledgement, at [5] of the RFRL, to the effect that the 'seriousness' threshold for exclusion under Article 1F(b) is analogous to the level of seriousness required to justify exclusion under Article 1F(a) & (c). I bear in mind that, when dealing with Article 1F, it has to be interpreted narrowly and applied restrictively.

153. Quite apart from the fact that it has not even been established that the appellant has committed a crime in Switzerland, having taken into account the written and oral submissions of both representatives, I conclude that the respondent has failed to establish, on a balance of probability, that the alleged crimes committed by the appellant in Switzerland reach the requisite threshold of seriousness to justify the appellant's exclusion from Convention protection with reference to Article 1F(b).

Non-political crime?

154. Additionally, and in the alternative, the appellant's position is to the effect that the alleged offences, with reference to the Swiss prosecution, cannot properly be described as non-political. At [32] of the RFRL, the respondent indicates that the appellant had not provided any evidence that the charges brought by the Swiss Prosecutor were politically motivated or that the Swiss Prosecutor had been unduly influenced to bring charges. However, Ms Laughton's contention is that such is not the test, the correct test being, not whether the charges are politically motivated, but whether the alleged crime is non-political. I reiterate that it is also for the respondent to prove his case.

155. At [36] of her skeleton argument, Ms Laughton refers to the leading case of T v Immigration Officer [1996] UKHL 8, which imposes a two-stage test; namely, with reference to the crime:

> "Taking these various sources of law into account one can arrive at the following definition. A crime is a political crime for the purposes of Article 1F(b) of the Geneva Convention if, and only if;
>
> (1) it is committed, for .. a political purpose, that is to say, with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy; and
>
> (2) there is a sufficiently close and direct link between the crime and the alleged political purpose. ..."

156. Ms Laughton's argument is that, in the present instance, the charges in Switzerland are intrinsically connected to the persecution of the appellant in Kuwait. She adds that the investigation in Kuwait, in which the appellant was involved, this being a reference to the videotape investigation, was directly concerned with the investigation of tapes implicating Sheikh Nasser and Jassem Al Kharafi in corruption. She notes that the appellant was convicted, in Kuwait, in respect of offences relating to the circulation of one of the tapes, namely the tape revealing judicial bribery. Ms Laughton also notes that, in the Swiss criminal proceedings, the complainants are the same individuals; namely, Sheikh Nasser and Jassem Al Kharafi, as acknowledged at [10] of the exclusion note. In this regard, Ms Laughton also refers further to Dr Yom's report, at [72b] (CB Tab 19), wherein he states, with reference to the Swiss prosecution, following on from the Trekell arbitration proceedings:

"The consequent Swiss investigation into the arbitration proceedings did not emerge spontaneously. It is public knowledge that the investigation was conducted only after criminal complaint was lodged in Geneva by Sheikh Nasser and the Khurafi family in June 2015. As someone intimately acquainted with how authoritarian regimes operate in the Middle East, both the sequence of these events and the authors of the criminal complaint are not surprising. The scenario is very familiar: when powerful financial and political elites, some of whom may wish to rule one day, threatened by evidence of wrongdoings that could destroy their careers (not to mention their domestic and international reputations), they will lash out unremittingly until the threat is crushed. Decades ago, and in harsher climes like Qaddafi's Libya, Bashar's Syria, or Saddam's Iraq, the solution was simple: kill the messenger. Yet excepting Syria, times have changed; and Kuwait for historical reasons was never a place where brazen assassinations or political massacres could occur. What is happening instead, in my expert opinion, is the equivalent translated into Kuwait's political culture, namely power holders are reacting harshly by deploying every available domestic and international mechanism to destroy both the message and the messengers' credibility. Consider the consequence if they did *not* react in this way - their ambitions and careers would be destroyed. In authoritarian countries with the highest stakes are in play, the winning strategy for power holders accused of wrongdoing is always to operate in the most extreme way."

157. The reference to the power holders is, of course, a reference to Sheikh Nasser and the late Jassem Al Kharafi. I reiterate that I address further elements of Dr Yom's evidence in further detail below. I simply set out this extract from his report at this stage, as it is pertinent at this stage in my decision.

158. At [38] of her skeleton argument, Ms Laughton also notes that the corruption investigation in Kuwait, in which the appellant was involved, and which led to his conviction, clearly had a political purpose; namely, the exposure of corruption by senior politicians. She adds that the purpose of the Trekell arbitration in Switzerland was in order to authenticate the tapes, demonstrating that such corruption had occurred, and to try to prove that corruption. She adds that, clearly, it was therefore connected to the same political purpose. Ms Laughton adds that such is acknowledged, even in the Swiss arrest warrant, wherein it is stated that the appellant "*acted with a view to serving the interest of Ahmed Farhad Al-Ahmed Al-Sabah in order to substantiate the charges of abuse of authority laid by the latter, in Kuwait, against political figures*". Ms Laughton adds that the appellant's persecutors, who are implicated in the corruption in Kuwait, are attempting to cast doubt on the authentication of the tapes for obvious reasons.

159. At [39] of Ms Laughton's skeleton argument, it is noted that, at [26] of the exclusion note, the respondent asserts that, even if the offence were committed to further political ends, then the offence was not proportionate to achieving those ends. Again, Ms Laughton contends that this is not the test as, indeed, was acknowledged by Mr Clarke at the hearing.

160. Mr Clarke addresses the issue of whether the alleged Swiss crimes are, or are not, non-political crimes, at [58] of his skeleton argument, which follows:

"i) As set out in the Appellant's skeleton the test identified by the House of Lords in **T v Immigration Officer [1996] UKHL 8** was,

(1) it is committed for a political purpose, that is to say, with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy

(2) there is sufficiently close and direct link between the crime and the alleged political purpose

- It is submitted that Sheikh Nasser resigned from office 28/11/11 and has not had a political role since, as confirmed by expert KCU (*Dr Ulrichsen - my words*) (CB 12@86). Equally Al Kharafi stepped down as Speaker in 2011. It is the Appellant's case that he became involved in the investigation only in 2013 (AIR 23).
- It is submitted that KCU @34 confirms the next Emir (Sheikh Nawaf Al-Ahmad) is expected to succeed without controversy, any power struggle between Sheikh Nasser and Sheikh Ahmad is in respect of positioning to succeed the future Emir Sheik Nawaf (@35).
- It is submitted that the Appellant's own evidence was financial gain as set out @paragraphs 26-34 above and the Appellant confirmed @AIR9 that he was not involved in politics.
- It is therefore submitted first, that the Appellant's intent in the Swiss arbitration was distinct from Sheikh Ahmad and non- political. Second, if the legal test is to overthrow, subvert, change a government or its policy, the individuals who were named in the Swiss warrant (HO bundle @H2) as harmed were not at the material time in government or politics. Third, if the purpose of the crime was for Ahmad to be best choice for succession, that is a succession at an indeterminate point in the future after the current Emir and his successor have died. It is submitted that there is an insufficiently close link between the crime and any political purpose, as defined by the House of Lords."

161. I reiterate that, in the present instance, it has not even been established that any crimes have been committed by the appellant in Switzerland. I conclude that, on that basis alone, the respondent cannot succeed in excluding the appellant from protection with reference to Article 1F.

162. My consideration of this element of the appeal is inevitably inextricably linked to my consideration of other elements of the appeal; specifically, with reference to the questions of whether the Fintas Group convictions in Kuwait, and the ongoing criminal proceedings in Jordan, have a political motivation. These issues are materially pertinent to the question of whether the appellant, first, has committed a crime at all, in any jurisdiction, and, second, to whether the alleged crimes in Switzerland are non-political. It will be seen, from my analysis of the evidence below, and from my findings in relation thereto, that I conclude, based upon the totality of the evidence, that the Kuwaiti convictions and the Jordanian political charges are reasonably likely to be politically motivated. This in turn clearly impacts upon the question of whether the appellant has committed a crime and whether he has committed a non-political crime. For reasons I have set out below, I am satisfied that it has not been established that the appellant has committed a non-political crime.

163. Consequently, for the reasons I have indicated, which is inseparably connected to the evidence and reasoning set out below, I conclude that the appellant does not fall for exclusion from Convention protection with reference to Article 1F(b).

164. For identical reasons, I conclude that the respondent has failed to establish, on a balance of probability, that the appellant falls to be excluded from a grant of humanitarian protection with reference to 339D(iv) of the Immigration Rules.

Credibility

The Fintas Group judgment

165. At this stage, I consider that it would be helpful, for information purposes, to set out some further detail regarding the Fintas Group prosecution in Kuwait.

166. The judgment of the Kuwaiti Criminal Court of the First Instance (the Fintas Group judgment) appears at B9 Tab 30. The Court of Appeal judgment against the convictions in the Fintas Group trial is at Tab 31 and the ensuing Court of Cassation judgment is at Tab 32 (in each instance with translations from the Arabic). The first instance judgment is lengthy. I refer to certain elements thereof, as they provide a better understanding of material elements of the Fintas Group trial and the defendants therein. I reiterate that there were 13 defendants, whose names have been set out above. The appellant is the named first defendant and reference is made to him being tried *in absentia*.

167. The appellant forms part of the first group of defendants, namely the 1st-7th defendants. The charges against defendants 1-7 arise from the said WhatsApp conversation and these are arguably the core defendants in the Fintas Group trial, they being the same individuals who formed part of Sheikh Ahmed's investigative team, as referred to at AIR Q 17. They include the appellant, Mr Al-Ateeqi and Sheikh Khalifa, amongst others.

168. Defendants numbered 8-13 are bloggers, tweeters and journalists accused of circulating the videotapes referred to. They were not part of the investigative team, as noted by Ms Laughton in her oral submissions. The charges laid against defendants 1-7, which includes the appellant, are stated to be:

> **"First: the defendants from the first to the seventh**
>
> 1. Publicly challenged the rights of the Emir and his authority in writing on "social networking programs" and on the international internet online by undermining the emirate, in that they wrote the phrases mentioned and as indicated in the investigations.
>
> 2. Each of them (the defendants) released within the sight of the remaining members of the collective conversation "Fintas Group" in the social networking program "WhatsApp" the phrases listed and as described in the investigations, thereby insulting the honour of counsellor Feisal Abdul Aziz Al Marshid "Chairman of the Supreme Judicial Council" and counsellor Yousef Jassim Al Matawah "President of the Constitutional Court," and others from the judiciary.
>
> **Second, all of the defendants:**
>
> 1. Deliberately spread abroad false news and malicious rumours about the internal situation of the country, namely that the first defendant synthesised a video showing Nayef Abdullah Al Rukaibi, office manager of the former Prime Minister, giving counsellor Yousef Jassim Al Matawah, "the President of the Constitutional Court", a bag of cash, and the rest of the defendants, from the second to the last one, published the footage through the account "facts and documents" on the social networking "Twitter" website, loaded from "YouTube" website and via their personal accounts on the first website, and commented on it in order to create the impression of its authenticity.
>
> That act was designed to weaken the prestige of the state and to shake confidence in one of its powers, namely "the judicial authority", and call into question the integrity of its members, as set out in the investigation.

2. Abused publicly the respect due to judges namely Counsellor Feisal Abdul Aziz Al Marshid, "Chairman of the Supreme Judicial Council", and Counsellor Yousif Jassim Al Matawah, "President of the Constitutional Court" and others from the judiciary, by publishing on the account "facts and documents" on the social networking "Twitter" website and other social networking sites on the international internet "online" a video footage, the subject of the charge described in "II / 1" and their comments on it by using the phrases and terms listed in a manner which questioned the judges' integrity, their interest in their work and their commitment to the provisions of the law, and as set out in the investigation.

3. Spread, in full view of others, by publishing and writing on the page "facts and documents" on the social networking "Twitter" website and other social networking sites on the international internet "online", Malicious information about counsellor Yousef Jassim Al Matawah "President of the Constitutional Court", about a matter warranting punishment and damaging his reputation, the subject of the charge in DESCRIPTION "II / 1" and as set out in the investigation.

4. Deliberately abused the use of the means of telephone communication, "Mobile Phones devices in order to commit the crimes which are the subject of the charges previously described and are set out in the investigations."

169. I confirm that Feisal Abdul Aziz Al Marshid and Yousef Jassim Al Matawah are the two judges who are alleged to have taken bribes, as allegedly disclosed in certain of the said videotapes. As I understand it, it was only two videotapes which formed the subject matter of the Fintas Group prosecutions.

170. The verdict of the first instance court in the Fintas Group trial is at B9 Tab 30 p350. It states:

"The court sentence in absentia, the first defendant (*i.e. the appellant*) and other defendants in their presence:

First: To punish the first defendant for ten years imprisonment to be enforced with labour, and each of the defendants from the second to the sixth for five years imprisonment to be enforced with labour, for the first, the second and fourth charges, item second assigned to them.

Second: the acquittal of the defendants from the first to the sixth of the first charge, item first attributed to them.

Third: to punish the ninth defendant for one year imprisonment to be enforced with labour for the second and fourth charges, item second assigned to him and to acquit him of the first charge, item second attributed to him.

Third: the seventh, eighth, tenth, eleventh, twelfth and thirteenth defendants to be acquitted of all charges against them.

Fourth: it is not permitted to consider the libel and defamation case of the second charge, item first and the third charge, item second for not filing a complaint from the victims, counsellors Faisal Abdul Aziz Al-Murshid and Yousiff Jassim Al-Mutaweh.

Fifth: Confiscation of the seized telephone.

Sixth: The Court is not competent to hear the civil lawsuit filed by Louay Jassim Al-Kharafi and the heirs of the late Jassim Mohammed Al-Kharafi."

171. Whilst the judgment is difficult to follow, by way of explanation, the appellant was acquitted of the charges of abusing the senior judges referred to and he was

also acquitted of criticising the Emir of Kuwait, whilst being convicted of the other offences, including in relation to the said WhatsApp conversation.

172. It is that alleged WhatsApp conversation which was arguably the trigger behind the appellant's main criminal prosecution in Kuwait in the Fintas Group trial. Essentially, on 23 March 2015, the police arrested opposition protesters outside Parliament, whilst they were demonstrating against corruption. Those demonstrators included Mr Al-Ateeqi, the appellant's lawyer, who was also part of the investigative team. It was alleged that, on Mr Al-Ateeqi's mobile telephone, the police found WhatsApp messages circulated amongst a chat group labelled 'Fintas Group', many of whose members overlapped with Sheikh Ahmed's investigative team, among them the appellant, Mr Al-Ateeqi and three other members of the Al Sabah family. The messages referred to one of the original videotapes linking Sheikh Nasser to the bribery of Kuwait's most senior judges, Faisal al-Murshid, who was then the head of the Supreme Judicial Council, the state organ that regulates judges, and Yousef al-Mutrawa'a (who was then head of the Constitutional Court).

173. At [18] of his report, Dr Yom helpfully summarises the findings of the first instance court in relation to the Fintas Group trial, as follows:

> "18. The trial of *qrub al-fintas* (the Fintas Group) caused a public sensation. On 30 May 2016 the Court of First Instance found HAH and six co-defendants guilty of various criminal offenses; six of the 13 co-defendants were acquitted. Tried in absentia, HAH received the harshest punishment in the form of 10-years' imprisonment, while others received 5-year imprisonment sentences. HAH's punishment reflects the charge that he was 'the mastermind and the planner' of bribery videos deemed to be fabricated and damaging. The guilty verdict was upheld by the Appeals Court on 19 January 2017, and by the Court of Cassation on 15 May 2017. ..."

174. In the Fintas Group judgment, indication is given that the defendants, including the appellant, were acquitted of slander of the judges, because the judges would have been required to lodge a complaint in relation to that particular charge, or charges, under Kuwaiti law, which they had not done. The reason for the acquittal in respect of the alleged criticism of the Emir, was that the basis of that complaint was a WhatsApp conversation. The Court held that WhatsApp was not public but, rather, constituted private conversations. It is confirmed in the judgment that criticism of the Emir requires to be public, in order to found a prosecution and conviction on that particular charge, or charges. This is why the appellant and his co-defendants were acquitted of that charge.

Additional evidence and issues

175. As indicated, I heard lengthy oral evidence by the appellant, Mr Clarke's cross-examination of him being extensive. I also heard oral evidence by the appellant's wife (the credibility of whose evidence was not specifically challenged by Mr Clarke), by Sheikh Khalifa, by Dr Yom and by the Jordanian lawyer, Tamer Khreis. There are various statements of the appellant and his witnesses contained in CB, together with additional statements of various witnesses who did not attend.

176. Additionally, and as I have indicated above, the documents provided and submitted on behalf of the appellant are very extensive indeed. There are also the original written submissions of the appellant's solicitors; namely, the April 2016

submissions. The statements and the April 2016 submissions have been extensively and meticulously sourced in terms of the references therein, as have the expert reports. As indicated, Mr Clarke, in his oral submissions, invited me to assess the weight to be given to all of the relevant documents in accordance with *Tanveer Ahmed* principles, which is what I have done.

Credibility issues raised in the RFRL

177. In the RFRL, the respondent raises a number of specific adverse credibility contentions. The appellant has addressed, and replied to, those contentions at [51] of WS4 (CB Tab 13). Ms Laughton's contention is that those credibility points have been raised by the respondent, without consideration of the extensive available evidence corroborative of the appellant's account, that they are based on peripheral points and that they are, in any event, incomprehensible. I set out below those various credibility points, as they are clearly relevant to the outcome of the appellant's appeal.

178. At [44] of the RFRL, the respondent states as follows:

> "44. You claim that you cannot return to Kuwait as you were part of a corruption scandal led by the ex-Deputy Prime Minister of Kuwait (*Sheikh Ahmed - my words*), which was discovered throughout 2013 and 2014. (AIR Q9). You state that as part of this team you discovered multi-national manipulation of funds and corruption within the judicial system and bribery between the Prime Minister and courts. (SCR 4.1). You claim that you were part of a team that had been formed with the aim of validating information involving video tapes of the Prime Minister of Kuwait Sheikh Nasser and the Speaker of the House and Judges. The information involved these people supposedly 'cooking' certain decisions that would benefit them in the political arena. (AIR Q16). At question 9 of the asylum interview you initially stated that "in late 2012 towards November I was asked by the Deputy Prime Minister to help them verify some evidence regarding some corruption". (AIR Q9). You then claimed that you became part of this team by March 2015. (AIR Q16). However, in question 23 of the asylum interview, when asked how long you were involved in the investigations, you claimed "I would assume from mid-2013". (AIR Q23). These are clear inconsistencies in your claim."

179. The appellant addresses [44] of the RFRL in the following terms:

> "Paragraph 44 of the RFRL - the Respondent asserts that I gave inconsistent answers in my interview as to when I became part of Sheikh Ahmed's investigative team. At AIR Q9, I stated that I was asked by the Deputy Prime Minister (Sheikh Ahmed) to help them verify some evidence. At AIR Q23 I stated that I was involved in the investigations from mid-2013. At AIR Q15, I stated that I did not have any issues "up until March 2015". I was therefore asked at AIR Q16 what happened in March 2015 and I went on to explain what had happened *by* March 2015. The paragraph in the RFRL is not entirely clear, but it appears to be suggesting that there is an inconsistency as to whether I became part of the team in 2013 or March 2015. As can be seen from the above and from the interview itself, there is no inconsistency there and I think it is rather misleading for the Respondent to suggest there is. The chronology of my involvement in Sheikh Ahmed's investigative team is also covered in detail in paragraphs 158-229 of WS1, which is not referred to by the Respondent. This includes sections on videotapes and Sheikh Ahmed's apology under duress;"

180. I confirm that I have read all of the appellant's statements in their entirety, together with the interview records. It is clear that WS1 was provided to the respondent under cover of the appellant's solicitors' submissions of 11 April 2016. That statement is detailed and does, indeed, provide a meticulous and thorough

account of events from the appellant's point of view. I agree with Ms Laughton's contention that it does not appear to have been taken into account, at least in any meaningful way, by the writer of the RFRL. The interview records themselves, I am satisfied, do not disclose the discrepancies relied upon at [44] of the RFRL. Having considered the interview records in the context of the evidence as a whole, I accept that there is no discrepancy in the appellant's evidence, contrary to the assertion at [44] of the RFRL.

181. [45]-[46] of the RFRL are essentially a recital of the appellant's evidence as disclosed in his asylum interview. [47] of the RFRL raises a further credibility issue. It follows:

> "47. Furthermore you cannot say who recorded the footage that is on the tapes and you are not sure if the tapes were sent anywhere. You claim that "perhaps they were" but you cannot remember how they were diagnosed. You claim that some of the tapes were sent to the Swiss police forensic department. (AIR Q32). However, this only strengthens the legitimacy of the Swiss arrest warrant against you. The fact that you claim you are under the impression that Sheikh Ahmed's actions were in accordance with the Emir and the Royal Court, casts doubt on the legality of your actions. You were also unable to accurately identify when you were part of the investigation, at one point claiming to be involved from late 2012 and another time from mid-2013."

182. In WS4, the appellant addresses the above in the following terms:

> "Paragraph 47 of the RFRL - This paragraph simply does not make sense to me. The most alarming and bizarre conclusion reached by the Respondent in the RFRL is "however, this only strengthens the legitimacy of the Swiss arrest warrant against you. The fact that you claim you are under the impression that Sheikh Ahmed's actions were in accordance with the Emir and the Royal Court, casts doubt on the legality of your actions." It shows wilful misinterpretation of my claim. It is not clear how the fact that some of the videotapes were approved by the Swiss police forensics strengthens the legitimacy of the Swiss arrest warrant. Further, it is unclear why the fact that I thought Sheikh Ahmed was acting with the permission of the Emir and the Royal Court casts doubt on the legality of my actions. I cannot add anything more at this time unless the point the Respondent is trying to make is explained in a clearer way;"

183. Contrary to the appellant's assertion, there is no evidence to suggest that the respondent *wilfully* misinterpreted the appellant's claim. It is, after all, a complex claim, with many strands. However, I consider the balance of the contentions raised by the appellant to be entirely meritorious. The appellant's evidence throughout is clearly to the effect that he believed that Sheikh Ahmed was acting with the permission of the Emir and the Royal Court, as is explained extensively in his witness statement evidence and in the evidence of his witnesses, where relevant. It is arguable that there is a discrepancy in terms of whether the appellant was approached by Sheikh Ahmed in late 2012, or in early 2013, but I find such, in any event, to be peripheral and to be of no material significance. I draw no adverse credibility conclusions with reference to the, rather unclear, contentions raised at [47] of the RFRL.

184. At [48] of the RFRL, the respondent states as follows:

> "48. Consideration has been given to the consistency of your claims. You were asked where the other members of the team currently are, to which you responded "Kuwait." (AIR Q24). Further, you were asked if any action has been taken against them and you replied "yes some of which is travel bans or house arrests and the legal team of our lawyers were put in

prison for quite some time." (AIR Q25). You were then asked what evidence you have to support your claims and why you had not submitted this evidence on the day of interview or prior, to which you claimed "not sure how to answer that". (AIR Q27). You were asked when you left Kuwait and you replied "I cannot be precise, but it was perhaps 26th or 27th March 2015. Maybe later, I cannot be precise." (AIR Q51). However in your asylum interview you state that you think you arrived in the UK on 4 April 2015. (AIR Q55). You then claim to have arrived in the UK on 3 or 4 of April, then left later on 22 April. You then claim you returned to the UK on 23 April having been to Switzerland and Malta. (AIR Q80). It is not plausible to believe that you cannot be precise about the date that you left Kuwait. Furthermore you have provided an inconsistent explanation about your role within the corruption scandal, and particularly that there is an official arrest warrant and extradition request for you regarding offences relating to the forgery of documents."

185. The appellant responds to [48] of the RFRL in WS4, in the following terms:

"Paragraph 48 of the RFRL - The Respondent suggests that I was inconsistent about the date when I left Kuwait as I could not remember whether it was 26 or 27 March. The factual matrix of my claim consists of thousands of dates (as is clear from WS1) that required careful checking against available corroborative evidence. I flagged this up several times throughout the substantive asylum interview but was clearly ignored. Moreover, the current Kuwaiti passport that I used to travel to the UK, had by then been returned to the Kuwaiti authorities. I was doing the best I could, with the greatest respect, I fail to see how the fact that I could not remember whether I left Kuwait on 26 or 27 March could possibly cast doubt on my claim as a whole. On checking the dates I provided a coherent account of my journey from Kuwait and to the UK in my witness statement. At paragraph 230 of WS1 I stated "I left Kuwait on 29 March 2015 because I had commitments in Europe including the last arbitration hearing in Zürich (in the KRIC v SSIF proceedings) on 7 April 2015 and a meeting in Valletta on 22 April 2015." At paragraph 243, I said that "I boarded the plane and left for London in the early morning on 7 April 2015 landing at 7am at Heathrow." The Respondent also suggests that I had provided an inconsistent explanation about my role within the anti-corruption scandal, but has not specified how. In fact, I have been entirely consistent throughout my interviews and statements about my role;"

186. I note that the respondent also contends that it is not plausible that the appellant would not recall, in his asylum interview, the precise date upon which he left Kuwait. I find there to be nothing implausible in this and the appellant is quite correct when stating that the respondent has failed to identify the discrepancy referred to at [48] of the RFRL. WS1 provides a clear, thorough and coherent account of the appellant's movements. I agree entirely with the appellant's commentary in relation to [48] of the RFRL.

187. At [49] of the RFRL, the respondent states as follows:

"49. In addition you asked why none of the other members of the team left Kuwait and you replied "they had no interaction with the lawyers outside of Kuwait because I was the person who liaised internationally with different lawyers and the forensic investigators." (AIR Q44). It is not plausible that you decided to leave Kuwait and other members of the team did not, solely because you had interactions with international lawyers, as you claim to have all been part of the same team. Furthermore you were asked what other events have taken place since you have been in the UK to which you replied "lots of events, which have changed the decision between me deciding to go back and to stay local, lawyers and once in Switzerland. I am not sure how accurate I can be here but I can be more accurate in my statement." (AIR Q57). You were then prompted at question 59 of the interview that you should provide all of the detail you can and you replied "I'm not sure the full detail whether I just don't want the legal details to be inaccurate." (AIR Q59) Further to this you were asked if you are able to provide any of the dates that events occurred since being in the UK and you replied "it will be very hard for me, you have to understand some of the

situation in regards to Kuwait requires my Kuwaiti lawyer... I see no harm in waiting for my statement to be accurate. I have it in front of me but it needs to be trimmed." (AIR Q60). When asked what you mean by needs to be trimmed you stated "What I mean is we need to be a little more specific regarding dates and there are lots of moving parts." (AIR Q61). You were questioned about your inaccuracy and inability to provide full details at questions 57-61 to which you were unable to give a full explanation. This has impacted on your credibility. It is not considered reasonable that other team members of yours are able to remain in Kuwait but you were the only one who left and cannot return. It is also not accepted that you cannot use your asylum interview as your opportunity to fully explain your reasons for claiming asylum."

188. The appellant responds in WS4 to the preceding paragraph of the RFRL, in the following terms:

"Paragraph 49 of the RFRL - the Respondent said it was implausible that I left and claimed asylum and the other members of the team remained in Kuwait. In fact, to the best of my knowledge, Sheikh Khalifa, Sheikh Athbi, Sheikh Ahmed Dawood, Falah Al Hajraf and Abdul Mohsen Al-Ateeqi all came to the UK and claimed asylum. I believe this is a fact which should be in the Respondent's possession and which he will be able to confirm if he checks his records. I do not know the exact date when they claimed asylum, but as far as I am aware, Sheikh Athbi arrived in the UK on 28 December 2016, Abdul Mohsen Al-Ateeqi arrived in the UK on 6 January 2017, Falah Al Hajraf arrived on 16 January 2017 and Sheikh Khalifa and Sheikh Ahmed Dawood arrived in the UK on 17 January 2017. Regarding my alleged failure to give details in my substantive interview, I was simply explaining that I did not want legal details to be inaccurate. My initial statement was 96 pages. It took a long time to ensure that all the facts were accurate. Some of the events occurred after I had left Kuwait and therefore I had to ascertain what had happened from other people or from media documents. I did not want to hastily say something in the interview which was incorrect, which is what I was trying to explain. My asylum lawyer attended the interview with me and at AIR Q27 told the interviewing officer that the evidence was still being written up as there was a lot of it and also referred to the amount of documents that have to be translated. In any event, the Respondent has completely failed to consider my detailed statement (WS1) and corroborating evidence which covers all the facts in detail. An extensive explanation is given by me in paragraphs 248-262 of WS1 as to the events in Kuwait since my departure and actions taken against the other members of the Fintas Group. Sheikh Ahmed Dawood, Sheikh Khalifa, Falah Al Hajraf and Abdul Mohsen Al-Ateeqi also described what happened to them in their individual supporting statements;"

189. I confirm that I have a statement of Sheikh Ahmed Dawood (CB Tab 5), four statements of Sheikh Khalifa (who also gave oral evidence to the Tribunal) (CB Tabs 7 & 16-18), Mr Alhaji (CB Tab 9) and Mr Al-Ateeqi (CB Tab 8). I have referred to their evidence in detail below. The respondent has not contended, that the appellant's evidence, to the effect that the other members of the team referred to by the appellant have claimed asylum, is incorrect. Certainly, Sheikh Khalifa has. In any event, the appellant's clear evidence is to the effect that, when he left Kuwait in late March 2015, at that stage it was his intention to return, he leaving his wife and four children behind in Kuwait, as well as other family members. Again, I find his response to [49] of the RFRL to be cogent and persuasive.

190. At [50] of the RFRL, the respondent, in part, raises issues relevant to a consideration of s. 8 of the 2004 Act. That paragraph states as follows:

"50. You claim you are able to leave Kuwait because there was not any case against you at the time so it was very hard for the Kuwaitis to stop you. You were aware that one of your companies were having a dispute with the government of Jordan in Zürich and you claim that there is an arbitration going on which the Jordanians have circulated through the Arab League. (AIR Q47). Later in the interview you state that you assume there are four cases against you and you know

some of them (AIR Q62 and 64). The main one you recall is the Fintas Group which is the largest criminal case. (AIR Q65). You claim that you became aware of the Fintas Group criminal case in October 2015, or a little while before that. However, you state that because you were outside of Kuwait "there is not a legal way, in those types of legal cases your presence has to be required." (AIR Q69). You claim that on discovering those cases you discussed it with your legal team and discussed the options. (AIR Q70). You were prompted by the interviewer about this at question 71 and you explained "the whole asylum is new to me...the lawyers I usually deal with are on the business side not on the humanitarian side so it is a big decision...the best option to protect myself." (AIR Q71). Furthermore you claim that you planned to return to Kuwait until the political events became intense and your lawyers advised you to have different considerations. (AIR Q47 and 56). There are clear inconsistencies in your claim. In your witness statement of 8 April 2016 at paragraph 247 you state that you were aware on 28 April 2015 that Kuwait and Jordan had made a request to Interpol for your arrest. You also state in your screening interview (*sic*) that you did not encounter any problems until March 2015. (AIR Q15). However, you did not claim asylum until October 2015. It is considered that if you are in genuine need of protection you would have claimed asylum at the earliest opportunity."

191. In WS4, the appellant responds to [50] of the RFRL, as follows:

> "Paragraph 50 of the RFRL - the Respondent suggested that I did not claim asylum at the first opportunity. However, I fully explained in WS1 what caused me to claim asylum at the point I did. In paragraph 230, I explained that "there was no intention on my part at that point to leave Kuwait permanently" and "I intended to return to Kuwait at the end of April 2015." An extensive explanation is given by me in paragraphs 248-262 of WS1 as to the events in Kuwait since my departure and actions taken against the other members of the Fintas Group. It must be emphasised that at the time I left Kuwait, the Fintas Group case had not yet started. It appears that an investigation started after I left the country and arrest warrants were issued in June 2015. I was already in the UK at this time. All the news had already started circulating in the media that I was wanted, (which is why my lawyers had written to Interpol on my behalf) information from the media is often inaccurate, especially when it emanates from biased sources. It would have been premature to claim asylum until I was sure of the situation. There was no obvious advantage to me in delaying a claim. Obviously, if it was safe, I would have preferred to return to Kuwait where my wife and children remain. At paragraph 268 of WS1 I explained that "Given the cumulative effect of the events that unfolded throughout 2015 since my departure from Kuwait on 29 March 2015 and in consultation with my teammates, Kuwaiti lawyers and family members, I decided to seek protection in the UK. Shortly after Falah Al Hajraf's release from detention on 1 October 2015 I received a telephone call from Sheikh Athbi who told me that the conflict between the establishment and Sheikh Ahmed had reached its apex and he was likely to be convicted and sentenced, it was inevitable. That was the breaking point for me";"

192. I find the appellant's explanation for his delay in claiming asylum to be a reasonable one. He has explained his reasons for the delay in detail in WS1. Further, as indicated at [7] of Mr Al-Ateeqi's statement (referred to below), the Fintas Group charges themselves were not laid until 13 August 2015. Whilst I find the delay to be potentially damaging to his credibility, as s. 8 of the 2004 Act requires me to do, I do not find it to be materially so, when considered in the context of the totality of the very extensive evidence, large tranches of which are corroborative of the appellant's evidence.

193. At [53] of the RFRL, the respondent states as follows:

> "53. Despite your claims that you were part of an anti-corruption group in Kuwait with Sheikh Ahmed, there are inconsistencies in your claims. You have failed to provide specific details when prompted and have given inconsistent statements and evidence. There is also objective evidence in the form of an arrest warrant and extradition request which questions

the legitimacy of your claims that your (*sic*) fear you will be persecuted and that the accusations levelled against you are politically motivated. It is not accepted that you would not have been aware that the actions you had taken part of in the corruption scandal would lead to criminal proceedings against you. This is confirmed by the arrest warrant and extradition request. You have also failed to provide evidence that you will be persecuted on return to Kuwait as the claims you have made relate to prosecution and criminal matters."

194. The appellant addresses [53] of the RFRL in the following terms in WS4:

> "Paragraph 53 of the RFRL - the Respondent suggests that I failed to provide specific details and have given inconsistent statements and evidence. I dispute this and the Respondent has not given any further details. Further, the Respondent suggests that the Swiss arrest warrant and extradition request questions the legitimacy of my claim to be persecuted and that the accusations are politically motivated. However, the Respondent has not explained how this is so. As I have already explained they are part of the same campaign of persecution by Sheikh Nasser and the Al Kharafi family to discredit me and discredit the videotapes. It must be remembered, I have not been convicted of these offences, simply charged and I intend to vigorously defend myself, hopefully in person if this is possible. Further, the Respondent suggests that the Swiss arrest warrant and extradition request proves that I would have been aware that my actions in the anti-corruption scandal would have led to criminal charges. I don't how to respond to this, as I cannot understand the connection made. All I can say is that I thought by exposing corruption, I was helping my country (which I still believe to be true). If the Emir had sided with Sheikh Ahmed, I would have been a hero for my part in this. Instead, he sided with Sheikh Nasser, and I am suddenly a criminal. If my actions in genuinely trying to make a difference to my country make me a criminal under Kuwaiti law, then it is the law that is at fault, not me;"

195. I agree with the appellant's indication that material elements of [53] of the RFRL make no obvious sense. Again, I find that the appellant has satisfactorily addressed the credibility concerns raised at [53] and that the respondent has failed to identify the inconsistencies alleged therein.

196. At [54] of the RFRL, the respondent states:

> "54. You claim that you cannot return to Kuwait as you were part of a corruption scandal which was discovered in Kuwait throughout 2013 and 2014 and because you are married to a member of the Kuwaiti royal family. However, the reasons you have given for not being able to return to Kuwait relate to prosecution rather than persecution. You have also provided an inconsistent account of your claim given the information available. At paragraph 4 of your witness statement dated 17 March 2017 you claim that you were sentenced to seven years imprisonment in Kuwait on 25 January 2017 for forging official documents. This is further evidenced by news articles which you have provided stating that you were involved in impersonating the legal representative of Tatweer Infrastructures Co in Qatar. You claim that the Al Kharafi family have used their enormous influence against you, but on the basis of other material evidence, your claim that these sentences are politically motivated is not accepted. You confirm in your interview that you have never been personally involved in politics. (AIR Q14). Additionally, in the witness statement of 17 March 2017 at paragraph 5 you claim that the Jordanian authorities have criminal charges levelled against you in Switzerland where they are seeking to file for compensation for you having caused huge losses regarding the sale of Housing Bank shares. Furthermore, at paragraph 6 of this witness statement, you claim that a Geneva prosecutor is conducting a criminal investigation into you and a number of other people who are suspected of having participated in fake arbitration, specifically, having committed forgery. The arbitration relates to establishing the authenticity of a series of videos showing senior Kuwaiti officials, members of the Royal family and the judiciary engaging in corrupt practices. You state that you received a notice from the Geneva prosecutor to appear at a hearing on 21 December 2016 in Geneva, Switzerland. However your claims that the investigation is politically

motivated are not accepted. Evidence has been provided in the form of an extradition request from Switzerland and arrest warrant which casts doubt on your claims."

197. The appellant addresses [54] of the RFRL as follows in WS4:

"Paragraph 54 of the RFRL - At the start of this paragraph, the Respondent suggests that I cannot return to Kuwait as I am married to a member of the Royal Family. I have never suggested that this is the basis of my fear, and I don't know why the Respondent has asserted this. In this paragraph, the Respondent also suggests that the charges cannot be politically motivated as I stated that I have never been involved in politics. The Respondent has clearly failed to understand that in acting in concert with the former Deputy Prime Minister in a bid to expose corruption at the highest levels of power in Kuwait which went to the heart of the Emiracy I expressed my imputed political opinion and was, as a result, made to pay a heavy price as those persecuting me unleashed the power of various state institutions to punish me for doing so. It is also clear that the Respondent simply has not read the expert report, which sets out the power struggle between Sheikh Ahmed and Sheikh Nasser and their political affiliations. In paragraph 270 of WS I stated that "with this in mind, I assumed a central role in the ongoing battle against corruption in Kuwait as part of Sheikh Ahmed's team. The evidence I was able to uncover and verify impinged on the political and financial interests of individuals closely connected to the highest echelons of power and their families who turned the weight of the state machinery against Sheikh Ahmed and those associated with him. As a result, I have been defamed, threatened with death, surveilled and charged with serious criminal offences. Other members of Sheikh Ahmed's team have been subjected to serious criminal charges, travel bans, arrests and detention and deprivation of assets. Sheikh Ahmed was put under a house arrest, pressured into apologising for his actions in bringing corrupt actions to light and eventually convicted. His fate and that of my teammates is uncertain. If returned to Kuwait, I will face interrogation under torture, inhuman and degrading treatment in pre-trial detention and, if convicted, will be sentenced to long term imprisonment or death. This is the price one pays for doing what is right";"

198. The above extract is, of course, from WS1, which was signed by the appellant prior to his conviction and sentence in Kuwait in relation to the Fintas Group trial. It should, of course, be borne in mind that the legal actions surrounding Tatweer are separate from the criminal charges surrounding the videotapes. Again, I do not find there to be any discrepancy in the appellant's evidence and he has provided a detailed and cogent account of events, which does not, in any way, or at any stage, present as inconsistent.

199. At [55] of the RFRL, the respondent states as follows:

"55. The arrest warrant from the prosecutor in Geneva is dated 27 December 2016 and relates to an offence of which you are accused, namely the forgery of documents, carrying a maximum penalty of five years. The arrest warrant outlines that you were charged with having participated in 2014 of setting up a simulated arbitration between Trekell Group LLC and Ahmad Fahad Al-Ahmad Al-Sabah resulting in an arbitral award dated 28 May 2014, which does not reflect reality. Furthermore there is an extradition request from Switzerland dated 13 January 2017 requesting your extradition following the arrest warrant dated 27 December 2016. Both of these documents cast doubt on your credibility that you cannot return to Kuwait as you claim you will be persecuted and that these crimes are politically motivated, considering that there is evidence from a third country which suggests you have committed criminal offences. Your claims are therefore related to prosecution and you have failed to provide sufficient evidence that you would be persecuted."

200. The appellant addresses [55] of the RFRL in the following terms in WS4:

"Paragraph 55 of the RFRL - the Respondent continues to rely upon the Swiss arrest warrant and extradition request as casting doubt on my assertion that the charges were politically motivated, but without ever explaining why. The arrest warrant is simply an arrest warrant - it is not proof of guilt, the complainants in Switzerland, Sheikh Nasser and the Al Kharafi family, are the same persecutors as in Kuwait and it is clearly part of the same plan to try and discredit me and the videotapes;"

201. I find the appellant's preceding explanation and analysis to be cogent. It is, of course, also linked, and of some relevance, to my consideration of Article 1F(b). I draw no adverse inference against the appellant with reference to the content of [55] of the RFRL.

202. At [56] of the RFRL, the respondent states:

"56. You claim that your wife was harassed on more than one occasion where she was receiving phone calls from anonymous people, telling her that they will come for you and hurt you. You state that you have reported these to the authorities in Kuwait. Between August and October 2015 you were receiving direct threats on social media and death threats, and you have submitted this information to the police. (AIR Q86). You claim that your wife received phone calls very frequently until you asked her to turn her phone off and after about two months they went away. You state that she did not have any other problems apart from the phone calls. (AIR Q88 and Q 89). However this is not considered to be persecution. You have provided no evidence as to who the threats came from and no evidence of the phone calls. However it is also noted that you claim to have reported these threats to the Kuwaiti authorities despite the fact that this is whom you claim to fear. This is an inconsistency in your claim."

203. The appellant addresses [56] of the RFRL in the following terms in WS4:

"Paragraph 56 of the RFRL - the Respondent asserts that there is no evidence where the threats to my wife came from, no evidence of the calls and the fact that they were reported to the authorities is inconsistent with my fear. It is submitted that there is evidence. The issues raised by the Respondent are dealt with in considerable detail and are backed up by documents in paragraphs 263-265 of WS1. My wife also provided her own statement which is contained at Tab 12 WS1. In paragraph 263 of WS1 I stated that "Her lawyer complained about this to the police in Kuwait but no action was taken." I was in the UK at the time and had no control over events taking place in Kuwait. My wife's lawyer obviously had more faith in Kuwait's due process than I do. It is stated in the letter from RHA Lawyers of 29 March 2016 (at Tab 92 WS1) that "the Kuwait State Security Service has been monitoring Mr Al Kharafi throughout his stay in the UK. We have obtained this information from Lt. Col Talal Al Sager who has been assigned to this case. Lt Col Talal Al Sager states in his statement to the Public Prosecutor that they had been monitoring Mr Al Kharafi in London through a secret agent tasked with keeping Mr Al Kharafi under surveillance. Although Lt. Col Al Sager did not disclose the name of his secret agent to the court he continued to say in his cross-examination on 24 January 2016 that he trusted the information received from his secret agent despite having no proof or foundation for his allegations. Lt Col Al Sager described surveillance of Mr Al Kharafi as extensive including on his residence in London. The cross-examination transcript also refers to correspondence from Al Diwan Al Amiri (*the headquarters and permanent centre of the Al-Sabah ruling family in Kuwait - my words*) to the Minister of the Interior. In fact, we came across a letter marked 'classified' from Deputy Minister of Al Diwan Al Amiri Affairs addressed to the Deputy Prime Minister and the Minister of Interior dated 29 April 2015 ordering them to take 'necessary action' in respect of this matter";"

204. I would add that RHA Lawyers are a Kuwaiti firm of lawyers who, they state, have acted for the appellant in respect of his commercial matters in Kuwait. The letter referred to above can be found at B4 Tab 90. I bear in mind that the content of

that letter is, *arguably*, not wholly independent, bearing in mind that two of the lawyers of that firm are members of the Fintas Group; namely, Mr Al Hajraf and Mr Al-Ateeqi. I have referred to the appellant's wife's evidence, which was not challenged by Mr Clarke at the hearing (excepting with reference to his adoption of the RFRL, which potentially or arguably raises a credibility issue relating to the appellant's wife at [56]). Again, I find that the appellant has provided a perfectly reasonable explanation which addresses the credibility concerns set out at [56] of the RFRL.

205. I am aware of the provisions of s.8 of the 2004 Act and, in view thereof, and with reference to the evidence which is before me, make the following findings in relation to the appellant's credibility. I have, of course, already addressed s. 8 issues above, with reference to [50] of the RFRL. At [57]-[61] of the RFRL, the respondent refers specifically to s.8. The salient paragraphs of the RFRL are [58]-[61], wherein it is stated:

> "58. You last arrived in the United Kingdom on 23 April 2015. Although you have claimed that you travelled with the intention of escaping your problems in Kuwait, you did not claim asylum at the airport. It is therefore concluded that your behaviour is one to which **section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004** applies.
>
> 59. You have claimed that your asylum claim is based on events that occurred after you left Kuwait. It is not accepted that your claim is 'sur place' as defined by paragraph 339P of the Immigration Rules. You claim that you did not encounter any problems until March 2015. (AIR Q15). It is also reasonable to believe that you were aware that criminal proceedings were brought against you prior to April 2015, as you state the charges were made against you by the government of Jordan on 18 November 2014.
>
> 60. It is therefore considered that if you were in genuine need of international protection as you claim then you would have sought the assistance of the British authorities at the earliest opportunity. You have failed to provide a credible reason why it took you six months to claim asylum and why you did not inform the Immigration Officer on your arrival of your problems. Your actions in this respect are not considered to be the actions of a person who has indicated a risk to their safety in Kuwait and is in need of international protection. It is therefore concluded that your behaviour is one to which **section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004** applies.
>
> 61. Before arriving in the United Kingdom, you travelled to Switzerland and Malta. These are considered a safe country under section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Therefore it is considered that you failed to take advantage of a reasonable opportunity to make an asylum or human rights claim while in a safe country. Your failure to do so has damaged your credibility under **section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004**."

206. The appellant addresses [58]-[61] of the RFRL as follows in WS4:

> "Paragraph 58 of the RFRL - the Respondent suggests that my credibility is damaged due to my failure to claim at the airport. I have always been a frequent traveller, travelling mainly on business. My cancelled passport is crammed with entry and exit stamps cover to cover. I have travelled to the UK on multiple occasions. When I left Kuwait on 29 March 2015 I had no intention to leave the country permanently and seek sanctuary elsewhere. In paragraph 230 of W1 I pointed out that "my family, including my wife and children, father and siblings were in Kuwait. I intended to return to Kuwait at the end of April 2015." After departing from Kuwait I travelled to Saudi Arabia and UAE before arriving in the UK on 7 April 2015. Thereafter, I continued to travel before returning to the UK on 23 April 2015. While in the UK I continued to assess the situation in Kuwait together with my

lawyers. It was only as a result of the cumulative effect of the events that took place between April and October 2015 in Kuwait and Jordan that I went on to claim asylum in the UK;

Paragraph 59 of the RFRL - the Respondent asserts that I was aware that charges had already been brought against me in Jordan. However, I am not a citizen of Jordan. Charges in a third country would not be a basis for a claim for asylum until the risk arose of my country of nationality returning me to that third country (which arose once I fell out of favour with Kuwait). In paragraph 256 of WS1 I stated that "in July 2015, Tamer Khreis came to London and brought with him files containing Jordanian charges and related case materials. He showed them to me and Yazed Eljazara in the presence of our then immigration solicitors. Among the documents was a bill of indictment dated 24 November 2014." This is the first time I became aware of these charges;

Paragraph 60 of the RFRL - the Respondent again raises the purported delay in claiming asylum, which has been dealt with above;

Paragraph 61 of the RFRL - the Respondent suggests that I could have made a claim for asylum in Switzerland or Malta. At paragraph 247 of WS1 I explained that "I left London on 22 April 2015 and went to Malta through Switzerland on a chartered plane. In Malta I met with the Maltese immigration authorities to discuss their citizenship by investment programme. I returned to the UK on 23 April 2015." As explained above, at the time I did not have a well-founded fear of persecution necessary to make a claim for asylum."

207. I reiterate that I have addressed certain s. 8 issues above, as noted by the appellant when referring to [60] of the RFRL. Again, I confirm that I find his delay in claiming asylum, and his failure to claim asylum in Switzerland or Malta, prior to returning to the UK in late April 2015, to be potentially damaging to his credibility, as I am required to do, but not materially so, having considered the appellant's evidence in its totality.

208. Having considered all of the specific credibility concerns raised in the RFRL, I conclude that I agree with Ms Laughton's contention that they lack material merit, that no material discrepancies are disclosed, that those adverse credibility contentions referred to in the RFRL are, in part, based upon a misinterpretation of the appellant's evidence and that they are, at most, peripheral in their import. I draw no adverse inference from any of those specific concerns, having considered them in the context of the evidence in its totality.

The appellant's witnesses', and related, evidence

209. It is the appellant's case that the available expert evidence also corroborates, and is consistent with, the credibility of his account. I have referred in detail below to that expert evidence, in addition to setting out certain limited elements thereof above.

210. It is also the appellant's case that his evidence relating to events in Kuwait is corroborated by the following statements (and oral evidence where appropriate); namely, statements of Sheikh Khalifa (CB Tabs 7 & 16-18), of Sheikh Ahmed Dawood (CB Tab 5), of Mr Al-Ateeqi (CB Tab 8), of Mr Al Hajraf (CB Tab 9 and the said letter from RHA Lawyers, at B5 Tab 90). I also have copies of the court judgment, appeal judgment and Cassation Court appeal judgment, in relation to the Fintas Group prosecution (B9 Tabs 30-32). There is corroboration of the ongoing threats contained in the appellant's wife's statement (CB Tab 2).

211. In relation to the claimed events in Jordan, Ms Laughton relies upon corroboration via the statements of the Jordanian lawyer, Mr Khreis (together with his oral evidence before the Tribunal) (CB Tabs 6 & 15), Sheikh Ahmed Dawood, Yazed Eljazara (CB Tab 4), Mr Al Yafei (CB Tab 3), Mr Al Amri (B3 Tab 44), with the said related medical report dated 19 November 2014 (B3 Tab 45), the said NCHR documents of 24 and 26 November 2014 (B10 Tabs 20-21) and a letter from Levy Kaufmann-Kohler ("LKK") dated 29 March 2016 (B3 Tab 41).

212. For clarification, I would add that LKK are the lawyers in Geneva who represented KRIC and Mr Al Yafei in the KRIC arbitration. There is no suggestion by the respondent that they are other than a reputable firm of Swiss lawyers. The letter in question is addressed to the appellant's solicitor in the UK. I consider that it may assist to set out the substantive content of that letter in its entirety, which follows:

"We refer to our telephone discussion.

As per your request, please find below a short summary of the various proceedings in which we are assisting KRIC Inc. (Kric) and Mr Ali Alyafei (Mr. Alyafei).

Such information is provided to you with the agreement of Kric and Mr Alyafei and in connection with Mr Al Haroun's application to the Home Office in the UK. Should you wish to receive further information or documentation concerning the arbitration proceedings or the subsequent appeals, please let us know and we will seek our client's permission for disclosure of same.

All proceedings relate to a Share Purchase Agreement (SPA) executed between Kric and the Social Security Investment Fund (SSIF) for the purchase by Kric of a significant stake in the Housing Bank for Trade and Finance (HBTF).

The dispute that arose is straightforward: SSIF defaulted under the SPA and Kric claimed the amount of the penalty provided for under the SPA. As a defence, SSIF claimed, among other arguments, that Dr. Yasser M. Adwan (Dr. Adwan), who was the SSIF's director and CEO, did not sign the SPA and that his signature on the contract had been forged.

1. <u>LCIA Arbitration</u>

Kric initiated arbitration proceedings in Zürich under the aegis of the London Court of International Arbitration (LCIA) in accordance with the dispute resolution clause contained in the SPA.

On 20 August 2015, the Sole Arbitrator issued an award rejecting Kric's claims on the ground that Dr. Adwan's signature had indeed been forged. The Sole Arbitrator also found that SSIF had no legal standing and, accordingly, the award was directed at Social Security Corporation (SCC) and not at SSIF.

In coming to this conclusion, the Sole Arbitrator did not draw inference from the conflicting declarations of the factual witnesses who testified on the presence of Dr. Adwan at the meeting where, according to Kric, the SPA was signed (the witnesses are mentioned in passing, without clear findings about who told the truth and who did not tell the truth). The award placed however great emphasis on the findings of the experts on handwriting appointed by the Arbitrator and by SSIF, and dismissed the expert evidence provided on behalf of Kric - essentially on the ground of methodology flaws which are disputed by Kric.

With specific regard to Dr. Marie Anne Nauer-Meier, one of the experts appointed by the Sole Arbitrator, it was discovered that she could have received money from Jordan. This resulted in a criminal complaint filed before the Zürich prosecutor. The Sole Arbitrator did not find this factor relevant and he relied on Dr. Nauer-Meier's expert report.

The arbitral proceedings gave rise to numerous other procedural motions and disputes between the parties.

2. Setting aside proceedings in Switzerland

The seat of the LCIA arbitration being in Zürich, Switzerland, the Swiss Federal Tribunal is the court with jurisdiction to hear challenges against the Sole Arbitrator's award.

On 21 September 2015, Kric filed an action to set aside the award on the ground that the Sole Arbitrator wrongly rendered his award in favour of a third party (SSC instead of SIFF (*sic*)) and breached Kric's fundamental due process rights by:

Omitting to make a ruling on first and witness evidence provided on behalf of Kric by the persons who attended the signature of the SPA; and

Refusing to allow Kric to bring counter-evidence to disprove the experts' reports provided by the handwriting experts appointed by the Tribunal, in particular Dr Marie Anne Nauer-Meier.

SSIF/SSC have a time limit until 9 March 2016 to file an answer to Kric's action to set aside the award. A second round of written submissions is possible.

3. Criminal proceedings in Switzerland

In September and November 2014, Kric filed criminal complaints in Switzerland (Zürich) against Dr Adwan (for perjury) and against Dr Marie Anne Nauer-Meier (for false expertise and corruption) in relation to their actions during the arbitration.

The prosecutor in charge is still examining the matter and we expect further evidentiary measures to be taken, in particular a new independent handwriting expertise of the signature of Dr Adwan and an analysis of the attendance sheet that he signed when attending the arbitration hearing.

4. Investment Arbitrations

In his capacity as the CEO of Kric and a Qatari national, Mr Alyafei also initiated two separate arbitration proceedings against the state of Jordan (both based on the Unified Agreement for the Investment of Arab Capital in the Arab States of 26 November 1980).

The first arbitration is in front of an ad hoc arbitral tribunal constituted in accordance with the above mentioned investment protection agreement. The constitution of the arbitral tribunal has been completed. The initial advance costs has been paid. A procedural hearing was held on 10 March 2016, following which the Arbitral Tribunal issued several procedural orders and directions.

While the proceedings are at an early stage, Mr Alyafei will argue in substance that the way in which SSIF/SSC and the Jordanian state acted and/or interfered with the LCIA arbitration is a violation of the obligation to ensure fair and equitable treatment to the foreign investor and is tantamount to an expropriation of such investment.

The second arbitration was initiated before the International Centre for Settlement of Investment Disputes (ICSID). It is currently stayed. ..."

213. I have set the LKK letter above out in full, as I consider that it provides some detailed and persuasive evidence, which is supportive of the appellant's evidence, and the evidence of his witnesses, in terms of events surrounding the SSIF/KRIC arbitration and its conduct.

214. In terms of the evidence of the various witnesses, with reference to core elements of the appellant's account, and those witnesses' corroboration thereof, I would comment as follows.

Sheikh Khalifa's evidence

215. In terms of Sheikh Khalifa's statement evidence, there are, as I have indicated, four statements (CB Tabs 7, 16, 17 & 18). I shall hereinafter refer to them as his first, second, third and fourth statements respectively. The first two statements have been prepared for the purpose of assisting the appellant in his asylum claim and appeal. The third and fourth statements have been prepared for the purpose of Sheikh Khalifa's own asylum claim in the UK. As indicated, Sheikh Khalifa is one of the Fintas Group and he is a member of the Al-Sabah Kuwaiti royal family. He also gave oral evidence before me.

216. In his first statement (CB Tab 7), which is dated 26 March 2016, Sheikh Khalifa sets out evidence which is supportive of, and consistent with, that of the appellant. As it is a relatively brief statement, I consider it worthwhile setting it out verbatim, rather than to seek to paraphrase it, which follows:

"1. I am a Kuwaiti national, born in Kuwait on 27 May 1977. I am a member of the Al Sabah family. Although I did not hold an official position within Al-Diwan Al-Amiri (*the Royal Palace - my words*), I was the top adviser to the Emir until early 2014.

2. Al Watan newspaper is a very famous newspaper in Kuwait, originally established in 1962. My father, Sheikh Ali, bought Al Watan in 1991 from the Al Qanat family. In May 2005, I took over as editor in chief. I expanded the media network and also established Al Watan TV in 2007. The network comprised of four channels, which primarily focused on local news and interests. The TV network and the newspaper were generally considered to be at the top of their respective fields. For example, until it was shut down in January 2015, the newspaper circulation was around 110,000. By comparison, its closest rival had a circulation of a mere 40,000. Likewise, the TV network dominated ratings among all local and regional networks in Kuwait. Its primetime ratings were close to six times its closest competitor. Further, the TV channel had a strong viewership across the Gulf.

3. Al Watan has been very influential politically and has always carried a great deal of credibility, despite the fact that it was, at times, viewed to be pro-government. During the period of the Arab Spring, Al Watan was extremely vocal in defending the government and the regime and warning against everything the Arab Spring stood for. On the other hand, Al Watan maintained its credibility in the stance it took against the little-liked mercantile families. This included exposing corruption in big state projects, such as the Dow chemical project.

4. Al Watan was also the only media outlet to be vocal in criticising Iran and Hezbollah, which reduced its popularity amongst Shi'ites in the region. However, conservative religious groups, like Al Salaf, have always regarded Al Watan as their main outlet in Kuwait.

5. Sheikh Ahmed Al-Fahad Al-Ahmed Al-Sabah is my cousin twice over. My father is his maternal cousin and my mother is his fraternal cousin. As is common knowledge, a corruption scandal exploded in Kuwait in 2011 and the Prime Minister, Sheikh Nasser Mohammed Ahmed Al-Jaber Al-Sabah was implicated. Sheikh Ahmed decided to form an anti-corruption team to investigate. I was approached by Sheikh Ahmed in November 2013 to form part of this team. I agreed. There were several members of the team. It was led by Sheikh Ahmed.

6. His brother, Sheikh Athbi Fahad Al-Sabah and I led the political work on the ground. As I was a top and trusted adviser to the Emir, my specific role was to put him in the picture and to also get the message across in the media using my position as editor in chief of Al Watan. HAH

I liaised with lawyers and experts outside Kuwait. Falah Al Hajraf and Abdul Mohsen Al-Ateeqi, both of RHA law firm, were legal counsel to Sheikh Ahmed. Sheikh Ahmad Dawood Al-Sabah and Yousef Al-Essa were the financial experts within the group. Most of the group members did not in fact know each other until the group was formed. For example, I only met HAH for the first time when the team was put together.

7. The team first met in December 2013. In January 2014, I had put the Emir in the picture. He, in turn, decided to create his own committee within the Royal family to look at and examine the evidence. In March 2014, Sheikh Ahmed was summoned by the Attorney General to testify in a defamation case brought by Jassem Al Kharafi, the former speaker of the National Assembly. He testified in April 2014. This was being brought against individuals who had revealed some apparently inaccurate information that may have been related to the evidence being investigated by the team. The individuals against whom the case was brought had discussed the videotapes that our team was investigating and falsely included reference to a plot to poison the Crown Prince. After his testimony, Sheikh Ahmed went public, for the first time, with some of the information that we were investigating and specifically announced the identity of two persons in the tapes, Sheikh Nasser and Al Kharafi, and disclosed some of the plots they discussed. This information was published by Al Watan and Alam Al Yawm newspapers. In April 2014, both newspapers were shut down for two weeks as punishment for publishing Sheikh Ahmed's comments.

8. In early June 2014 Al Watan reported on its website that Sheikh Ahmed had given Prime Minister Sheikh Jaber al-Mubarak al-Sabah, another family member, 10 days to disclose details about companies that had been hired to transcribe the recording and its content, before starting possible legal action. Although these statements were also published by other newspapers, it was Al Watan was shut down for 4 days that month, whereas the other newspapers remained open.

9. On 14 June 2014, Sheikh Ahmed appeared on Al Watan TV to show some of the evidence about the case, which was mainly the evidence included in the arbitration case between Sheikh Ahmed and the Trekel Group LLC which had confirmed the authenticity of the tapes and had included transcripts of them.

10. In June 2014, Sheikh Ahmed began giving evidence to the Attorney General about the plot and filing some of the evidence that we had already obtained. In July 2014, Sheikh Ahmed asked the Attorney General to come to Geneva to look at bank statements that showed multibillion balances on Sheikh Nasser's accounts and transfers to high-ranking official in the government of Kuwait, the Parliament and even the judiciary. They also included transfers to officials in other countries and multibillion dollar dealings with Israeli entities. These documents were kept with Sheikh Ahmed's lawyer in Switzerland to protect him and the documents. In September 2014, Sheikh Nasser and Jassem Al Kharafi were summoned by the Attorney General to respond to Sheikh Ahmed's accusations. In October 2014, Sheikh Mohammad Al-Sabah and I were summonsed as witnesses.

11. I received threats from people close to Sheikh Nasser that Al Watan would be shut down if I testified. Despite these threats, I did testify. I went public and also declared that I had received this threat. True to their word, 40 days later, in January 2015, Al Watan newspaper (and its affiliated magazines) had its licence cancelled. The decision to shut down the company, Dar Al Watan Journalism Printing and Publishing Company, was made by the minister of commerce, Abdul Mohsen Al Madaaj, who is a member of the so-called "National Coalition", a very close ally of Sheikh Nasser. It was closed down under the pretext of major financial losses, which were completely false. It was clear that it was a punishment for me testifying. The appeal was upheld in February 2015. The Supreme Court further upheld the decision in November 2015. Al Watan TV was also threatened with closure.

12. In March 2015, the case that was initially brought by Sheikh Ahmed was dismissed without it even being brought to court. Sheikh Ahmed responded with a fiery statement in which he accused the legal system of collaborating with the plotters and ignoring key evidence. The statement was published on Al Watan TV and Sheikh Ahmed's Twitter account. Sheikh Ahmed

was placed under house arrest on 25 March 2015 and he and his close family (together with the team) were threatened with imprisonment by the Emir.

13. The Emir then summoned Sheikh Ahmed and forced him to both retract the statement and apologise to Sheikh Nasser and Al Kharafi. On 26 March 2015, Sheikh Ahmed apologised on the state run television station, incorrectly stating that the videotapes were fake. The apology was then printed in corporate media outlets. In April 2015, a bogus case was brought against all the team members except Sheikh Ahmed accusing us of plotting to disturb national security. A separate case was brought against Sheikh Ahmed for defaming the judiciary.

14. Al Watan TV was taken off the air in June 2015. In June 2015, charges were brought against and travel bans were imposed on 7 June 2015 on 13 suspects of the 'Fintas Group' which included all members of the anti-corruption team, including Hamad, except Sheikh Ahmed. Among the 13 suspects were also those who were not part of the anti-corruption team. Arrest warrants were issued. Sheikh Athbi was on a family vacation and had to return to Kuwait. Hamad was in London and was advised not to return. The news about the arrest warrants was public and published in all newspapers. The Attorney General started the process of questioning each one of us during the last 10 days of Ramadan. Some members of the team who were interrogated were bailed in July 2015.

15. On 6 September 2015, a similar case was brought against Falah Al Hajraf, one of the legal counsel to the team. He was arrested and detained until 1 October 2015. In September 2015, the court hearing started in respect of the 'Fintas Group' case. By this time, the charges had increased from 3 to 8. They included defaming the Emir, plotting to overthrow the regime and defaming the judiciary. Soon after, the judge lifted the travel restrictions. In November 2015, a third case was brought against Falah Al Hajraf and an arrest warrant was issued. He was not in Kuwait at this time. He returned to Kuwait in February 2016 and handed himself to the court.

16. In the meantime, on 10 December 2015, Sheikh Ahmed was given a 6 months suspended sentence and ordered to pay 1,000 dinars for violating a prosecutor's gag order regarding his allegations against Sheikh Nasser and others by discussing it in a television interview on Al Watan TV. On 25 January 2016 the sentence was overturned by a court of appeal.

17. Separately, in January 2016, in the 'Fintas Group' case the court decided to hold a final hearing on 6 March 2016 on the Whatsapp case against the members of the team. That hearing was postponed twice to now be heard on 28 March 2016.

18. The risk I face is a life sentence in prison. Some of the alleged charges also lead to capital punishment. Also, my media empire, which was at its peak value at around US $800 million was liquidated and my family's holdings mainly in companies like Zain, the biggest telecoms operator in the Middle East, was handed over to the Al Kharafi family and to the Emir's sons. Legally, Hamad is facing the same risks as I do. Furthermore, I understand the control of some of his own companies has been handed over to Loay Al Kharafi in the most illegal manner.

19. Despite the risk, I have decided to remain in Kuwait for two main reasons. Firstly, I want to be close to my family and friends. Secondly, I feel that I needed to stay with the remainder of the team. ..."

217. I have set out the above in full, as it provides a slightly different slant or viewpoint upon the relevant history of events relating to events in Kuwait, linked to the said videotapes and the subsequent criminal prosecutions, compared to the appellant's account, albeit entirely consistent with it. Since Sheikh Khalifa's first statement was prepared, he has, of course, now travelled to the United Kingdom and claimed asylum in his own right. I note that his above statement is copiously sourced with relevant references.

218. Sheikh Khalifa's second statement is dated 6 August 2018 (CB Tab 16). He confirms therein that he claimed asylum in his own right on 10 July 2017 and he

refers to the two statements submitted to the respondent in support of his own claim. I reiterate that those two statements are at CB Tabs 16-17. They are detailed and their content does not need specific reference within this decision, save to comment that the information contained therein is consistent with the balance of Sheikh Khalifa's evidence. It is clear that Sheikh Khalifa still awaits a decision in relation to his asylum claim.

219. Sheikh Khalifa's oral evidence was entirely consistent with the content of his various statements. He presented as a credible and cogent witness in the manner in which he answered questions asked of him by both representatives. No discrepancies in his evidence were referred to or highlighted by Mr Clarke. He presented as an impressive witness and I have given his evidence material weight, when considered in the context of the evidence as a whole.

Sheikh Ahmed Dawood's evidence

220. Sheikh Ahmed Dawood did not attend the Tribunal, in order to give oral evidence, but his witness statement, dated 29 March 2016, is at CB Tab 5. I have read that statement in its entirety. It was prepared for the purpose of supporting the appellant's asylum claim. It appears to give Sheikh Ahmed Dawood's address as one in Kuwait. It is Sheikh Ahmed Dawood who, until 1 April 2015, was, inter-alia, the chairman of KCH. In his statement, he reiterates the history of how KCH sought to acquire HBTF shares in Jordan, through the Jordanian SSIF, the bidding competitor being the Qataris. He refers to meeting Dr Adwan for the first time in October 2011. Sheikh Ahmed Dawood adds that Dr Adwan was, at that stage, the chairman of the SSIF. Sheikh Ahmed Dawood's indication is that his, Sheikh Ahmed Dawood's, involvement in the prospective purchase of SSIF shares was linked to the potential of the Kuwaitis providing financial aid/investment to the Jordanians.

221. Sheikh Ahmed Dawood makes reference to the Jordanians manipulating certain facts and hiding crucial information regarding the status of the sale of the HBTF shares. He adds that the appellant's services were engaged, essentially because the appellant was known to have good links, not only in Kuwait, but also with the Qataris, the rival bidder for the SSIF shares. He confirms the appellant's account of the events which then unfolded. Specifically, at [14]-[16] of his statement, Sheikh Ahmed Dawood states as follows:

> "14. ... In April 2012, I had confirmation from HAH ... that the deal (*that is, between the Jordanians and the Qataris for the sale of the SSIF shares to the Qataris - my words*) had been concluded. However, at the same time, the Jordanians were still denying this. Therefore, in June 2012, we visited Amman. HAH ... was an adviser at our group, and so he attended, along with Yousef Shamalan Al Essa and a predominant banker. We arrived at Marka Airbase near Amman Jordan in our Government plane, and went to see the Social Security Investment Fund as per a scheduled meeting to discuss our business prospects. Before our arrival, I was still sceptical whether the Qataris were telling HAH ... the truth (*namely, whether the talks between the Jordanian SSIF and the Qataris was still ongoing, rather than a sale having been concluded - my words*). I was still not aware how talented our Jordanian counterparts could be when it came to deceit. Therefore, upon arriving, HAH ... called a senior banker from QNB and put him on speakerphone, whilst the motorcade was heading towards the Social Security Investment Fund head office.

15. Over the phone, the QNB banker confirmed the sale of the SSIF shares in the Housing Bank to the company that was once associated with HAH ..... The banker also described the deal, the details of which were then later announced in what they call the "Hareer Gate" in the Jordanian press. I asked the motorcade to stop at an office close to the SSIF office, where Mr Yazed Eljazara, who we had employed specifically for the Kuwait Jordan project, was present. Yazed volunteered to contact one of the senior legal representatives at the Social Security Investment Fund whose name was Khaled Al Fayez. Mr Al Fayez confirmed that he was aware that the deal had been concluded.

16. I was very disappointed at that deception. Initially, I ordered HAH ... and Yousef to go back to the airport as I felt so insulted. However, Yousef suggested that we would not lose anything if went to the meeting and asked Dr Adwan directly. I took his advice and we went. We later discovered from the Qataris that the meeting was recorded and taped by Jordan intelligence. The Qataris discovered this because that recording was used in an arbitration session in the Swiss proceedings between Qatar and Jordan in respect of the non-compliance with the terms of the Housing Bank deal. Having arrived at the meeting, I asked Dr Adwan if they had really sold the shares. His answer was "it's classified information." I then knew that they had sold the shares. I left the meeting room and made it clear that I was angry. Dr Adwan followed me with Waleed Murjan, his assistant, and tried to calm me down, telling me it was higher authority orders to conclude the deal, but he also offered me other investments to purchase such as the Arab Bank and Al Ahli Bank whilst I was swiftly trying to get out of his building. I was devastated by how unprofessional and incompetent the Jordanians were."

222. The above extract from Sheikh Ahmed Dawood's statement is entirely consistent with the appellant's evidence, in relation to this aspect of the related history. It is also, I find, evidence which is consistent with the claim that the shares in SSIF were, indeed, sold to QNB, such being the subject matter of the KRIC arbitration.

223. Sheikh Ahmed Dawood's statement proceeds, from [17] *et sequor*, to refer to Sheikh Ahmed Dawood's involvement in the investigative team, formed to investigate the claimed corruption linked to the video tape recordings referred to. He refers to having seen certain video and audio recordings and confirms that he joined the team, which included the appellant, in order to assist the appellant in his investigation in Europe and the Middle East, in order to follow the trace of the video recordings and to verify them. He adds that the Emir of Kuwait was aware of what they were doing and was initially supportive and encouraging but that matters then turned against them, the Emir having had a private meeting with Sheikh Nasser and the late Jassem Al Kharafi.

224. In his statement, Sheikh Ahmed Dawood then relates the course of events which followed thereafter, in terms of the suppression of the investigation and the actions taken against the investigative team. He makes reference to the pressure put on Sheikh Ahmed, who was one of the closest candidates to succeed to the Kuwaiti throne as Emir, and he refers to Sheikh Ahmed being forced to give a televised apology on Kuwait national TV. He refers to the situation beginning to decline rapidly after the appellant left Kuwait on 29 March 2015. He also refers to the arrest of their lawyer, Mr Al-Ateeqi, at a demonstration, and to the said WhatsApp conversation, allegedly extracted from Mr Al-Ateeqi's mobile phone, being fabricated. He indicates, at [21] of his statement, that the aim of the Kuwaiti state was to "*target the team that consisted of the "creme de la crème" of Kuwaiti society, known for their bravery, integrity and ethics.*" He makes reference to the corrupt Kuwaiti court system and to the bribery of judges. He indicates that he is personally aware that the appellant is being watched closely by Kuwait's

intelligence services and that the appellant comes from a very strong, reputable family that has been known to fight corruption for a long time.

225. Sheikh Ahmed Dawood's statement is, again, entirely consistent with the evidence of the appellant in relation to events in Jordan and Kuwait. I bear in mind that he was not present to give evidence and have taken that factor into account in terms of the weight to be given to his statement. Nevertheless, I find it to be evidence which is materially supportive of the appellant's credibility.

Letter of RHA Lawyers dated 29 March 2016 (B4 Tab 90)

226. I have referred above to this letter and set it out at this stage verbatim. Mr Al-Ateeqi and Mr Al Hajraf, also referred to above, are two of the partners in RHA Lawyers, and I have also referred below to the content of their respective statements. The letter in question is addressed to the appellant's current solicitor. I am unclear as to who actually wrote the letter. Its narrative proceeds as follows:

"RHA Lawyers is a Kuwaiti legal firm that concentrates on litigation, arbitration, and legal services. Our offices are located Al-Qibla Fahad Al Salem Street Dawliah Commercial Centre Entrance 2, 2nd Floor, Kuwaiti City, Kuwait. We write this letter in support of a confidential application made by [redacted] to the Home Office in the United Kingdom.

We have acted on behalf of [redacted] in respect of his commercial matters in Kuwait. We are not able to represent him in respect of any ongoing criminal matters or have access to case materials as those who are outside of the jurisdiction are not afforded a right to defence and tried in absentia.

[redacted] is a Kuwaiti citizen. He is a businessman who had business interests in infrastructure aviation, and financial consultancy. In addition, he has been a distinguished banker working for several regional banks in Kuwait and Qatar.

[redacted] assisted both Sheikh Ahmed Al Fahad Al Ahmed al Sabah and partners of this firm with gathering and authenticating evidence of corruption that were found in the reports of 11 video tapes that were given to the Public Prosecutor in the case 1214/2013. Mr Al Haroun assisted Sheikh Ahmed Fahad Al Sabah with verifying the videotapes and dealing with a wide range of forensic experts and investigators abroad. Mr Al Haroun arranged, through legal representatives in Switzerland, for forensic reports to be provided by Kroll, K2, CY40R, Afentis Forensics, Emerson Associations and other experts.

Please find below the list of cases and brief description of each case instigated against [redacted]: ... (*There then follows a table of the various cases, with dates, case numbers, description and judgment (if any), the RHA letter then proceeding to provide a detailed commentary in relation to each case referred to*) ...

Case number 1214/2013:
In brief, the case was against the former Prime Minister Sheikh Nasser Mohamad Al Ahmed Al Sabah and the former Speaker of the National Assembly, Jassem Mohamad Al Kharafi, who had been accused of attempting to topple the regime, money laundering and of contacting an enemy state.

Sheikh Nasser who is also a senior member of the ruling Al Sabah family, and Jassem Al Kharafi had been caught in the middle of a high-profile controversy about an alleged plot to overthrow the regime details of which first came to the fore in December 2013. Sheikh Ahmed Al Fahad Al Ahmed Al Sabah, who is the former Deputy Prime Minister for Economic Affairs, Minister of State for Development Affairs and Minister of State for Housing Affairs and a nephew of the Emir, Sheikh Sabah Al Ahmad, had received a videotape from a confidential source that allegedly claimed that Jassem Al Kharafi and former Prime Minister Sheikh Nasser, also the Emir's nephew, were "conspiring to topple the regime".

The controversy surrounding the story and the involvement of high profile figures led the Public Prosecutor to issue a blanket gag order on the issue in April 2014, saying it was undermining the public order.

This information is provided by way of background.

Case number 8641/2015/5:

On March 23 2015 Mr Abdul Mohsen Mohamad Al-Ateeqi, a partner of RHA was arrested in front of the National Assembly by special forces. He was detained for three days and his phones and personal items were confiscated. He was accused of committing a criminal offence and leading a protest and illegal demonstration in front of the parliament building. Bail was granted after the Kuwaiti Lawyers Union intervened. Later criminal charges were pressed against him in the case No. 8641/2015/5. Mr Al-Ateeqi was later found not guilty by a judgment dated 1 March 2016.

On Thursday, 26 March 2015, Sheikh Ahmed Al Fahad issued a public televised statement on Kuwait national television. The short apology was printed in national newspapers. After the apology, a systematic legal attack was launched on the members of the team who helped Sheikh Ahmed in investigating, verifying, and scrutinising the videotapes or material relating to the videotape case, including HAH .....

Several cases were filed against HAH ..... and the rest of the team members assisting Sheikh Ahmed in the fight against corruption. Sheikh Ahmed's opponents used their power and influence against HAH and the rest of the team. They were able, through their connections with different branches of power in the country to stage-manage the legal and political matters and to stop the team from continuing to expose corruption within the ranks of the executive, judicial and legislative branches of government. The team members who assisted Sheikh Ahmed throughout this battle had no criminal charges or convictions prior to Sh. Ahmed Apology.

This information is provided by way of background.

Case number 217-2015:

As of 2 March 2015 HAH had no charges on his record. There were some attempts from Sheikh Ahmed's opponents to instigate a number of civil and criminal cases against HAH ..... one of which resulted in a travel ban being issued on 11 February 2015. The ban was removed on 1 March 2015. Mr Loay Jassem Al Kharafi (son of the former speaker of the National Assembly) made an attempt to prevent HAH ..... from travelling as part of case relating to United Aviation, a Kuwaiti subsidiary of Tatweer Infrastructure Company, a BOT company registered in Qatar. H... ... HAH ... who is a former company officer was accused of embezzlement, withholding assets, theft and manipulation. He was cleared of all charges on 24 February 2016. The judgment is not available. We understand that this is satellite litigation stemming from the proceedings in Qatar. H... HAH will provide you with the key documents.

Case number 280/2016:

HAH ..... was accused of leaving Kuwait while subject to an extant travel ban by the Arab Police Federation issued by Jordan, and was sentenced to 10 years imprisonment on 5 January 2016 along with three immigration officers. HAH ..... was tried and convicted in absentia without a right to representation. It was concluded that HAH had left the country with a Kuwaiti National passport number 002479988 on 29 March 2015 through the border with Saudi Arabia. However, Kuwaiti National passport number 002479988 was cancelled on 1 March 2015. HAH ..... used to be (*sic*) travel frequently. His passport pages were full and he applied for a new passport which was issued on 2 March 2015 valid until 1 March 2025.

Kuwait does not allow possession of more than one valid passport. If there was in fact an extant travel ban issued by the Arab Police Federation, then it is likely that HAH ..... would have been stopped on entering or leaving Saudi Arabia on 30 March 2015. We are unable to obtain a copy of the judgment dated 5 January 2016 due to HAH 's absentee status. If requested, we could reach out to the lawyer representing the other defendants to try and get a copy. The Constitution and

Part VI of the Riyadh Arab Agreement for Judicial Cooperation contain the relevant provisions on extradition. Jordan, Kuwait, UAE and Saudi Arabia are all contracting parties.

Case number 152/2015:
Following the confiscation of one of Mr Al-Ateeqi's phones, the Criminal Investigation Department together with the Chairman of Kuwait's Supreme Judicial Council and the Cassation Court and the President of the Constitutional Court filed a case number No. 152/2015 Criminal/8 against I[illegible] HAH[illegible] and twelve others in a case known as the 'Fintas Group' case. Among those who have been accused are members of Sheikh Ahmed's team: Abdul Mohsen Al Ateeqi (a partner at RHA Lawyers), Falah Al Hajraf (a partner at RHA Lawyers), HAH[illegible], Sheikh Athbi Fahad Al Ahmad Al Sabah (previous head of Kuwait security), Sheikh Ahmed Al Dawood al Sabah (financier and banker), Sheikh Khalifa Al Ali Al Sabah (former owner and editor in chief of Al Watan), Sheikh Fawaz Abdullah Al Sabah (major in Kuwait's military intelligence) and Yousef Shamlan Al Essa (financier and banker).

On 7 June 2015 travel bans were issued against all thirteen suspects. On 13 August 2015 charges were laid in an indictment report pursuant to pursuant to (*sic*) materials 147/1,209,210 of the Penal Code and articles 15.25 of Law number 31 of 1970 amending some provisions of the Penal Code number 16 of 1960 and article 70/A.1, A.2 of Law No. 37/2014 of the Establishment of Communications and Information Technology Commission. We refer you to the indictment report for the full list of charges. At the start of the proceedings in September 2015 travel bans were lifted in respect of those who were in Kuwait but not HAH[illegible]. The case was last adjourned on 28 March 2016 until 11 April 2016.

Kuwaiti law prohibits judges from being sued, monitored or questioned. The Chairman of Kuwait's Supreme Judicial Council and the Cassation Court and the President of the Constitutional Court are the highest ranking judicial positions in Kuwait. The Chairman of the Supreme Judicial Council has filed cases against Mr Al Haroun under numbers 150000152 and 150791610.

A large number of false reports generated by the security services in Kuwait have been associated with this case. The Kuwait State Security Service has been monitoring Mr Al Haroun throughout his stay in the UK. We have obtained this information from Lt. Col. Talal Al Sager who has been assigned to this case. Lt. Col. Talal Al Sager states in his statement to the Public Prosecutor that they had been monitoring HAH in London through a secret agent tasked with keeping [illegible] HAH under surveillance. Although Lt. Col. Al Sager did not disclose the name of his secret agent to the court he continued to say in his cross-examination on 24 January 2016 that he trusted the information received from his secret agent despite having no proof or foundation for his allegations. Lt. Col. Al Sager described surveillance of HAH as extensive including on his residence in London. The cross-examination transcript also refers to correspondence from Al Diwan Al Amiri to the Minister of the Interior. In fact, we came across a letter marked 'classified' from Deputy Minister of Al Diwan Al Amiri Affairs addressed to the Deputy Prime Minister and the Minister of Interior dated 29 April 2015 ordering them to take 'necessary action' in respect of this matter.

Cases number 1172-2014 and 727-2015
These two cases relate to the conflict between Ettizan Financial And Real Estate Company and a Kuwaiti company, Ijara House Holding Company controlled by the Al Kharafi family through the National Investment Company. It revolves around a contract for the sale of land between the two entities in Doha, Qatar.

On 11 February 2015 a travel ban was issued and initiated on 12 February 2015 against [illegible] HAH[illegible], a former chairman of Ettizan, in Kuwait in respect of a commercial matter relating to Ijara House Holding Company. The travel ban was lifted on 1 March 2015. At the time of his departure from Kuwait on 29 March 2015, HAH[illegible] did not have any charges or convictions against him. The Kuwaiti government, along with the Jordanian government, joined forces in order to arrest [illegible] HAH[illegible]. Although the case has no criminal aspect, it has been window dressed as a criminal complaint to stop HAH[illegible] from travelling and obtaining further evidence relating to case number 2014/2013.

Later, Ijara House Holding Company filed the same case with a different court. The judge ordered to engage a court expert. The expert concluded that there was no element of crime, the appropriate

jurisdiction is Qatar and the conflict is civil and not criminal in nature. Ijara House Holding Company through Loay Al Kharafi asked for the judge to be recused. The case is pending.

Political motivation

We have advised HAH that he will be facing an unprecedented sentence if he returns to Kuwait. It is obvious that the cases are controlled and motivated by political interests. As part of the Fintas Group case (to which two of our partners are party) Loay Al Kharafi asked a mediator to speak to one of the defendants, Yousef Al Essa. Mr Al Essa, Mr Al Kharafi and HAH at one point in the past sat on the same board of directors in various companies. Mr Al Kharafi met Mr Al Essa at his office in Al Kharafi Tower, Kuwait City, and asked him to write a false statement to the court. Mr Al Kharafi also showed Mr Al Essa the full investigation report document prior to the case going to court insisting the report was prepared by the secret police. Mr Al Kharafi told Al Essa that in exchange for writing the full statement, he would remove Mr Al Essa's name from the relevant paperwork. He claimed to have capacity to do so since all the reports were being prepared at his office and given to the police to be submitted. Mr Al Essa refused Mr Al Kharafi's offer. He described the situation to us as scary, repulsive and frustrating as he could see empty letterheads of the State Security Service being filled by our opponent. The issue was brought to the attention of the court but no action was taken. It shows systemic corruption and bias in the judicial system. The political motivation in this case is very clear. When the Public Prosecutor cleared two former top officials of plotting a coup d'etat and corruption in March 2015, he overlooked key and incontrovertible evidence. Sheikh Ahmed and his team are paying a high price for their stand against corruption. ..."

227. The organisations referred to as Kroll and K2 are referred to by the appellant at [202]-[203] of WS1. I bear in mind that RHA Lawyers have, as their partners, two of the Fintas Group accused and that, consequently, it might be argued that that letter is potentially self-serving and not independent in evidential terms. I have made appropriate allowance for that fact, with reference to the weight which I have afforded to the letter set out above. Nevertheless, the content of that letter is helpfully detailed and persuasive. Its content is consistent with the balance of the evidence presented on behalf of the appellant. As a result, I have given it some material weight.

Abdul Mohsen Al-Ateeqi's evidence

228. Mr Al-Ateeqi's statement is dated 29 March 2016 and is at CB Tab 8. He did not attend the hearing to give evidence. In his statement, he refers to himself as being a lawyer and partner at RHA Lawyers in Kuwait City, specialising in commercial litigation, with a focus on white-collar crime. He indicates that RHA Lawyers comprises three partners; namely, Mr Al-Ateeqi, Mr Al Hajraf (*as referred to elsewhere in this decision*) and Abdullah Al Refai. He confirms that he, Mr Al Hajraf and other colleagues at RHA have, since April 2014, been representing Sheikh Ahmed in relation to the corruption allegations involving Sheikh Nasser and Jassem Al Kharafi. He refers to him and his clients filing a complaint with the Public Prosecutor's office on 16 June 2014, relating to the tape recordings involving a number of high-ranking politicians, in terms of their criminal acts.

229. Further in his statement, Mr Al-Ateeqi makes reference to how the supporting documents were prepared and submitted to the Public Prosecutor and that cogent evidence was produced, including video recordings which had been analysed by forensic experts in the UK, USA and EU, together with judgments from Switzerland and the UK. This would appear to be a reference to the three reports submitted in the Trekell arbitration, to the judgment in the Trekell arbitration and to the UK High Court's order granting permission to enforce that arbitration judgement.

230. Mr Al-Ateeqi proceeds by indicating that, on 18 March 2015, the investigation was closed by the Public Prosecutor and he refers to a BBC source confirming that fact. He indicates that no reasoned decision was served, as to why that had occurred, and that the Public Prosecutor blocked their every attempt to appeal the decision.

231. I note that it is Mr Al-Ateeqi, who is the lawyer who was arrested at a demonstration on 23 March 2015, and whose telephone was confiscated. He addresses this event at [6]-[7] of his statement, as follows:

"6. On 23 March 2015, the special forces and secret police arrested me in Al Erada Square during a protest rally outside the National Assembly. I was detained for three days until 26 March 2015, the day of Sheikh Ahmed's fateful public apology. I was accused of leading a protest and/or illegal demonstration in front of the parliament building that demanded reforms, leading to instability in the country. After I was bailed by the Kuwaiti Lawyers Union. I was a put under a travel ban without have (*sic*) any formal charges against me. I was then served with criminal charges under case number 8641/2015/5. I was acquitted of the charges on 1 March 2016. It was clear from the judgment that there was insufficient evidence to convict me.

7. During my detention, I had two of my mobile phones confiscated from me. One was returned to me upon my release. However, I was told that the other phone was not in their possession. I lodged a complaint at the police station where I was held stating that my phone was lost or stolen while I was in their custody. The phone contained records of my client communications. My request to have the phone returned was denied in breach of my rights as a registered lawyer to preserve client confidentiality. This was done without a court order at the discretion of the Ministry of Interior's "Kuwait Secret Police" and the "Criminal Investigation Department". Based on a series of fabricated WhatsApp group conversations devised out of the contents of my phone, the Criminal Investigation Department instigated criminal proceedings against thirteen individuals who are Sheikh Athbi Al Fahad Al-Sabah, Sheikh Ahmed Al Dawood Al Sabah, Sheikh Khalifa Al Ali Al Sabah, HAH [redacted], Falah Al Hajraf, Sheikh Fawaz Al Abdullah Al Sabah, Yousef Al Essa, Muhammed Abdulkadir Al Jassim, Ahmid Sayir Muhson Muhammed Alanzi, Suad Abdulaziz Suad Alasfour Alhajeri, Meshari Nassir Nafilhumod Boyass, Jarah Muhammed Lafta Aldhferi and me. The case was dubbed the Fintas Group case. Travel bans were imposed on 7 June 2015 and charges were laid in the indictment report on 13 August 2015. ..."

232. In his statement, Mr Al-Ateeqi indicates that the case is still ongoing but, of course, it has now concluded. He continues his statement as follows:

"8. ... The charges are ridiculous and baseless. For example, there is no proof that the phone number assigned to HAH [redacted] in the fabricated WhatsApp group conversations belongs to him. The court continues to ignore our attempts to examine the phone independently and/or to challenge the experts that have obtained the data. We are not afforded the basic rights of defence and access to justice.

9. Politics have been the driving force and the real motive behind the charges against HAH [redacted] and the rest of the team. Civil cases have been window dressed as criminal in order to take more extreme measures against him. Our opponents have used their power and corrupt influence against me, HAH [redacted] and other members of the team. They were able, through their connections, to manipulate the political process and to stop us from pursuing our fight against corruption. None of the team members who have assisted Sheikh Ahmed in investigating acts of corruption committed by former senior government officials and members of the judiciary had any criminal charges or convictions prior to the events that ensued in March 2015 starting with Sheikh Ahmed's public apology on 26 March 2015.

10. HAH [redacted] poses a threat to Sheikh Nasser and the Al Kharafi family interests. As someone who was leading the investigation outside of Kuwait, obtaining evidence, having it examined and

> authenticated by lawyers and forensic experts, HAH [redacted] is thought to know too much about their dishonest dealings. For the first time in a long time a political scandal in Kuwait has reached such heights and claimed so many victims. In my opinion, HAH [redacted] will pay a very high price if he returns to Kuwait. His life and safety will be at stake and it is likely that the bias within the legal system will be used against him to commit him to life imprisonment or worse. ..."

233. Thus, Mr Al-Ateeqi's statement also, I find, provides corroborative evidence of the events surrounding his arrest and the use of his mobile telephone in relation to the claimed false WhatsApp conversation. I consider his statement to constitute evidence which is entirely consistent with the balance of the evidence. Again, as Mr Al-Ateeqi was unavailable to give oral evidence, and to be cross-examined, I have allowed for that fact in terms of the weight which I have given to his evidence, which evidence I have considered in the context of the evidence as a whole. Nevertheless, bearing in mind its consistency with the balance of the evidence relied upon by the appellant, I have given it some material weight.

234. Linked to the above, in oral submissions, Ms Laughton elaborated upon the contention that the said WhatsApp conversation was actually a fabricated one and that it had never occurred. Secondary to this, the appellant's case is that he could not have been a party in such WhatsApp conversation in any event.

235. Ms Laughton's oral submissions were to the effect that the chronology relating to the claimed WhatsApp conversation made no sense, as noted by Dr Yom at [36] of his report (as set out below), which analysis of Dr Yom I find to be persuasive.

236. Linked to the above, and as raised at the hearing, I note that, in the Fintas Group judgment, the appellant is accused of creating the relevant WhatsApp group and reference is made to his relevant telephone number being *"+447742355005"* (B9 Tab 30 p259) which, it is common ground, is a British telephone number; this despite the fact that the appellant was actually resident in Kuwait at the time of the alleged WhatsApp conversation. Documentary evidence from O2 has been produced, which does not establish that that number has, in any event, ever been registered to the appellant. It is an element of the evidence which I have taken into account, albeit I do not find it to be determinative.

Evidence of Falah Al Hajraf

237. Mr Al Hajraf has also produced a statement (CB Tab 9), which is dated 29 March 2016. As indicated, Mr Al Hajraf was one of the partners in RHA Lawyers based in Kuwait.

238. In his statement, Mr Al Hajraf confirms that he is a lawyer with RHA Lawyers and that he has been representing Sheikh Ahmed since April 2014. He states that he was introduced to Sheikh Ahmed by the appellant in December 2013. He adds that, during that time, rumours were circulating in Kuwait about allegations of corruption against Sheikh Nasser and Jassem Al Kharafi. He confirms that Sheikh Ahmed was putting together a team to investigate the underlying evidence.

239. At [4] of his statement, Mr Al Hajraf states that he called the appellant and offered to help in any way that he could, either personally or professionally, he also offering the expertise of his firm on a *pro bono* basis. He indicates that his partners

in RHA Lawyers were of similar mind. He confirms that he, Mr Al Hajraf, and 'Mohsen' (this evidently being a reference to Mr Al-Ateeqi) became part of Sheikh Ahmed's team, which team consisted of several individuals drawn mostly from the ranks of the ruling family.

240. Mr Al Hajraf proceeds by providing a detailed account of how he represented Sheikh Ahmed, together with his RHA colleagues, in the said complaint to the General Prosecutor, with reference to the corruption of various high-ranking politicians, including Sheikh Nasser and the late Jassem Al Kharafi. He also makes reference to the legal team, led by RHA's lawyers, over a period of nearly 10 months, and assisted by law professors from Kuwait University, preparing and submitting supporting documents to the Public Prosecutor. I consider it pertinent to set out [7]-[10] of Mr Al Hajraf's statement, which provides additional detail not set out in other statements, and which follows:

"7. As soon as the tapes showing judges taking bribes became available in February 2015, I went along with Sheikh Ahmed to see Justice Mohamad Nigga Al Otaibi, a senior judge who is known to be a big supporter of reform in the judicial system in Kuwait. When he watched the clips on Sheikh Ahmed's laptop he said that he could not believe what he was seeing: Justice Yousef Al Mutawa'a, receiving money from one of Sheikh Nasser's officials. He was shocked, devastated and angry. He suggested that the tapes should be shown to the Public Prosecutor to take further legal action.

8. In the first week of March 2015, the judges tapes were shown to Abdullah Al Osaimi and Nasser Al Nasser, Assistant Public Prosecutors who are assigned to the Kuwait Epic "Balagh Al Kuwait" case. We did not tell them who was in the clip they watched. Nonetheless, they both recognised Justice Yousef Al Mutawa'a. They said that it was him without a doubt. Abdullah Al Osaimi got so upset that he asked for his blood pressure medication and was begging me and Sheikh Ahmed not to take it public. Nasser Al Nasser said "It's our old man" meaning Justice Mutawa'a who is considered to be the father of courts.

9. Soon after our meeting with the two Assistant Public Prosecutors, the Public Prosecutor, Dherar Al-Asousi, told Sheikh Ahmed not to disclose the judges video to anyone as it would shake the nation to its core, and that the evidence was so compelling it could be catastrophic. He also mentioned that the leadership of the country (meaning, the Emir) wanted this issue to be done with. Sheikh Ahmed told the Public Prosecutor that what was needed was justice. The Public Prosecutor insisted that the leadership wanted the case to be closed. Sheikh Ahmed's response sealed his fate. He said "If my uncle wants it that way, then we are only left with one option and that is to tell the Kuwaiti people about what is going."

10. On 18 March 2015 the investigation was closed by the Public Prosecutor. Although the decision was announced in the media, we were not served with anything in writing setting out the reasoning for the decision. The Public Prosecutor blocked our every attempt to appeal the decision. The political scene began to change after Sheikh Ahmed made a public apology on national television on 26 March 2015 with anti-corruption campaigners and social media activists facing mounting oppression. An example of this was the arrest of Musallam Al-Barrak, a distinguished opposition leader, on 13 June 2015 to serve a two year sentence.

11. Despite the circumstances that led to the apology and the intentions behind the investigation into alleged corruption, we - members of Sheikh Ahmed's team - found ourselves on the receiving end of a massive political and commercial crackdown. Sheikh Ahmed's apology was preceded by the arrest and detention of my colleague, Mohsen, at a protest outside the National Assembly on 23 March 2015. He had two of his mobile phones confiscated one of which was not returned. He was bailed on 26 March 2015, the day of Sheikh Ahmed's forced apology. His arrest paved the way to a series of trumped up criminal cases being instigated against members of Sheikh Ahmed's team, individually and collectively. The cases that followed were aimed at muzzling our efforts to expose those responsible for corruption in the highest echelons of power."

241. Mr Al Hajraf, in subsequent paragraphs of his statement, reiterates the account of what subsequently occurred in Kuwait, in terms of the prosecution of the Fintas Group. He confirms that the travel ban upon the appellant related to the Ijara House Holding Company and that that ban was lifted on 1 March 2015, thereby enabling the appellant to travel. He confirms the political motivation behind the Fintas Group case and indicates that the appellant poses a threat to Sheikh Nasser and the Al Kharafi family, he having played a major part in dealing with the evidence showing their corrupt activities. He indicates that the appellant is unable to defend himself in the Fintas Group proceedings, as he is absent from Kuwait and does not have access to case materials.

242. Further in his statement, Mr Al Hajraf refers to threats and to a wide range of lies and deceptions having been unleashed by their antagonists, by various means, in Kuwait. He refers to death threats having been made against the appellant and to the appellant having been subjected to harassment, as has his wife. At [18] of his statement, he indicates that the Kuwaiti government has used its influence in Jordan, in order to have the appellant charged there with a number of criminal offences. At [19]-[20], he refers to the fabricated WhatsApp group conversation and to the fact that charges were laid in the Fintas Group case. Mr Al Hajraf refers to the progress of that litigation, in which Mr Al Hajraf himself is one of the defendants.

243. At [23] of his statement, Mr Al Hajraf states: "... *On 6 September 2015 I was arrested by the secret police and then taken to the main prison in Kuwait where I was kept in isolation for four weeks until 1 October 2015. Keeping me in isolation was intentional to put more pressure on me.*" He adds that he received appalling treatment in detention, ranging from psychological abuse to insults and that they tried to force him, unsuccessfully and falsely, to confirm that the appellant was the person who fabricated everything. He indicates that, following his release from detention, he remained at home for a long time and isolated himself from the public. He confirms that the travel ban in relation to the Fintas Group case was lifted in September 2015. He proceeds to refer to various cases lodged against him and that the Fintas Group cannot hope for any fairness in Kuwait. Mr Al Hajraf concludes his statement in the following terms:

> "33. We cannot hope for any fairness in Kuwait. The Emir and the Crown Prince have sided with Sheikh Nasser who has been exposed as a perpetrator of large scale corruption supported by power networks and the judiciary in Kuwait. Even after his resignation from the post of Prime Minister he remains a powerful figure within the Al Sabah family who has been abusing his position with impunity. The executive, legislative and judicial branches of government are firmly under his control with the help of the Al Kharafi family's money and companies which have been used to facilitate bribery and other forms of corruption in Kuwait.
>
> 34. Sheikh Ahmed and his supporters have established themselves to be in opposition to this deeply entrenched regime. If the legal system and the judiciary in Kuwait were equitable, then I would have advised HAH ....I to return to Kuwait to fight the charges against him. However, that is not the case. When it comes to his treatment and punishment, the only thing thatHAH would be facing on his return is tyranny and oppression with all of the ensuing consequences."

244. I have taken Mr Al Hajraf's evidence fully into account as part of my consideration of the evidence as a whole. Again, as he was not available for cross-

examination, I have taken that factor into account in terms of the weight to be given to his evidence. Nevertheless, his statement evidence is wholly consistent with the appellant's evidence, and with that of his witnesses. It is detailed and persuasive in its content.

Evidence of the appellant's wife, Sheikha Nouf Jaber Sabha Al-Sabah

245. As indicated, I also heard oral evidence by the appellant's wife, whose statement is at CB Tab 2. The appellant's wife continues to live in Kuwait, with their four children. Her unchallenged evidence would indicate that she periodically travels to the UK, in order to see the appellant. Her statement is dated 29 March 2016. It is not particularly long and, consequently, I set much of it out in full:

"1. ... We got married on 27 December 2003 in Kuwait. I am a member of the Al Sabah ruling family of Kuwait and hold a diplomatic passport (a special passport). My father, Sheikh Jaber bin Sabha Al-Saud Al-Sabah, is a former deputy vice-chairman of the Kuwait Olympic Committee. ...

2. Before 2015 I led a normal life with my husband and children. In November or December 2013 I found out that my husband decided to join forces with some of my relatives in a battle to stop corruption and suppression in Kuwait. He joined Sheikh Ahmed Al-Fahad Al-Ahmed Al-Sabah, Sheikh Athbi Fahad Al-Sabah, Sheikh Ahmad Dawood Al Sabah, Sheikh Khalifa Ali Al-Khalifa Al-Sabah, Sheikh Fawaz Abdullah Al-Sabah and their local and international lawyers to try and stop corruption that Kuwait was facing and which had cancerously spread across the country. I told HAH to back away but he refused. I was very proud of him but also scared. At the same time I did not want him or any of the others to be hurt. The measure of patriotism and eagerness they had to build a better future blinded me of the consequences. After all, suppression is not something we are used to in Kuwait. We had a lot of freedom of expression prior to this era, and suddenly coping with the new attitude is not an easy thing to adapt to.

3. Towards the second quarter of 2015 many newspapers and TV channels were shut down, leaving only one voice to be heard. A number of new telecommunications, social media and cybercrime laws were introduced over the course of the last few years to quell the voices of dissidence.

4. Up until March 2015, everything was fine for my family. I know that HAH had been involved in some commercial disputes in Kuwait and elsewhere but it was not something that affected us as a family. It was only after 25 March 2015 that the situation changed.

5. In March or April 2015 I started receiving constant nuisance calls which turned to threats, mainly from anonymous or withheld phone numbers. Others came from individuals using phone numbers in Kuwait, Egypt and the Philippines. The calls were very frequent. There was a barrage of them. The callers were unfamiliar to me. The calls were made either early in the morning or late at night. In the second week of May 2015, Hamad saw me online on WhatsApp. He texted me asking me if I was awake. It was around 3:30am. I had just received one of the calls. HAH asked me why I was on the phone so late. Putting on a brave face, I told him not to worry about it. "They are trying to rattle me", I said. Some calls were sexually explicit. Others made direct and indirect threats to my husband or were offensive in other ways. I refrained from repeating some of the content because of its revolting nature. As far as the threats against my husband are concerned, I was told that he would be either burned, chopped, shot or killed in other ways. One man said to me "If you think your husband is going to be back, you're mistaken. You need to think about other men. I am a good candidate. By the way, I'm going to take his life." I called his bluff and asked him if he wanted me to give him HAH 's address in London. "He will not blink", I said. As I was pregnant at the time I found the phone calls to be very distressing, hurtful, and traumatic not to mention frightening.

6. By the time I answered the first call I would get a second line ringing at the same time. I would only hear the first few words before hanging up within seconds. I reported the calls to the police

in Kuwait but nothing had happened. They could not trace the phone calls. I also told my husband about them. These calls only stopped when I came to London for the summer in 2015 and switched off my Kuwaiti phone. I was in London from 29 May 2015 to 27 September 2015. I was pregnant with Noor when I travelled to the UK. I gave birth to Noor on 15 June 2015 at the Portland Hospital. I returned to Kuwait on 27 September 2015. I have since been to the UK three times for short periods to visit my husband.

7. There is no independent media left in Kuwait. Most of the outlets which have avoided licence revocation and closure are owned or run by members of the Al Kharafi family who are prominent, wealthy and close to the Emir and the ruling elite within the Al Sabah family who are set on preserving their power. These media outlets have run a concerted campaign of slander against HAH and others aimed at undermining their reputation and destroying the integrity of their actions by making allegations against them which have not been made out in court. We would wake up to outrageous stories in the papers about HAH being a thief, tampering with video footage or paying off officials to leave the country and there was little we could do about them. All of the legal challenges that have been brought to force the newspapers to print retractions have come to nothing.

8. This has affected us at every level in our everyday lives. For example, I cannot do something as trivial as renew my car registration because it is registered in Hamad's name. Kuwait is a small, tightknit community. Although many Kuwaitis believe we are the victims of what has been going on in the country, there are still some who continue to hurt us. My children are young. Yet they are constantly asked by their fellow students about their father and why he is not in Kuwait. Equally, people have been taking to social media to badmouth HAH. Like the rest of the country, the Al Sabah family have split over this. Some are supportive and kind although they do not speak in our support publicly, and others have distanced themselves to keep out of harm's way.

9. In March 2016 I watched an interview given by Mazen Jarrah Al Sabah, who is a general in the police and one of my cousins, on Al Majlis national TV channel in November 2015. The interview is available on YouTube (https://youtu.be/zluFdr35H38). In the interview he is talking about beating up people and stripping nationality from those who find themselves in opposition to the Emir. I am ashamed, disgusted and disgraced by his words. We are a ruling family. We are here to serve the people rather than usurp and abuse power. Mazen goes on to say in the interview: "We have stripped over 900 citizens from their citizenship...we strip citizenships if citizen is a threat to our leadership and political system." He then goes on to confirm that suspects are beaten. I enclose translated excerpts from his interview.

10. I feel that my husband's life is in danger. Apart from the avalanche of attacks launched against him by the Kuwaiti and Jordanian authorities, he has received several threats through the social media. These were reported to the police in the UK in the summer of 2015. He has also been put under surveillance by the Kuwaiti authorities in London.

11. I am helpless when it comes to the safety and wellbeing of my husband. All the doors have been shut on us. All we are seeking is justice and most importantly safety for HAH at this point. From reading Twitter feeds, I can see that today more than ever Kuwaitis of all classes and ranks are seeking refuge abroad. It truly saddens me to say this about my country. I am not sure as to whether I am safe or not in Kuwait. As I said, most people consider us to be helpless victims. When the media are quiet, I feel somewhat safe. However, when we are caught in the waves of a media storm, as was most recently the case with Sheikh Ahmed's conviction in December 2015, I feel that we are taking a huge risk as there is no justice in Kuwait. I feel like our family has been torn apart. We are the casualties in the fight against corruption which has been ripping our country apart. HAH and others are being punished for breaking ranks. ..."

246. I note that, at [2]-[3] of the appellant's wife's statement, she refers to a regime of increasing suppression, which indication, I note, is consistent with the expert evidence referred to, and detailed, below. Again, I reiterate that the appellant's wife's statement and oral evidence was not the subject of any *specific* credibility challenge at the hearing. The manner in which she delivered her evidence

presented as credible and it is consistent with the balance of the evidence available. I have given it material weight, having considered it, and all of the evidence, as part of my consideration of the evidence in its totality.

Evidence of Tamar Khreis

247. As noted, I also heard evidence from Mr Khreis, the Jordanian lawyer, with reference to events in Jordan. He presented as a passionate and convincing witness in the manner in which he delivered his oral evidence. That evidence demonstrated no inconsistencies of any kind, when compared with his statement evidence, with reference to the appellant's evidence and the evidence of his other witnesses. Mr Khreis' has signed two statements, the first dated 30 March 2016 and the second dated 1 August 2018 ("first statement" & "second statement" respectively) (CB Tabs 6 &15).

248. Mr Khreis' first statement is a lengthy one, wherein he confirms that he is a Jordanian national and a qualified lawyer. He has his own law firm in Amman and he states that he is regarded as one of the leading corporate lawyers in Amman, he making reference to having various substantial commercial clients, whom he names.

249. In his first statement, Mr Khreis confirms that he first met the appellant on 6 August 2014, at the first hearing of the KRIC arbitration proceedings in Zürich, KRIC being a wholly-owned subsidiary of a Qatari company called Al Musabalah Co. Mr Khreis states that the appellant was one of the witnesses in the KRIC arbitration, which case had been filed against Jordan's SSIF, a sovereign wealth fund owned and managed by the Social Security Corporation and a state entity of the Hashemite Kingdom of Jordan.

250. At [6]-[18] of his first statement, Mr Khreis provides a helpful summary and analysis of the background to that litigation and the importance and significance of SSIF in Jordan, which follows:

"6. The brief background to the case is that on 18 March 2012, the SSIF and KRIC signed a Share Purchase Agreement that the latter would buy 38,782,800 shares in the Housing Bank for Trade and Finance for US$469,271,880. KRIC claimed that the SSIF breached the agreement and therefore claimed an entitlement to US$93,854,376. On 13 November 2013, KRIC initiated arbitration proceedings against the SSIF.

7. HAH ..... employed, at Tatweer Infrastructure Company, a lawyer called Rozan Al Amri who was a former classmate of mine at the University of Jordan with whom I kept good ties with after graduation. Mr Ali Al Yafei, chairman of KRIC Inc, asked HAH and Rozan to recommend a Jordanian lawyer to provide some legal advice on the regulatory framework governing the Jordanian banking system. Rozan suggested that KRIC instruct me, and on 9 July 2014, I was retained to provide this advice. I understand that HAH I and Mr Al Yafei were formerly business partners and maintained a close relationship after they had concluded their business relationship.

8. KRIC seemed happy with my initial advice which was that the Share Purchase Agreement can be easily argued to be a legally valid agreement, and the defence raised by the SSIF that the Share Purchase Agreement was void could be argued with strong legal arguments based on valid precedents and Jordanian laws. KRIC immediately expanded the scope of my involvement in the arbitration proceedings. They found that my knowledge of Jordanian law, and my understanding of the Jordanian commercial and political context, would prove valuable to them.

I soon became involved in the central issue in the arbitration, namely, the genuineness of the contract signed between KRIC and the SSIF. In essence, KRIC was saying that the agreement was a genuine document, signed by Mr Al Yafei and Dr Yaser Mana'a A A Adwan (who was the Chairman of the SSIF at the date of signing), while the SSIF's argument was that it was a fraudulent document because Dr Adwan's signature on it had been forged.

9. On 13 July 2014 I was asked to identify and instruct Jordanian handwriting experts capable of analysing various documents, and give an expert opinion on whether the signature of Dr Yasser Adwan on the Share Purchase Agreement was genuine. I found three reputable experts, and on 15 July 2014, I travelled with the experts to Cairo, Egypt, for them to analyse the original documents and where I met with Rozan. Cairo was chosen as a place where the experts can do their work without interference from the Jordanian government. The experts brought their tools with them such as hand lenses, stereo microscopes, and an ultraviolent device with which they examined the original Share Purchase Agreement comparing the questioned signatures to other known signatures. At this stage Dr Adwan was refusing to provide a signature for comparison even when the arbitral tribunal issued an order that he must sign before the handwriting experts, he did not show up on the designated day, claiming later that he had not felt secure at my office.

10. At this stage, the only way for the experts to verify his signature on the Share Purchase Agreement was to compare it with his signature on another SSIF contract which was a good specimen since it was submitted by the SSIF in error as part of the respondent's exhibits, and signatures found on Intercontinental Doha receipts during the stay of Dr Adwan in Doha at the time he signed the Share Purchase Agreement. The experts asked for one week to prepare their interim reports. When they submitted their reports on 24 July 2014, they concluded that Dr Adwan's signature on the Share Purchase Agreement was genuine. The reports were sent to my office in Amman and I scanned them and sent them to Mr Al Yafei and his lawyers.

11. Very quickly I became a central member of KRIC's legal team in the arbitration proceedings, working closely with Matthew Parish, a British lawyer, who, at the time, was the lead lawyer for KRIC in the arbitration proceedings. The team also included Vitaly Kozacheko and Dragan Ziljic. All three worked for Holman Fenwick Willan Switzerland LLP, a British law firm based in Geneva. Subsequently, Matthew and Vitaly left to set up Gentium Law Group while Dragan stayed on at Holman Fenwick Willan Switzerland LLP. I began attending the arbitration sessions from November 2014 dealing with advocacy and rebuttals. Mr Al Haroun was called as a witness in the arbitration procedures. His witness statement dated 7 July 2014 was submitted as evidence on behalf of the claimant. He was called to give oral evidence on 1 September 2014, we confirmed meeting with officials in Jordan, negotiating at some stage buying the Housing Bank Shares as part of a Kuwaiti delegation, and discovering that the shares had been sold to the Qataris (i.e. KRIC).

12. The arbitration proceedings were of major public interest in Jordan, and the Jordanian government and Royal Court were very sensitive about these proceedings. The SSIF is regarded as a national institution of major importance - it is effectively the nation's pension pot and is the single largest Jordanian investor, with assets under its control of around US $10 billion. Every employee in Jordan is required by law to pay 7% of their salary into the SSIF, and their employer must also make a contribution of 13.25%. A monthly pension of no more than 3,000 JD is payable to those who have reached the age of retirement. Contributions are invested in various companies, securities, real estate and some of it is held in cash. The SSIF owns the media in Jordan with the majority of newspapers under its control such as Al Rai newspaper where they control the board of directors. The SSIF own major hotels in Jordan as part of their investments, and they run the hotelier business through long and solid ties with Intercontinental Hotel Group.

13. The SSIF's assets are regarded by the Jordanian people as 'public property' and as a result the Jordanian state is sensitive about how the SSIF and its dealings are perceived by the public. The sensitivity has become particularly acute because in recent years Jordan has been plagued by a number of high profile corruption scandals relating to the privatisation of state assets. Moreover, from 2011, as the Arab Spring swept across the Middle East, the Jordanian government and the Royal Hashemite Court have become much more nervous about public

discontent. In May 2013, the Council on Foreign Relations in a report entitled "Political Instability in Jordan" captured the mood in Jordan very well:

"Jordan's King Abdullah faces a combination of rising external and internal challenges. The main external sources of instability are the spillover effects of Syria's civil war, including possible military entanglement in the border zone, the spread of Salafist radicalisation, the cost of sustaining a large refugee population, and the potential interference inside Jordan of Islamist movements from other regional countries. Internal sources of instability include rising public anger resulting from economic austerity, insufficient political reform, and perceived government tolerance of corruption, as well as growing confidence in the country's Muslim Brotherhood and burgeoning Salafism movement. While external threats pose significant challenges, the most serious danger to the regime is when these threats catalyse or exacerbate domestic instability."

14. Further, news of the potential sale of a controlling interest in Jordan's second largest bank to Qatar also became an issue, given the volatility of Jordanian-Qatar relations. Those relations have ebbed and flowed over the years, but after the Arab Spring and in particular the rise to power of the Muslim Brotherhood in Egypt in early 2012 undoubtedly with backing by the Qataris, I am aware that through the latter part of 2012 and into 2013 the Jordanian security establishment and the Royal Hashemite Court became increasingly nervous about executing the SSIF/KRIC deal which would have given the Qataris such a major foothold in Jordan. In a spring 2014 piece entitled "Jordanian Foreign Policy and the Arab Spring", Curtis Ryan writing for the Middle East Policy Council recognised that Qatari support for the Muslim Brotherhood in Jordan was a major reason for strained Jordanian-Qatari relations:

"Jordanian-Qatari relations had been problematic for years, oscillating between periods of rapprochement and recrimination. Since Qatar maintained strong ties to Jordan's large Muslim Brotherhood organization, and hence ties to the single largest opposition group in the kingdom, Jordanian-Qatari relations were at all times tenuous, with Jordan by far the more vulnerable party."

15. The combination of all these factors has meant that the SSIF/KRIC arbitration proceedings are a potentially explosive issue in Jordan, as far as the government is concerned. This has resulted in an almost complete, state enforced, media blackout on reporting of the arbitration proceedings. In the days after the news broke that these proceedings had been instituted in November 2013, there was a flurry of media interest. But soon after, the media were effectively shut down. Since then, there has been little or no reporting of the proceedings, save for the odd media piece reporting official statements by the SSIF such as an article in Al Bawaba entitled "Jordan's Social Security fund wins Qatari lawsuit, owes firm no money" published on conclusion of the proceedings in August 2015.

16. Further, since the proceedings were instituted in November 2013, the Jordanian state has gone out of its way to do everything it can to ensure that the arbitration proceedings are successful - most extreme of all is the instigation of a criminal case against HAH , Mr Yazed Eljazara and my current client, Mr Nader Al Amri, who has been severely tortured for the purposes of extracting a confession from him.

17. Returning first to my involvement in the arbitration proceedings however. As I said above, I started attending the arbitration hearings from November 2014 which was when the cross examination sessions began. I recall very clearly my first trip from Amman to Zürich, where the arbitration panel was sitting. The SSIF team, which included a number of SSIF officials and Jordanian lawyers instructed by the SSIF, were on the same flight as me. I knew the majority of these people, and when a couple of the lawyers, who I knew well, saw me in the departure lounge they asked me "what are you doing here". When I told them that I was flying to Zürich to attend the arbitration hearings on behalf of KRIC, they seemed both surprised and disappointed. Once we boarded the plane, almost the whole of the business class section was filled with the SSIF team. I felt distinctly uncomfortable on the plane, surrounded by a large group of SSIF officials and lawyers. They all refused to talk to me, and at one point one of the air hostesses commented to the SSIF instructed lawyers that it seemed that everybody seemed to know each other - he responded, speaking loudly enough for me to hear, "yes, but there are also enemies amongst us".

18. It was therefore made clear to me that taking on this arbitration case for SSIF's opponents, KRIC, was regarded as an act of treachery on my part, certainly within Jordanian governmental/establishment circles."

251. In his first statement, Mr Khreis proceeds to confirm that there were seven hearings in total in the KRIC arbitration, between the beginning of September 2014 and 7 April 2015. He indicates that the witnesses cross-examined included Dr Adwan and the appellant but that the biggest battle was between the handwriting experts, bearing in mind that SSIF's allegation was that the Share Purchase Agreement was forged. Reference is made to handwriting experts being appointed by the arbitrator also.

252. Mr Khreis proceeds by going into very significant detail regarding the progress of the arbitration. He indicates that the SSIF submitted only one expert report with reference to Dr Adwan's signature; namely, the report of a Mr Widmer, dated 15 August 2014. Mr Khreis indicates that there were two tribunal-appointed experts, one of whom was the said Dr Nauer-Meier, whose report was submitted on 20 October 2014. He adds that that report concluded that the signature on the relevant contract was not that of Dr Adwan and that the signature had been forged. He then refers to the alleged payments by wire transfer to Dr Nauer-Meier's bank account from Jordan, as described above. Mr Khreis adds that, in the arbitration proceedings in Zürich on 10 November 2014, Dr Nauer-Meier denied this. Mr Khreis states: "*In response the Jordanian authorities started an investigation accusing [HAH], amongst others, of a number of criminal offences including cybercrimes, forgery and attempting to bribe an expert*". ([22] of Mr Khreis' first statement).

253. At [23] of his first statement, Mr Khreis describes how Dr Adwan's signature was taken at the KRIC arbitration proceedings themselves, his indication being that it was not taken in accordance with the relevant and requisite procedures. He confirms that the arbitration award was issued on 20 August 2015, dismissing KRIC's claim and declaring the Share Purchase Agreement to be forged. Essentially, in his statement, Mr Khreis criticises, with some reasoning, why he considers that there were flaws in the arbitration proceedings; specifically, with reference to the taking of Dr Adwan's signature. In oral evidence, Mr Khreis criticised the performance of KRIC's lawyer, who was Matthew Parish, at the KRIC arbitration hearings.

254. At [22]-[35] of his first statement, Mr Khreis refers to the arrest, detention and torture of Nader Al Amri in connection with the SSIF case. He indicates that Mr Al Amri was detained for a period in excess of that permitted by the Jordanian Criminal Procedure Code and he refers to Mr Al Amri being bruised, beaten and having broken ribs. At [26] of his first statement, Mr Khreis states:

"26. In the end, Nader was held for 7 days (168 hours, to be precise) in police detention, without being able to see a lawyer, during which time he was severely tortured and was forced to sign a confession, admitting his guilt and implicating others, including HAH and Mr Eljazara. His confession in brief was that he was instructed by HAH and financed by Mr Eljazara to make wire transfers to Marie Anne Nauer-Meier, the Tribunal appointed expert to make it appear as if she was accepting a bribe from a Jordanian source, and to send these wire transfers by email through the SSIF system by hacking their emails. During these 7 days, Nader did not have access to either a lawyer nor was he allowed to see members of his family. This extended period of detention was in gross violation of Jordanian law, as stated above. In

Jordan, it is during these unlawful, extended periods of police detention that detainees are most vulnerable to ill-treatment and to make forced, false confessions."

255. At [27] of his statement, Mr Khreis indicates that he did not become personally involved in relation to Mr Al Amri until 18 November 2014, his colleague, Tamer Al Saud, having been involved between 11-18 November 2014. Mr Khreis confirms that his knowledge of what occurred during that intervening period came from Mr Al Saud and also from Mr Al Amri, with reference to what Mr Al Amri told Mr Khreis, when Mr Khreis spent some time with him after 18 November 2014.

256. From [28] onwards of his first statement, Mr Khreis then provides a detailed commentary on what occurred, in relation to the Jordanian authorities seeking to implicate others in the alleged crimes, in respect of which, proceedings were subsequently issued in Jordan. He makes reference to the SSIF's involvement in those plans. For example, at [30] of his first statement, Mr Khreis states as follows:

"30. On the evening of 15 November 2014, Tamer Abu Al Saud went to the CID and met the head of the cybercrime police Lt. Colonel Sahm Al Gamal who was leading the investigation. When he went there, he found one of the SSIF lawyers present. I have subsequently found out from Nader that the whole case against him and his co-defendants was conceived and then driven by lawyers from Dajani & Associates Attorneys & Legal Consultants who are the main lawyers acting on behalf of the SSIF. ..."

257. Mr Khreis then proceeds, in his first statement, to describe in detail the torture suffered by Mr Al Amri, the police seeking a specific confession which would fit with the case that the SSIF lawyers, Dajani, needed to put before the Swiss arbitrator. Mr Khreis indicates that that confession was ultimately signed by Mr Al Amri, at which stage it was sent to the Jordanian Public Prosecutor.

258. At [36] of his first statement, Mr Khreis states as follows:

"36. The clearest possible indication that the criminal case against Nader, HAH ..... is ultimately a device for advancing the SSIF's position in the arbitration and discrediting KRIC and/or HAH ..... is the fact that evidence from the case had made its way to the arbitration proceedings. As the evidence came through the emails allegedly connected to the SSIF staff, these emails showed documents suggesting that Marie Anne Nauer-Meier received money from Jordan. Another email shows Dr Adwan sitting in a meeting room in the exact way described by KRIC witnesses, proving that the denial of signature that was raised by the SSIF is false and proving that the defence raised by the SSIF and Dr Adwan denying meeting with Mr Al Yafei or knowing him is also false. The penal case in Amman was all about demolishing the reliability of the emails and obliging the arbitrator to question their correctness in the final award, something the SSIF eventually succeeded in when the final award dismissed the claim made by KRIC."

259. In his first statement, from [37] onwards, Mr Khreis then describes Mr Al Amri's interrogation by the Jordanian Public Prosecutor, Mr Khreis' indication being that that interrogation was not in accordance with normal procedures, that it was evident that Mr Al Amri had been broken and that he acknowledged certain allegations, having been told that he would be allowed to go home. At [41], reference is made to the medical report prepared by Dr Basil Abu Sabha and dated 19 November 2014, which evidences the ill-treatment suffered by Mr Al Amri whilst in detention. At [42], Mr Khreis refers to him, Mr Khreis, reporting that ill-treatment to the NCHR, as referred to above.

260. At [44] of his first statement, Mr Khreis refers to the charges brought against the appellant. From [47] onwards, he refers to the progress of the Jordanian trial and, inter-alia, indicates that the appellant is not permitted to be represented in those criminal proceedings, due to him being *in absentia*, Mr Khreis only representing Mr Al Amri in those proceedings. He refers to significant irregularities in those criminal proceedings. He also refers to his subsequent contact with HAH ([51]) and, in essence, to the unfair way in which the appellant would be treated, were he to be extradited to Jordan.

261. Thus, in the extracts from Mr Khreis' first statement as set out above, he provides a backdrop to the Jordanian State's motivation in seeking to disown the SSIF/KRIC agreement. I would add that, where Mr Khreis refers to background or country material, he has sourced it with reference to footnotes to his first statement.

262. I have set out above significant portions of Mr Khreis' first statement but have omitted reference to certain material elements thereof, for the sake of relative brevity. His first statement is detailed and cogent and, on its face, I find it to be strong evidence corroborative of the appellant's case. I reiterate that Mr Khreis also presented as a cogent and persuasive witness when giving his oral evidence before me.

263. Turning to Mr Khreis' second statement, this is an updating statement. He confirms therein that he continues to represent Mr Al Amri in the criminal proceedings in Jordan and that that trial is still ongoing, despite it having commenced on 30 November 2014. At [3] of Mr Khreis' second statement, he confirms receipt of the NCHR letter of 26 November 2014, which letter, he indicates, confirms that Mr Al Amri was tortured whilst in Jordanian detention. Mr Khreis states that the NCHR: "*letter stated that this constituted a clear violation of human rights and the right to a fair trial and asked for a review and for legal measures to be taken against the individuals who have committed this crime. However, the NCHR's recommendations were ignored*".

264. I have briefly referred to the said NCHR documents above. At this stage, I consider it worthwhile setting out verbatim the translation of the NCHR letter or report of 24 November 2014, as it is relevant to the question of the reliability of the Jordanian prosecution. It is at B10 Tab 20 and states (there are numerous typographical/spelling/English phraseology errors in the report, which I have set out verbatim) as follows:

"The National Center for Human Rights

Report On Visit to Juwaidah Correction Center
Prisoner Nader Al Amri

Visit Date 24/11/2014

Visiting Delegation:
Lawyer Rami Al Hashem,
Capt. Jehad Khadam "Public Prosecutor for Transparency and Human Rights Affairs"

Purpose of the visit: To verify the validity of the claims received in the complaint by the defendant's lawyer Tamer Kharis (*sic*) the legal representative of Nader Who has claimed that his client has been attacked and beaten from officers from the office of the security services / and criminal investigation department.

Facts of the Visit:
The Visit started with meeting of Lt. Col. Mahar Al Khaldi the manager of Juwaidah Correction Center who greeted the delegation and showed his full willingness to cooperate and present to the delegation all information and material he has on the case. Thereafter, we met with the prisoner Nader alone and listened to his statement in regards to his captivation circumstances and the claims that have been stated in the complaint file by his legal representatives.

His Statement was as follows:

Nader Mohamad Abdulrahman Al Amri Born 1972
Live in Dahiat Al Rasheed and works as a self-employed Entrepreneurial Business Man.
He stated "Based on a phone call that has been received from the Criminal Investigation Department Al Abdali Branch, I was asked to come to them, the call was to inquire about my father and wanted to my father for some unclear reason. I was told that there were two Lebanese nationals and they wanted me to show them where they lived.
I went to them to get some clarification, as I arrived and before getting out of my car I was attacked and beaten by masked men, and I could not see their faces. I was taken to the criminal investigation Department in Abdali, and I was integrated (*sic*) in regards to emails that was alleged to belong to me and were under my name, I had to agree and confess with what they were telling me to say under beating and duress on everything they asked me to say although I have not committed any crime or criminal act, but I said what I have said in order for them to stop beating me. The person that have supervised the integration (*sic*) and beating have identified himself to be from the Jordan Intelligence Department, and he was integrating (*sic*) me regarding electronic crimes and emails, and during the integration (*sic*) he attacked me physically and orally and swears and threatened me using phrases that frighten me and insulted my dignity and honor, he further then put his boots in my mouth and neck. After that I was put in solitary cell. Minutes after that a man came inside the cell and told me if I open my mouth "i.e. Speek (*sic*) about what happened" in front of the Public prosecutor I will be beaten again and hanged. Later the Public prosecutor of North Amman District came to me and I was very afraid and didn't say what have happened to me.

The investigation and interrogation continued for eight days during my stay in the criminal investigation dept. And I was continuously being beaten throughout these days during the investigation.
After that I was presented to the Public Prosecutor First Instance Amman, who charged me for the following:

1- Bribery Crime
2- Forgery of Documents
3- Forgery of Electronic Documents
4- Ruining Relationship with Foreign Country
5- Using a Civil Id and Impersonating someone else.

There are also three other charges that the public prosecutor told me about but I canot (*sic*) remember them."

After we have listened to his Statement he was asked to show us the places he claims to have marks from beating on him and indeed we saw the following:

- Appearing on his Left side clear bruises from officers who used Electricity in the torture process.
- Appearing of his right Arm Clear bruises as result of hanging him on the door using the "American Restraining Method"
- Appearing on his right and left wrists clear injures (*sic*) with complete numbness in his right hand.
- There are clear burses and marks of pulling and bruises on his left leg and inside upper leg.

In the question asked if he was seen by a doctor or got any medical attention, his answer was he was not seen by a doctor or took any medical attention."

265. There is no challenge by the respondent, in terms of the NCHR's role as a human rights organisation in Jordan, and no specific challenge by the respondent to the content of its report relating to Mr Al Amri. That report strongly indicates that a confession was elicited from Mr Al Amri under torture, which confession is most clearly in relation to matters pertinent to the outcome of the KRIC arbitration and also in relation to the Jordanian prosecution of the appellant and others. On its face, I consider that it materially calls into question the outcome of the KRIC arbitration and the question of the motivation behind the Jordanian prosecution. Its content is clearly relevant to the question of the respondent's reliance upon those Jordanian criminal proceedings, in terms of the assertion that the appellant has a propensity to commit criminal offences and that he should be excluded from Convention protection and a grant of humanitarian protection.

266. The medical report of Dr Basil Abu Sabha, dated 19 November 2014, is at B3 Tab 45. The translation thereof indicates that Dr Sabha referred to Mr Al Amri as follows:

"Suffering from bruises and contusions in the left shoulder area and left thigh and is suffering from scratches in the left flank area and redness in the facial area ..."

267. Thus, the content of that medical evidence is consistent with the suggestion that Mr Al Amri was tortured whilst in Jordanian detention.

268. Proceeding further with Mr Khreis' second statement, at [4]-[6] thereof he states as follows:

"4. I would also like to add an important fact relating to the torture of Nader that was not mentioned in my original witness statement. At the time of preparing the original statement I was unaware of it and only discovered it after obtaining a copy of the court records. On 27 April 2015, my colleague Advocate Tamer Abu Al Saud attended the hearing in my place. On this day, Mr Omar Hasan Taher Abu Aly gave evidence. As I explained in my first statement, this individual used to be the attorney hired by Nader's family, and indeed by Nader himself when he was first arrested. As his previous lawyer, it was therefore entirely unethical and unlawful for him to give evidence against Nader in the proceedings. However, the court did not accept the defence's objections on this point. During his cross examination, Mr Omar Abu Aly admitted that he was asked by the CID to bring in new clothes for Nader while he was in detention and he took the old clothes away.

5. In his oral evidence made to the court Mr Omar Abu Aly testified under oath answering questions put to him by the court, prosecutor and defence. I made a note of his evidence. As part of his oral statement he stated that "I have received Nader suit and personal belongings from the Criminal investigation dept, the status of his clothing and suit was very bad, it smell bad and had wet sand and dust. I sent these cloths to the dry cleaners, and were surprised that the buttons of the suit and shirt were torn, his underwear had blood stains. ... I have received Nader Belongings the same day the case was transferred to the public prosecutor.".

6. This shows that the CID was trying to hide their torture of Nader, and to present him in fresh clothes as if nothing had happened. Mr Omar Abu Aly also stated in his oral evidence that "I was confronted my self and defendant Nader at Criminal Investigation Dept. and when I saw he had red marks on his face. I don't know if it was a result of horror or he was beaten. He was putting his hand on his stomach and the situation of the defendant Nader was not Normal. And this is my testimony."

269. Again, I find the preceding excerpt from Mr Khreis' second statement to be consistent with the indication that Mr Al Amri was tortured whilst in Jordanian detention and that he provided a confession/statement as a result of such torture. Such indication is consistent with the content of the said NCHR report and, indeed, with the appellant's indication that the Jordanian charges are ill-founded and arguably politically motivated. It is also material to the reliability of the outcome of the KRIC arbitration

270. As [7] of his second statement, Mr Khreis indicates that, nearly 4 years after the start of the trial, they were still waiting to hear the last witness from the CID cybercrime unit. He describes the further progress of the trial. At [9]-[11] of his statement, Mr Khreis states:

> "9. During the trial, we, the defence, asked the court for permission to cross-examine the experts appointed by the general prosecutor (who were all from the CID). I asked for neutral experts in cybercrime and integrated technology to examine the system servers at the Social Security Investment Fund ('SSIF') in order to prove that the purported hacking did not happen at all. However, the court denied my request without giving a reason; simply saying it would explain the reasons for refusal of our request at the final judgement."
>
> 10. Dr [redacted]mmouri (who was at that time a board member of the SSIF) and Mr Jam[redacted]was the director of the investment department at the SSIF) were both prosecution witnesses. They asserted during the criminal procedure trial that the SSIF had been hacked and their cyber system was spoofed. However, when I cross-examined Dr Hammouri, he could not give any details of the hacking and said that the integrated technology director and D[redacted]ent would answer that question. Mr Qudah was cross-examined by my colleague in the [redacted]
>
> 11. We took a chance and called witnesses from the SSIF and the Social Security Corporation Integrated Technology department (which is the department that deals with emails, websites and electronic data system at the SSIF), including the SSIF director of integrated technology. All of these witnesses denied that their system was ever hacked or was subject to a cyber-attack during the time when the purported crime had allegedly taken place according to the general prosecutors and the CID. That proved, in my opinion, that the alleged cybercrime case was concocted by Jordanian security agencies to facilitate a positive outcome in the Swiss arbitration proceedings and the evidence of Dr Hammouri and Mr Qudah was patently false."

271. At [12] of his second statement, Mr Khreis indicates that Dr Hammouri was subsequently appointed to a government cabinet post which, Mr Khreis indicates, he believes was a reward given to him by the government for the evidence which he gave in the trial and the role that he played. He adds that a similar reward was given to a Mr Omar Malhas who was, at the time of Mr Khreis' original statement, a board member of the HBTF, he being appointed as Minister of Finance, having never held a government post.

272. At [14] of his second statement, Mr Khreis refers to the Human Rights Watch (HRW) annual reports which, he states, highlight the fact that torture exists as a practice by the Jordanian police and he provides an example thereof.

273. At [51] of his skeleton argument, Mr Clarke notes that Mr Khreis, the Jordanian lawyer, was retained by KRIC for the purposes of the KRIC arbitration. Consequently, Mr Clarke argues that Mr Khreis was under a duty to represent the interests of his client in the best possible light. He adds that, Mr Khreis' attempts effectively to reargue the merits of the KRIC arbitration in his statement, must

therefore be given little weight. He indicates that, equally, Mr Khreis represents one of the appellant's co-defendants in the Jordanian prosecution. Mr Clarke submits that it is self-evident that Mr Khreis' client, Mr Al Amri's, interests are aligned with those of the appellant. He invites the Tribunal as a result to give Mr Khreis' evidence little weight.

274. I have taken into account Mr Clarke's submission with reference to Mr Khreis' evidence. However, having considered Mr Khreis' statement evidence, in the context of his impassioned oral evidence, and in the context of the evidence as a whole, I find his evidence to be highly persuasive, in relation to the issues which he addresses and in which he has been involved; namely, in relation to the motivation behind the Jordanian prosecution and his concerns regarding the reliability of the evidence provided to the arbitrator in the KRIC arbitration, with particular reference to the alleged bribery of one of the tribunal-appointed experts, Dr Nauer-Meier. Such evidence potentially impacts upon the results of the KRIC arbitration and, of course, also impacts upon the Swiss criminal charges which have been brought against the appellant, bearing in mind that it is argued, on behalf of the appellant, that all of these matters are interrelated.

Statement of Yazed Eljazara

275. Mr Eljazara's statement, which is dated 2 December 2015, is at CB Tab 4. He is, of course, one of the co-accused in the Jordanian criminal proceedings. He is a Jordanian citizen, born in 1961. In the early paragraphs of his statement, he sets out in detail his, and his family's life and employment histories. He explains how, when he was working in Oman, he rekindled his friendship with Sheikh Faisal Al-Humoud Al-Malik Al-Sabah ("Sheikh Faisal"), who had been a schoolmate and a neighbour at one stage. He refers to Sheikh Faisal's appointment as the Kuwaiti Ambassador to the Sultanate of Oman and that, in 2007, Sheikh Faisal was appointed as the Kuwaiti Ambassador to Jordan for three years. He makes reference to meeting Sheikh Faisal, both in Oman, and then in Jordan, and that they became regular friends, they seeing each other every day when Mr Eljazara moved back to Jordan.

276. Mr Eljazara indicates that, before Sheikh Faisal's diplomatic service in Jordan finished, he suggested that Mr Eljazara go to Kuwait and that he use his connections to find a job there. As Mr Eljazara had no other prospects in Jordan at the time, he took Sheikh Faisal up on that offer and obtained a six-month special business visa to Kuwait, where he obtained a job as an HR & Admin. Manager with a recruitment company, whose headquarters were in Kuwait and which had offices in other countries. He adds that he missed his family during this period, who had remained in Jordan.

277. Mr Eljazara proceeds by stating that, at the end of 2010, he met the appellant at Sheikh Faisal's guesthouse in Kuwait and that they then met several times over the course of the next few months, again at Sheikh Faisal's guesthouse, when they discussed investment and business opportunities in Jordan. Mr Eljazara makes reference to understanding that there were plans afoot to invest Kuwaiti money into strategic projects in Jordan, in order to assist Jordan financially. He confirms that that project was overseen by Sheikh Ahmed Dawood, the chairman of KCH.

278. Mr Eljazara indicates that he learned that Sheikh Faisal had approached the appellant about finding a job for Mr Eljazara in Jordan, the appellant indicating that he would "test the water" in that regard with Sheikh Ahmed Dawood. Mr Eljazara indicates that, sometime later, the appellant offered him a job with KCH, which he accepted, and that, in 2011, he was appointed as the executive manager for Jordan at KCH.

279. Mr Eljazara adds that he was then sent to Jordan, in order to set up Kuwait Jordan Capital, a Special Purpose Vehicle (SPV), whose job was to hire staff and embark on projects in Jordan. He indicates that he went to Amman in June 2012 and that he was the executive director of Kuwait Jordan Capital. He confirms that the company never actually traded, primarily due to the falling-out between the Kuwaitis and the Jordanians over the sale of the HBTF shares. He then recites events surrounding the attempts by Kuwait to purchase SSIF shares, which does not require repetition. Mr Eljazara adds that he was asked to liaise directly with a legal adviser for the SSIF, a Khaled Al Fayez (who is also referred to above), who brokered the deal with Sheikh Ahmed Dawood and other senior managers at Kuwaiti Capital. At [22] of his statement, Mr Eljazara describes his role in events, which included dealing with correspondence between the parties and delivering messages to various officials on behalf of the appellant.

280. At [23] of his statement, Mr Eljazara refers to meeting with Sheikh Ahmed Dawood and the appellant, when they came to Jordan for the said meeting in July 2012, which meeting was cancelled. This has been referred to above and does not require repetition in any detail. Mr Eljazara refers to the fact that it was discovered that there was an agreement to sell the SSIF shares to KRIC, that agreement having been signed by Dr Adwan on each page of the documents.

281. Thereafter, following the Kuwaitis' failure to purchase the shares, Mr Eljazara indicates that there was no work to be done further for Kuwaiti Jordan Capital but that the appellant told him to stay in Jordan for six months, in order to see if things would pick up, even though Mr Eljazara had no work to do, but he nevertheless remained on the payroll. He adds that the appellant then suggested that Mr Eljazara work for Grand Real Estate Projects, a real estate company managing commercial property in Kuwait and that he was then employed by Mr Falah Al Hajraf, the vice-chairman of that company, as operations manager, as a favour to the appellant. He indicates that he relocated to Kuwait in February 2014. I confirm that the Mr Falah Al Hajraf referred to herein is the same 'Al Hajraf' who is a partner in RHA Lawyers and one of the 13 Fintas Group defendants.

282. In his statement, Mr Eljazara refers to the need to renew his Kuwaiti residence permit and that, in order to do so, he needed to apply for a 3-month business visitor visa first, in order to go to Kuwait to do this. He indicates that he left Jordan for Kuwait on 7 November 2014 and had not been back since. He refers to learning from HAH , when they met in London in April 2015, that there was a criminal investigation underway against him in Jordan and that he subsequently learned about the charges in July 2015.

283. Mr Eljazara, who is one of the co-accused in the Jordanian prosecution, asserts that he is innocent of the crimes of which he has been accused in Jordan and that he had, neither the intention, nor the skills, to carry them off. He adds that he was not even in Jordan at the relevant time and that he has never received instructions, either from the appellant, or from any of the co-accused, relating to financial transactions of the sort referred to in the charges. He adds that he has never given instructions to the two others to prepare to perpetrate offences. He indicates that he does not, in any event, know any of the named co-accused, save for the appellant and Mr Al Amri, whom he had met twice.

284. Mr Eljazara asserts that the Jordanian charges are politically tainted and that they go to the core of the Jordanian and Kuwaiti power structures and the ruling families. He adds that it involves deep-seated corruption at the highest echelons of power in Kuwait, which the appellant has sought to expose alongside a group of others. That is clearly a reference to the Fintas Group. He adds that he is being persecuted alongside the appellant, as a person who is perceived to be associated with the appellant. He adds that, by instigating charges against him in Jordan, the Jordanian authorities are hoping that he will give false and incriminating evidence against the appellant. He reiterates that the charges against them are trumped up and groundless.

285. Mr Eljazara confirms that, on 29 July 2015, he attended the respondent's Asylum Screening unit in Croydon and it is evident that he claimed asylum also on the basis of what he considers he would face if removed to Jordan. However, he adds that, in the last few weeks (*I bear in mind that this is 2 December 2015, the date of his statement*) he has been under immense pressure, from various quarters in Jordan, to return to Jordan, in order to face the charges. As a result, he adds that, with a heavy heart, he decided to withdraw his asylum application, which he did on 26 November 2015, on the day that he was due to have his substantive interview, and that he made arrangements voluntarily to return to Jordan on 5 December 2015. He adds that his understanding was that, unless he returned to Jordan, he would be putting his wife and two daughters in danger and had therefore decided to put their personal safety first. That is last evidence from Mr Eljazara which, of course, is now some 3 ½ years old.

286. Again, I find the evidence of Mr Eljazara to be entirely consistent with the balance of the evidence relied upon by the appellant. I have similarly made appropriate allowance, in terms of the weight which I have given to that evidence, for the fact that he did not give oral evidence before the Tribunal. Nevertheless, I find his evidence to be evidence upon which some weight can and should properly be placed.

Evidence of Mr Al Yafei

287. Mr Al Yafei's statement is dated 29 March 2016 (CB Tab 3). He states therein that he is a Qatari national born in 1982, that he worked in the banking sector and that, in December 2004, he joined the appellant at Ettizan. He adds that, from 2004 until 2014, he was the appellant's partner in various sectors and companies. He indicates that, from 2004, he was the appellant's vice-chairman at Ettizan, until late 2011/early 2012, having by then bought the company. He confirmed that Ettizan is

a shareholder in many companies in Qatar and the Middle East. He provides a diagram setting out Ettizan's relationship with various companies, which includes it being the owner of Tatweer.

288. At [3] of his statement, Mr Al Yafei adds that, at the relevant time, he had ownership of a Group which, in effect, owned KRIC, he confirming that he is the chairman and director of KRIC. He refers to KRIC signing the said Share Purchase Agreement with the SSIF on 18 March 2012. Mr Al Yafei confirms that he personally signed that agreement, as did Dr Adwan on behalf of the SSIF, and that the agreement was witnessed by various people. He then refers to the failure to transfer the shares to KRIC and to the KRIC arbitration proceedings which ensued.

289. I consider it worthwhile setting out the last sentence of [3] of Mr Al Yafei's statement, together with [4]-[8] of his statement, verbatim, which follow:

> "3. ... There was overwhelming evidence that Dr Adwan did sign the Share Purchase Agreement, including videos and photographs of him doing so in Qatar.
>
> 4. We were sent these videos and photographs from an email associated with an SSIF email address from someone who was aware of the transaction. They were also forwarded to the anti-corruption committee in Amman, Jordan and the arbitrator in Zürich. My manager, Mr Nasser Mohammed, spoke to Mr Waleed Murjan, Head of Project and Private Equity Department at the SSIF on many occasions. Mr Murjan was the assistant to Dr Adwan and assisted in negotiations leading up to the signing of the Share Purchase Agreement. He was also present at the signing. Prior to the commencement of the arbitration, Mr Murjan spoke to Mr Mohammed and explained that he intended to tell the truth about the agreement (to the detriment of SSIF's case).
>
> 5. About two weeks after Mr Mohammed and Mr Murjan had this conversation, there were rumours that the brakes on Mr Murjan's car were deliberately severed, which caused a car accident that led to his death. It is believed that those associated with the SSIF, in collaboration with the Jordanian security agencies, may have been responsible for his death as they had become aware of the evidence that he intended to give at the arbitration.
>
> 6. Mr Murjan's home was searched by the Jordanian intelligence services. It is now understood that the photographs and video footage that were attached to the email sent by the helpsssif@ssifgov.jo belonged to Mr Murjan and this footage was seized. It was after this search and after death that this materials was disseminated by the SSIF email address.
>
> 7. In his statements Dr Adwan repeatedly said that he never met me and he had never been to our offices. However, photographs taken on the day of the meeting show that we were with him on the morning of 18 March 2012 signing documents. These attachments were circulated in several local Jordanian newspapers which caused consternation and political disorder in both the Jordanian parliament and government.
>
> 8. In the statements submitted to the arbitrator, Dr Adwan slipped saying that he had never crossed the road from his hotel to our building. However, if he did not see us nor know us and had never met us, how would he know that he needed to cross the road from Intercontinental Doha to our Al Reem Tower building? How would he know that Al Reem and the hotel share the same parking area and they are exactly 80 meters apart from each other?"

290. Mr Al Yafei then proceeds to make reference to the dismissal by the arbitrator of the KRIC case on 21 August 2015, which was appealed to the Federal Court in Switzerland. He confirms that the Zürich Public Prosecutor is also looking at the case, as referred to in a letter of Mr Al Yafei's Swiss lawyers, LKK. I have, of course, set out the LKK letter above.

291. At [10] of his statement, Mr Al Yafei states that the case has become politicised, with Jordanian state authorities interfering at various levels. He adds that he is surprised that the Jordanian government brought up the appellant's name in the case, initially because the appellant was not involved in signing the agreement and because the appellant was not involved in Mr Al Yafei's companies at the time that the agreement was signed, even though he was aware of earlier negotiations prior to the agreement.

292. At [11] of his statement, Mr Al Yafei refers to the torture of Mr Al Amri, the brother of one of Mr Al Yafei's employees (Rozan Al Amri), to force him to provide false testimony. He indicates that the criminal proceedings in Jordan were for the purpose of bringing the appellant's testimony into disrepute. Mr Al Yafei refers to the evidence obtained, which showed that funds were paid from a Jordanian source to the Swiss arbitration tribunal-appointed expert in the arbitration proceedings, who provided a report favourable to the Jordanians. This would appear to be a reference to Dr Nauer-Meier. Mr Al Yafei concludes his statement in the following terms:

> "13. Jordan itself is no stranger to these games. It has been accusing us of forgery at every turn. First, the SSIF claimed that the Share Purchase Agreement was forged, even though, to be safe, it also said that Dr Adwan might have signed the Agreement under duress. Then the SSIF said that our correspondence with Dr Adwan was forged, even though it had submitted that same correspondence as reference documents to its handwriting expert. Then the SSIF said that the email correspondence was forged because it could not be found on the Respondent's server, even though it turned out that almost all correspondence for the relevant period had been deleted from the SSIF server as per the KPMG forensic report. The SSIF is now claiming that the videos of Dr Adwan signing the Share Purchase Agreement are forged because the person pretending to be Dr Adwan could in fact have been wearing a silicon mask. One would ridicule such a defence unless one was a fan of the Mission Impossible films. But these defence tactics used by the Jordanian State seem to have reached their goal, including putting certain witnesses who are associated with this case under pressure and trying to use the tools of the state such as arrest warrants and the Interpol watchlist. Jordanians continue to propose conspiracy theories that require the most ambitious of intellectual inferences and attribution of knowledge to HAH [redacted]. Dr Adwan signed the Share Purchase Agreement, and from the video and photographic evidence it is clear that he did."

293. At [14] of his statement, Mr Al Yafei states that he has known the appellant for nearly 12 years and that he is a man who stands by his principles. He confirms that he is aware personally of the enmity which exists between the appellant, Al Kharafi and Al Mutairi, he having met them through his relationship with them through Tatweer. At [15]-[17] of his statement, he concludes as follows:

> "15. Although they have admitted to me that they know that they are fabricating material against I[redacted] HAH[redacted], they assured me that the reason is because they want to keep HAH busy with his own issues and not to concentrate on the Sheikh Ahmed Al Fahed Al Ahmed Al Sabah case. They urged me to sell Ettizan to them in order for them to have a new line of attack against HAH [redacted] in Doha. When I refused the offer they asked me if they could offer me a settlement plan that would put a truce in the conflict between HAH [redacted] and Mr Al Kharafi in Kuwait. They offered me the amount of US$ 150,000,000 for HAH[redacted] subject to I[redacted] HAH[redacted] stopping to help Sheikh Ahmed in his case. They also wanted HAH[redacted] to work against Sheikh Ahmed and give him false information so that Sheikh Ahmed would be embarrassed.
>
> 16. When I spoke to HAH [redacted] about it, he said that this was ridiculous and he was continuing the fight against corruption because the future of Kuwait was at stake. He said that it was never personal, this is a fight against a dangerous terror sweeping over Kuwait. He also said that he

was fighting for his children. Having a corrupt legal and government system will be catastrophic and using Kuwait and its financial institutions as a back yard for money laundering is something that he could not be silent about. I then told HAH what Mr Al Kharafi threatened to do and said if he did not work with them he would harm HAH in every way imaginable and that his power in addition to the power of his family would be used to come after him, and that they would use every method available to them including the media, the courts, the police and other institutions to hurt him affecting his reputation, financial stability, family and eventually liberty and life. HAH told me that he would be pleased to face them in any forum they wanted to take this fight to, but he was not intending to back down.

17. Various Arab newspapers across the Middle East have published articles saying that HAH was a central figure in the corruption scandal that has enveloped Kuwait over the course of the last few years. I have spoken to a lot of people from Kuwait who assured me in private that they have never believed the allegations against HAH . These are people who know HAH closely and some who know of him through others. They believe that HAH and his associates are all facing the same problem and their reading of the political situation is that HAH is being threatened to keep him out of Kuwait. This reading may be speculative. Nonetheless, HAH has been facing a tremendous amount of pressure and is facing an uncertain future unless he can find protection and safety that he needs in the UK."

294. I have taken Mr Al Yafei's statement into account as part of my consideration of the evidence as a whole. I find the weight to be given to it to be arguably less than it might otherwise have been, bearing in mind that he was not available for cross-examination. Nevertheless, I bear in mind that the content of his statement is consistent with the balance of the evidence submitted on behalf of the appellant and I have given it appropriate and material weight. It is a detailed and, on its face, persuasive statement. Of course, I do not know precisely what evidence was before the Swiss arbitrator in the KRIC arbitration proceedings and I do not have that evidence, or the evidence upon which the Jordanians rely in the criminal prosecution, in any event. However, Mr Al Yafei's statement evidence, if accepted at face value, is consistent with the appellant's claim that the Jordanian criminal charges are essentially 'trumped up' and that the result of the Swiss arbitration is unsafe.

Background evidence

295. It is trite to confirm that credibility and, of course, also risk findings, require to be made in a country context, with reference to relevant background evidence. With reference to the appellant's case, Ms Laughton refers to such evidence at [49]-[50] of her skeleton argument and refers to Annex A thereto, which contains the background evidence relied upon. Reliance is also placed by the appellant upon the two expert reports, to which I have referred further below. The material set out below is, not only relevant in terms of the question of risk to the appellant with reference to his asylum claim but, additionally, has been taken into account by me as part of the available evidence relevant to my consideration of Article 3 below.

296. At [49] of Ms Laughton's skeleton argument, she states as follows:

"49. Before considering the risk to A, it is important to place his claim in the context of the background evidence. R has considered very little background evidence in the RFRL and that which he has considered is either out of date or selectively quoted. For example, the HRW 2018 report is extremely critical, but R has only referred at §74 to the fact that Kuwait allows HRW access to the country. Likewise, in respect of prison conditions, R referred to

(and selectively quoted) the 2015 US State Department report, when the 2017 report is more negative. In order to not unduly lengthen the skeleton, the summary of the background evidence is contained in Annex A of the skeleton argument. In brief however, the background evidence demonstrates that:

(a) corruption occurs with impunity;

(b) there has been a recent increase in the suppression of dissent;

(c) people are detained for political beliefs;

(d) individuals are prosecuted and convicted for expressing their opinions; including opinions that corruption exists, using vaguely worded laws;

(e) it is a crime to criticise the Emir, the government, the judiciary, or even neighbouring states;

(f) there is a real risk of torture in detention."

297. Relevant country material was similarly referred to by Ms Laughton in her oral submissions and this aspect of the appellant's case, inter-alia, was elaborated upon. I confirm that I have read and considered Annex A to Ms Laughton's skeleton argument, wherein the following relevant country material is specifically referred to.

298. At [1] of Annex A, reference is made to the US State Department (USSD) Report 2017 on Kuwait (namely the report published in 2018, relating to 2017) ("the USSD 2017 Report") (B9 Tab 11), wherein it is confirmed that "*the Emir holds ultimate authority*", that there were numerous reports of government corruption during the year and that "*Government observers believed officials engaged in corrupt practices with impunity.*"

299. At [2] of Annex A, reference is made to the USSD Report 2014 (B8 HR2), wherein it is stated:

"In June an opposition leader alleged there was widespread corruption in the government and judiciary. Investigations into the allegations of corruption continued at the end of the year. Since insulting the judiciary is against the law, investigations into the persons making the allegations were also underway at the end of the year.

There were several instances of persons detained for their political beliefs, although the government officially arrested them on charges such as participation in unlicensed demonstrations or insulting the judiciary. Most of those arrested were either bidoon advocating for human rights or opposition political figures alleging government corruption. While authorities arrested and released some individuals after a few days, they held others for weeks or months pending trial. ..."

300. At [3] of Annex A, reference is made to the 2018 USSD report, in reliance upon the contention that the preceding situation, referred to in the 2014 Report, is ongoing and that individuals are convicted for expressing their opinions. This is actually a reference to the report published in 2018, which relates to 2017. The following extracts therefrom are pertinent and relied upon:

"There were several instances of persons detained for their political views. Throughout the year the government arrested several individuals on charges such as insulting the emir, insulting leaders of neighboring countries, or insulting the judiciary. While authorities arrested and released some individuals after a few days, they held others for weeks or months pending trial. During the year

sentences for insulting or speaking out against the emir or other leaders on social media ranged from a few months in prison to up to 10 years. ...

The constitution provides for freedom of expression including for the press, although these rights were violated. The courts convicted more than one dozen individuals for expressing their opinions, particularly on social media. The law also imposes penalties on persons who create or send "immoral" messages and gives unspecified authorities the power to suspend communication services to individuals on national security grounds.

Freedom of Expression: The Press and Publications Law establishes topics that are off limits for publication and discussion, and builds on the precedent set by the penalty law. Topics banned for publication include religion, in particular Islam; criticizing the emir; insulting members of the judiciary or displaying disdain for the constitution; compromising classified information; insulting an individual or his/her religion; and publishing information that could lead to devaluing of the currency or creating false worries about the economy. The law mandates jail terms for anyone who "defames religion," and any Muslim citizen or resident may file criminal charges against a person the complainant believes has defamed Islam. The government generally restricted freedom of speech in instances purportedly related to national security. Any citizen may file charges against anyone the citizen believes defamed the ruling family or harmed public morals.

The courts convicted more than one dozen individuals for insulting the emir, the judiciary, neighboring states, or religion on their social media sites.

In July the Court of Cassation upheld rulings made by the Court of Appeals and the Criminal Court and sentenced ruling family member Sheikh Abdullah al-Salem to three years in prison with hard labor for allegedly insulting the emir and one of his ministers. ...

The government continued to monitor internet communications, such as blogs and discussion groups, for defamation and generalized security reasons. The Ministry of Communications blocked websites considered to "incite terrorism and instability" and required internet service providers to block websites that "violate [the country's] customs and traditions." The government prosecuted and punished individuals for the expression of political or religious views via the internet, including by email and social media, based on existing laws related to libel, national unity, and national security. The government prosecuted some online bloggers under the 2006 Printing and Publishing Law and the National Security Law. Individuals must receive a license from the Ministry of Information to establish a website."

301. At [5] of Annex A to Ms Laughton's skeleton argument, indication is given that the Amnesty International (AI) Annual report for 2017/2018 (B9 Tab 14) confirms that there is the reporting of persecution in Kuwait arising from criticism of the government. The extract therefrom relied upon states as follows:

"The authorities continued to unduly restrict freedom of expression, including by prosecuting and imprisoning government critics and banning certain publications. ...

The authorities continued to unduly restrict the right to freedom of expression, prosecuting and imprisoning government critics and online activists under penal code provisions that criminalized comments deemed offensive to the Emir or damaging to relations with neighbouring states.

In March, UK-based writer and blogger Rania al-Saad was sentenced on appeal and in her absence to three years in prison on charges of "insulting Saudi Arabia" on Twitter. The Appeal Court reversed her earlier acquittal rendering this verdict final.

In May the Cassation Court upheld an Appeal Court verdict in the "al-Fintas group" case of 13 men charged in connection with WhatsApp discussions about video footage that appeared to show government members advocating the Emir's removal from power. Six were acquitted and seven were sentenced to between one and 10 years' imprisonment, some in their absence. The trial was marred by irregularities.

In July the Cassation Court upheld a 10-year prison sentence against blogger Waleed Hayes on vaguely worded charges that included "defaming" the Emir and the judiciary. During his trial, Waleed Hayes claimed he was tortured to make him "confess" to offences he did not commit. He remained on trial on other similar charges.

Former MP Musallam al-Barrak was released in April after serving a two-year prison term for criticizing the government. He continued to face separate trials on other charges.

Bidun activist Abdulhakim al-Fadhli was released on 1 August after serving a one-year prison sentence in relation to a peaceful demonstration in 2012, after which he had been due to be expelled from Kuwait. In February, the Cassation Court had overturned his acquittal along with 25 other Bidun men for their participation in peaceful demonstrations in Taima. The court reinstated their two-year prison sentence, as well as a bail of 500 Kuwaiti dinars (about USD1,660) to halt the implementation of the prison sentence on condition that they signed a pledge to no longer take part in demonstrations. Abdulhakim al-Fadhli signed the pledge which, in his case, also annulled his expulsion order.

In August the Public Prosecutor ordered a ban on publications in connection with reporting on ongoing state security cases before the courts. The ban was despite the Cassation Court establishing in May that there were no provisions in the law criminalizing the breach of "confidentiality" or prohibiting the publication of such information."

302. In the same vein, the Human Rights Watch (HRW) Annual Report on Kuwait 2016 (B9 Tab 15) is also referred to, the following extract in particular being set out at Annex A:

"Kuwaiti authorities have invoked several provisions in the constitution, penal code, Printing and Publication Law, Misuse of Telephone Communications and Bugging Devices Law, Public Gatherings Law, and National Unity Law to prosecute over a dozen people over the last few years for criticizing in blogs or on Twitter, Facebook, or other social media the emir, the government, religion, and the rulers of neighboring countries.

Those prosecuted have faced charges such as harming the honor of another person; insulting the emir or other public figures or the judiciary; insulting religion; planning or participating in illegal gatherings; and misusing telephone communications. Other charges include harming state security, inciting the government's overthrow, and harming Kuwait's relations with other states. From January to October, courts convicted at least five of those charged, imposing prison sentences of up to six years and fines."

303. At [7] of her skeleton argument, Ms Laughton also relies upon the HRW 2018 Kuwait annual report (B9 Tab 16), the following extract being relied upon:

"Provisions in Kuwait's constitution, the national security law, and other legislation continue to restrict free speech, and were again used in 2017 to prosecute dissidents and stifle political dissent. ...

Freedom of Expression

Kuwaiti authorities have invoked several provisions in the constitution, penal code, Printing and Publication Law, Misuse of Telephone Communications and Bugging Devices Law, Public Gatherings Law, and National Unity Law to prosecute journalists, politicians, and activists for criticizing the emir, the government, religion, and rulers of neighboring countries in blogs or on Twitter, Facebook, or other social media.

Prosecutions for protected speech are ongoing in Kuwaiti courts. Kuwaiti officials and activists reported that many, if not most, initial complaints in these cases are filed by individuals, underscoring the need to further amend broadly written or overly vague Kuwaiti laws to ensure adequate protections for speech and expression. Kuwaiti courts continued to issue deportation orders in some

of these cases, including against members of the Bidun population, although Kuwaiti officials reported these orders would not be implemented.

In 2016, Kuwait amended the election law to bar all those convicted for "insulting" God, the prophets, or the emir from running for office or voting in elections. The law is likely to bar some opposition members of parliament from contesting or voting in future elections.

The Cybercrime Law, which went into effect in 2016, includes far-reaching restrictions on internet-based speech, such as prison sentences, and fines for insulting religion, religious figures, and the emir."

304. At [8] of Annex A, reference is made to the Freedom House Freedom in the World Report on Kuwait 2016 (B9 Tab 17), with reference to the crackdown in Kuwait, upon those critical of the regime, having intensified. The extract relied upon states:

"While Kuwait's often contentious parliamentary politics remained stable in 2015, the government intensified its crackdown on opposition figures and those most critical of the regime. Prominent dissidents, including former parliamentarian Musallam al-Barak and activist Saleh al-Saeed, were sentenced to prison during the year over their criticism of the government. Others, such as legislator Abdulhamid Dahsti, were threatened with prosecution. The authorities also continued harassing critical media, including the newspaper Al-Watan and a number of associated entities."

305. At [9] of Annex A, Ms Laughton refers to the criminalisation of peaceful dissent having been detailed by AI in its report entitled *The Iron Fist Policy: Criminalization of Dissent in Kuwait*, dated 16 December 2015 (B8 Tab HR1). It is contended that criticism of the government is taken as criticism of the Emir and that the two are viewed as interchangeable, due to the political structure of the Kuwaiti state. It is noted that that report comments on various criminal provisions which are aimed at suppressing such dissent:

"Article 25 of Law 31 of 1970 Amending the Penal Code criminalizes the public "undermining" or "questioning" the Amir, and imposes a penalty of up to five years of imprisonment. This provision has been repeatedly used by the authorities to prosecute those deemed to have criticized the Amir or the government in writing, speech or online. ..."

306. In the same report, reference is also made to the fact that disrespecting judges carries a sentence of up to 2 years and to the vaguely-worded Article 15 of Law 31 of 1971, which states:

"Article 147 of the Penal Code makes it an offence punishable by up to two years' imprisonment and a fine to show disrespect to a judge "in a way that calls into question his integrity or his interest in his work or in his commitment to the provisions of law". The law qualifies this by allowing for "honest criticism, in good faith"."

307. At [11] of Annex A, reference is made to the vaguely-worded Article 15 of Law 31 of 1971, in the following terms:

"Article 15 of Law 31 of 1971 Amending the Penal Code, imposes a penalty of up to three years' imprisonment for the deliberate publication of "false or malicious" news or information about "the internal situation of the country [which] could weaken confidence in the financial situation [or which] could damage the country's national interests". It is left unclear what would constitute malicious information. ..."

308. Again with reference to the *Iron Fist Policy* report, at [12] of Annex A, Ms Laughton refers to the method by which any alleged insults are sent is also criminalised:

"As well as focusing on the "insulting" content of publications and messages, Kuwaiti legislation also concerns itself with the means by which such content is communicated. The 2007 Law on Misuse of Telephones and Communications provides two years' imprisonment and/or a fine for deliberately "insulting or defaming" through use of a telephone by way of recording images or a video on the device and its subsequent broadcast.

The recently introduced 2014 Communication Law also provides for a year's imprisonment and/or a fine for the "purposeful abuse of telephone telecommunications"; up to two years' imprisonment and/or a fine for the use of a means of telecommunication to send a threat or "insult"; and up to two years' imprisonment for the use of a telecommunications device to direct "insult" or libel towards others. The law also codifies sweeping powers to block content; cut off access to the Internet, suspend communications services on vague national security grounds, and revoke broadcasting licences without specifying reasons."

309. At [13] of Annex A, reference is made to Kuwait having subsequently passed new, even more Draconian, laws, aimed at stifling dissent:

"In July 2015, Kuwait's National Assembly passed a Cybercrimes, or Electronic Crimes bill. Signed into law as Law 65 of 2015 on Electronic Crimes, it is scheduled to take effect on 12 January 2016. It will further undermine freedom of expression in Kuwait. The new law covers a wide range of issues related to online offences, including phishing, forgery, online extortion and human trafficking. But drawing on provisions already set out in the 2006 Press and Publications Law, the law will criminalize, in vague terms, a swathe of expression that could constitute an exercise of peaceful expression including what might be construed as criticism of government and judicial officials or religious personages.

Most seriously, Article 7 imposes a punishment of up to 10 years in prison for using the Internet to:

"...overthrow the ruling regime in the country when this instigation included an enticement to change the system by force or through illegal means, or by urging to use force to change the social and economic system that exists in the country, or to adopt creeds that aim at destroying the basic statutes of Kuwait through illegal means."

Under international law, the definition of crimes has to be clear and narrowly defined. The language used in this Article, such as "creeds that aim at destroying the basic statutes through illegal means" is so vague and broad that it lends itself to abuse."

310. At [14] of Annex A, further relevant extracts from the *Iron Fist Policy* report are set out, which follow:

"... In July 2014, in response to opposition protests, the cabinet pledged "an iron fist policy and a decisive and firm confrontation with whatever could undermine the state, its institutions and constitution".

The government has used existing laws and adopted new ones to target its critics, including human rights defenders and political opponents, and ultimately close down space for dissent. Judicial authorities have ordered the suspension or closure of newspapers and other media platforms. The government has invoked the country's nationality law to strip some of its critics of their citizenship, sending a stark warning to others of the consequences of speaking out. ...

... The authorities have used vague and sweeping criminal defamation laws to punish and deter criticism of the Amir, other state officials and their policies or conduct, and also to target those who openly criticize leaders of other Arab states with which the government maintains close relations.

The use of such laws has increased markedly since 2011. In the last two years, more than 90 cases have been reported in Kuwaiti media of people facing charges in court in relation to such offences.

People accused of these offences have often faced arbitrary detention and court processes in which they frequently spend months waiting for the trials to open or close due to frequent court adjournments.

Many have faced multiple cases simultaneously. At one point in 2014, former parliamentarian Musallam al-Barrak, for many years one of the government's most trenchant critics, speaking out against a perceived lack of government transparency and criticizing the Amir and the judiciary, was facing ongoing separate criminal prosecutions. He is currently serving a two-year jail sentence. Hamad al-Naqi, meanwhile, is serving a 10-year jail sentence for posting comments on Twitter criticizing the leaders of Bahrain and Saudi Arabia and for making comments considered derogatory to the Prophet Mohammad and other religious figures.

A web of laws is used to prosecute critics and opponents of the government. These include articles of the Penal Code and other laws that criminalize expression deemed to insult the Amir or undermine his authority or that of the government or judiciary, or which threaten Kuwait's national security or relations with other states, such as criticism of leaders of other Arab states.

Other laws target online critics of the government – some 75% of Kuwait's population use the internet. Critics can face prosecution under laws that can make it an offence to use modern communications technology– such as mobile phones and the internet – to transmit and disseminate perceived criticism of the Amir, members of the judiciary or public officials. ...

The government criminalizes comments that it defines as offensive or insulting to the Amir or other government leaders, as well as judges and foreign political leaders. A range of laws also make it a criminal offence to undermine the government or government officials, publish false information, harm national interests, defame religion, or "misuse" a phone, for example to send tweets that the authorities consider illicit. Many of these laws restrict freedom of expression in ways that exceed the limits permitted by international law.

Critics can be prosecuted under long-standing laws dating back to the 1970s, as well as a range of updated legal instruments developed in the last decade to deal with potential criticism of the authorities via new forms of communications.

Some of those arrested in the last four years have been prosecuted on multiple, sometimes overlapping charges under different provisions. ...

Since 2011, the Kuwaiti authorities have used the array of restrictive laws at their disposal to arrest, prosecute and imprison scores of people for peacefully exercising their right to freedom of expression, including because they criticized the government or its policies.

Those targeted include political activists and opposition figures, journalists, human rights defenders, and users of Twitter and other social media. In 2015, they have included senior members of the ruling family and former Ministers. Amnesty International considers a number of these people to be prisoners of conscience, jailed solely for the peaceful exercise of their right to freedom of expression.

The use of laws prohibiting "insult" of state officials, particularly the Amir of Kuwait, and neighbouring countries has increased markedly since 2011. The marked rise in the use of such laws to clamp down on dissent appears to have been at least partly the state's response to popular political challenges to the government, after Kuwait witnessed a series of mass demonstrations from 2012 onwards, sparked by opposition to a new electoral law and concern over corruption in government. A number of these Karamat Watan ("Nation's Dignity") rallies were forcibly dispersed. In July 2014, the cabinet pledged "an iron fist policy and a decisive and firm confrontation with whatever could undermine the state, its institutions and constitution." The government's actions in this period have demonstrated its increasing intolerance of criticism and dissent.

Some individuals have faced numerous charges simultaneously relating to a range of different critical statements issued, for which they have faced court proceedings and jail sentences on a

repeated, cyclical basis. They endure months awaiting trial and can face delayed hearings due to frequent court adjournments. Those facing such charges have described the toll it takes on their lives and the way in which the burden of continual legal cases constrains their activities.

Amnesty International considers that the use of repeated and multiple charges against activists and opposition figures forms part of a government strategy to muffle dissenting voices and deter others from risking their liberty by speaking out."

311. At [15] of Annex A, reference is made to the said AI report, in the chapter entitled *The Targeting of Opposition Activists, Human Rights Defenders and Journalists for Crimes of expression*, wherein specific details are given of the Fintas Group case and the closure of Al Watan (as set out above).

312. As [16] of Annex A, it is contended that AI considers that many of those prosecuted are prisoners of conscience, jailed solely for the peaceful exercise of their right to freedom of expression. It is stated that the 2017/2018 AI annual report specifically refers to the Fintas Group trial (as set out above).

313. Thus, the appellant's position, as supported by the above referred-to country material, is to the effect that there has recently in Kuwait been a huge increase in repression and a systematic crackdown on those who criticise, or who are perceived as criticising, the government and State. It is also argued that it is evident, from the background evidence, that simply stating that government leaders and judges have engaged in corruption, opens an individual up to the risk of prosecution and punishment. I note that AI is of the view that the Fintas Group trial "*was marred by irregularities*", which view is consistent with the evidence of the appellant and his relevant witnesses, and with the expert evidence, all of the above country material being entirely consistent with that evidence.

Credibility in the context of the expert evidence

314. As part of my consideration of the appellant's credibility, I have also taken into account the two expert reports produced on behalf of the appellant. I have read both reports in their entirety and have taken their content into account. The earlier report has been prepared by a Dr Kristian Coates Ulrichsen ("Dr Ulrichsen") and is dated 6 April 2016 (CB Tab 12). That report was prepared prior to the respondent refusing the appellant's claim for asylum and prior to the conclusion of the Fintas Group trial. I note that Dr Ulrichsen declined to prepare an updating report, for fear that, in doing so, his career would be damaged and he might be banned from Kuwait (see his email at B10 Tab 32). The second report is that of Dr Yom, whose report is dated 5 August 2018; post-decision (CB Tab 19).

315. I reiterate that I am required to consider the credibility of the appellant's account in a country context, the expert evidence being relevant to such consideration. There is no challenge by the respondent to the expertise of either expert, or to their ability to produce a report relevant to Kuwait and the Middle East, although Mr Clarke did seek to challenge the findings contained in those reports and, following cross-examination of Dr Yom, he also sought to challenge certain of Dr Yom's conclusions, as referred to further below. I accept that both experts have extensive and relevant experience and that they are qualified to provide relevant country

evidence to the Tribunal. I have addressed the content of the expert evidence in further detail below.

316. Turning first to Dr Ulrichsen's detailed report, from [11] *et sequor* thereof, he corroborates the political background to the appellant's account and, at [65] of his report, he concludes that the appellant's account is plausible in a country context. At this stage, I consider it worthwhile setting out [65] of Dr Ulrichsen's report.:

> "65 However, unlike Sheikh Ahmad al-Fahd, HAH I lacks the protection accorded by being senior member of the ruling family, and this vulnerability has been exploited by his opponents in Kuwait. HAH I's account of his work as part of Sheikh Ahmad al-Fahd's investigative team and his role in acting as the point-person for ascertaining international verification of the 'coup' tapes is entirely plausible and consistent with the record of the 'coup' allegations that is already in the public domain and which have linked HAH publicly to the tapes (bearing in mind the attempts by the Kuwaiti authorities to suppress the allegations and prevent, by any means necessary, their public disclosure). I consider that the allegations against I are politically motivated, likely to have been fabricated, and illustrative of the absence of due process is itself indicative of the treatment HAH would expect to receive if he were forced to return to Kuwait."

317. In her skeleton argument, Ms Laughton provides a useful summary and reference to various elements of Dr Ulrichsen's and Dr Yom's reports, as a result of which I have set out below those submissions in some detail, they being contained at [51]-[67] of that skeleton argument.

318. Dr Ulrichsen, in his report, provides background information about the Al-Sabah family and about the ongoing tussle for power which has been ongoing since 2006 and has recently intensified. At [33] of his report, he indicates that, since 2006, there has been a marked escalation of factional infighting within the ruling family in Kuwait, as ambitious "next-generation" sheikhs in the *al-Jabir* branch of the family began to construct power bases of their own. He indicates that the two prominent and leading candidates for succession are Sheikh Nasser and Sheikh Ahmed, who have engaged in a prolonged struggle for influence simultaneously intended to strengthen their own position and to weaken that of their rival ([35]-[36] of the report).

319. At [52] of her skeleton argument, Ms Laughton indicates that, in view of the said power struggle, it is clear that the discovery and publication of the videotapes, accusing Sheikh Nasser and Jassem Al Kharafi of involvement in corruption, is inextricably bound up in that power struggle. Reference is made to [37] of Dr Ulrichsen's report, wherein he indicates that the opposition MP, Musallam Al-Barrak, who is also closely associated with Sheikh Ahmed, has capitalised upon these allegations, to increase public protests against Sheikh Nasser. Ms Laughton contends that, if Sheikh Nasser's popularity decreases, then it is evident that the other main rival for succession, namely Sheikh Ahmed, will be likely to increase in popularity. I accept that such indication is consistent with the available expert evidence.

320. At [53] of her skeleton argument, Ms Laughton notes that the race for succession, and the rivalry between the two sheikhs, is also referred to at [12]-[16] of Dr Yom's report (under the heading **Political Context**).

321. At [46] & [94] of his report, Dr Ulrichsen states as follows:

> "46 Although Sheikh Nasser undoubtedly prevailed in the factional round of struggle in 2014, the 'coup' tape and the government's heavy-handed response provided a foretaste of what is likely to become an increasingly bitter dispute the older Emir Sabah becomes (he turned 86 on 16 June 2015) and the closer Kuwait comes to a succession. While Sheikh Ahmad was forced into a public climbdown from his allegations over the 'coup' tape, he remains a key protagonist among the Al Sabah with an influential global profile owing to his positions of leadership in the International Olympic Committee and on the FIFA Executive Committee, and, as such, is seen to constitute a continuing threat to Sheikh Nasser, his faction, and much of the Kuwaiti political and economic 'establishment.' Furthermore, the fallout from the 'coup' tape affair illustrates how the Kuwaiti government has responded by systematically going after its political opponents in what appears to be an organised and retributive campaign against Sheikh Ahmad al-Fahd and his associates. Although there is no evidence publicly available to indicate whether Emir Sabah was directly involved, it is nevertheless striking how people (such as Musallam al-Barak and Sheikh Ali Khalifa Al Sabah as well as HAH) and entities (such as the *Al Watan* and *Al-Youm* media groups) linked to or perceived as being aligned with Sheikh Ahmad have been targeted in a pattern of apparent 'retribution.' Indeed, the powers available to state institutions appear to have been mobilised in a selective and disproportionate manner to silence key elements of the Kuwaiti 'opposition' since 2013. ...
>
> 94 While there are few known overt cases of political pressure having been applied directly by the Emir on the judiciary, it is barely conceivable that the allegations of the severity of those made against HAH could have originated without at least the tacit approval of the head of state in Kuwait; this is reinforced by the Emir's direct role in the pressure placed on Sheikh Ahmad al-Fahd to publicly apologise and retract his allegations concerning the 'coup' tape or face life in prison without trial. Given HAH 's pivotal role in the investigative team put together by Sheikh Ahmad al-Fahd in 2013 to examine the veracity of the 'coup' tapes, and given that Mr. al-Haroun has been urged by Sheikh Ahmad and other members of the team to remain outside Kuwait in order to preserve his freedom, it is simply not possible to imagine that HAH would be afforded any right to due process or a free and fair trial in Kuwait in the present climate, particularly when he is associated with what is at present the weaker, 'non-establishment' faction that does not possess the ability of the dominant faction (led by Sheikh Nasser) to influence executive action and the operations of the courts and the law enforcement agencies."

322. At [55] of her skeleton argument, Ms Laughton notes that the Al Rai newspaper, dated 18 April 2015, states that the Al Haroun case has a personal importance to the Deputy Prime Minister, Sheikh Mohamed Al Khaled (B1 Tab 14 pp 478-480). With further reference to [46], and with reference to [47], of Dr Ulrichsen's report, it is noted by Ms Laughton that Dr Ulrichsen confirms that people, such as Musallem Al Barak and Sheikh Khalifa, as well as the appellant, and entities, such as the Al Watan and Al-Youm media groups, linked to, or perceived as being aligned with, Sheikh Ahmed, have been targeted in a pattern of apparent retribution. I set out [47] of Dr Ulrichsen's report, which follows:

> "47 Beginning in the second half of 2014, the Kuwaiti political 'establishment' embodied by the Emir, former Prime Minister Sheikh Nasser Mohammed Al Sabah, and (while he was still alive) Jassim al-Kharafi, has undertaken a comprehensive pattern of retributive action that has targeted Sheikh Ahmad al-Fahd and many people associated with him either directly or indirectly. Before moving on to the specific case of HAH , this section examines first the apparently systematic targeting of Sheikh Ahmad's 'allies' in the media sector and among the political opposition, as the lack of regard for due process is deeply troubling and an indicator of the treatment that HAH himself has faced since 2015, and almost certainly will face should he be forced to return to Kuwait in the future."

323. At [56] of her skeleton argument, Ms Laughton notes that Dr Ulrichsen provides detailed examples of retribution carried out against known associates of Sheikh Ahmed, and specific references to the persecution of Musallam Al-Barak and of Mr Fahad al-Rajaan, both of whom were associated with Sheikh Ahmed ([47]-[51] & [55]-[58] of his report). At [59] of his report, Dr Ulrichsen, inter-alia, states:

> "59 The apparent pattern of selective targeting of individuals and entities linked - whether directly, indirectly, or merely through public or political perception - to Sheikh Ahmad al-Fahd highlights the inconsistent application of the rule of law in Kuwait ..."

324. At [64]-[65] of his report, Dr Ulrichsen confirms that the appellant is a known associate of Sheikh Ahmed and that, as a result, he has been caught up in the campaign of retribution. Dr Ulrichsen adds that, as the appellant is one of Sheikh Ahmed's key associates, he also poses an additional threat to Sheikh Nasser and to the Al Kharafi family interests. Paraphrasing, Dr Ulrichsen indicates that, as someone who was leading the investigation outside Kuwait, obtaining evidence and having it examined and authenticated by lawyers and forensic experts, the appellant is thought to know too much about their dishonest dealings. He adds that the appellant is known as the "black box" and the main accused in respect of the manipulation of videotapes and sedition. He adds that it is clear that the adverse interest in the appellant is being pursued at the highest level, as is evidenced in the Fintas Group case. I have already set out above [65] of Dr Ulrichsen's report.

325. At [58] of her skeleton argument, Ms Laughton refers to Dr Yom's report and to the summary of his findings at [10] thereof. She also refers to [24] of Dr Yom's report, in which paragraphs the following is stated (Dr Yom referring to the appellant as 'HAH'):

> "10. In my expert analysis, HAH is a victim of Kuwaiti political repression masquerading as an ordinary criminal prosecution. This campaign of retribution has targeted HAH due to his critical political opinions, as evidenced by his acts, regarding the extreme corruption linked to a powerful royal figure - Sheikh Nasser al-Muhammad Ahmad al-Jaber al-Sabah ('**Sheikh Nasser**'), who is likely to become the next Emir - and those connected to him, including senior judges and the Khurafi (sometimes spelt as Kharafi) family. HAH's political beliefs were expressed by his participation in efforts to expose this faction's activities as highlighted by the Fintas Group case. The royal executive leveraged enormous resources to harm HAH across multiple fronts, from Switzerland to Jordan, but the core method was criminal prosecution in Kuwait that exploited the judiciary's lack of independence and a disregard for the rule of law. Given the prevailing political climate of repression, weak and biased legal system, and absence of physical protections for his safety, I believe that HAH will suffer human rights violations in contravention to the European Convention on Human Rights should he be returned to Kuwait.
> ...
>
> 24. As the next sections illustrate, criminal prosecutions related to high-stakes affairs such as that of the Fintas Group are inseparable from the will and capacity of the royal executive to punish anyone believed to pose a threat. In this case, legal punishments were undertaken by authorities after a revolutionary period of unrest in the Arab Spring and following the Emir's favouritism towards Sheikh Nasser and against Sheikh Ahmad - and, by extension, the latter's associates and supporters. The fundamental basis of HAH's targeting has been on the basis of his political opinions as expressed in two ways: first, his association with Sheikh Ahmad, whose defeat by Sheikh Nasser opened the door to attacking affiliates like HAH; and second, his actions and stated beliefs regarding the necessity of eliminating widespread corruption and abuses of power, which through the videotape scandal caused embarrassment to Sheikh Nasser and the Khurafi family."

326. At [59] of her skeleton argument, Ms Laughton notes that Dr Ulrichsen's report was prepared before the Fintas Group judgment but notes that, at [65] of his report, Dr Ulrichsen concludes that *"the allegations against Mr. al-Haroun are politically motivated, likely to have been fabricated, and illustrative of the absence of due process"*. She notes that, at [66], Dr Ulrichsen indicates that the appellant is *"extremely unlikely to be accorded a free or fair trial or any form of due process in Kuwait, as he was described in the Arab Times Kuwait newspaper as the 'prime suspect' in the Fintas Group case"*. It is noted that, at [86], Dr Ulrichsen states that the allegations against the appellant are *"consistent with the pattern of systematic retribution against the associates of Sheikh Ahmad al-Fahd by Kuwait's political elite intent on destroying all traces of the explosive allegations of political corruption and ending once and for all any leadership ambitions Sheikh Ahmad may once have entertained"*.

327. At [60] of her skeleton argument, Ms Laughton notes that Dr Yom's report was prepared after the Fintas Group judgment and that Dr Yom was therefore able to provide a detailed examination of the general lack of independence and political bias in the judicial system, and how it was applied in this particular case. She adds that Dr Yom was also able to provide a detailed examination of the procedural and other irregularities which demonstrated that the charges were politically-motivated and that the appellant did not receive a fair trial. That is indeed Dr Yom's analysis of the situation, as set out in detail at [25]-[33] of his report.

328. At [61] of her skeleton argument, Ms Laughton notes Dr Yom's evidence, with reference to the extreme importance of the Fintas Group case to the Kuwaiti authorities and their strong motivation in obtaining a verdict of guilty in that case ([19], [23(e)], [24] & [30(a)] of Dr Yom's report).

329. With reference to [62] of Ms Laughton's skeleton argument, it is noted that, at [26]-[33] of his report, Dr Yom refers to the general judicial system in Kuwait and to its inherent weaknesses. It is not contended by Dr Yom that nobody can have a fair trial in Kuwait; rather, Dr Yom's evidence is that, if there is a political interest in a case, then the *"judiciary lacks independence to adjudicate matters neutrally"* ([26] of Dr Yom's report). Dr Yom reiterated such evidence orally at the Tribunal hearing.

330. Again at [62] of her skeleton argument, Ms Laughton notes that an identical conclusion is drawn by other human rights monitors; for example, at [24] of the Interim Trial Observation Report of the Bar Human Rights Committee of England & Wales Report of 25 June 2018 (B9 Tab 22). I note that that report is headed *The "Entry of Parliament" mass trial of defendants accused of public order offences relating to anti-corruption protests at the Kuwaiti National Assembly in November 2011*. I confirm that I have considered that Report and [24] thereof does, indeed, reach such conclusion. I consider it worthwhile setting out that paragraph of the Report in full, which follows:

> "24. BHRC notes the following general factors which provide context to this interim report:
>
> a. Kuwait has a Constitution that provides clear guarantees which underpin the rule of law: the separation of powers, independence of the judiciary, protection of the right to liberty, freedom of expression, a free press and freedom of assembly, and fair trial rights. It has also acceded to the ICCPR, enshrining those guarantees as international obligations.

b. Kuwait has a functioning judicial system which, as a general rule, adheres to the rule of law and due process. However, the evidence indicates that compliance with these basic standards does not extend to cases with a political dimension.

c. The UNHRC and international NGOs are critical of Kuwait's practical compliance with its constitutional guarantees and international obligations, in particular with respect to freedom of expression and assembly, a free press, and fair trial rights for those accused of dissent or criticising the government.

d. Kuwaiti lawyers confirm that there are concerns about executive interference in such cases."

331. Thus, the expert evidence of Dr Yom, in respect of this issue, is consistent with the content of the BHRC report referred to and, I would add, consistent with the thrust of the appellant's case. I would add that, at [33] of his report, Dr Yom comments that, if there is executive interference, then there are no safeguards against this in order to prevent an abuse of rights.

332. At [63] of her skeleton argument, Ms Laughton notes that the Fintas Group trial concerned the circulation of two tapes, showing the two highest judges in Kuwait, namely the Head of the Supreme Judicial Council and the Head of the Constitutional Court, accepting bribes. At [33c. & d.] of his report, Dr Yom concludes "*that there was no realistic chance that judges at any level, from the First Instance to the High Appeals to the Cassation Courts, would rule in favour of HAH in the Fintas Group proceedings in a trial that human rights observers described as 'marred with irregularities.'*" and that "*a guilty verdict was a foregone conclusion*" and that "*any judges ruling that left open even a remote possibility the videotapes were authentic by finding in favour of HAH would be career suicide given the nature of judicial employment*". I would add that elements of such evidence were reiterated by Dr Yom at the hearing. I note that his reference to human rights observers is a reference to the AI report, a salient element of which is set out above.

333. I consider it worthwhile setting out verbatim [64] of Ms Laughton's skeleton argument, rather than seeking to paraphrase it, that paragraph of the skeleton continuing to refer to the Fintas Group prosecution. I would add that 'SY' is Dr Yom, which follows:

"64. SY also considered the background and chronology of the investigation at §§35-36, which he considered disclosed "*abnormal inconsistencies, but also indications that the process moved forward under political instruction from the royal executive*". He had interviewed a source who informed him that in fact he had been asked to give false evidence against A by Loay Al Kharafi (the son of Jassem Al Kharafi), in exchange for the investigation being discontinued against him. Loay Al Kharafi apparently had access to all the confidential ongoing investigation files in the Fintas Group proceedings. The expert also details the inherently political nature of the offence of which A was convicted (§§40-46), which must be placed within the general context of the deployment of loosely worded laws as political weapons and the overall pattern of worsening repressive crackdowns since the Arab Spring (§47). It is further extremely important to note that A was sentenced to 10 years imprisonment, despite the maximum cumulative sentences for the offences of which he was convicted being 6 years (§40)."

334. I consider it appropriate to set out [34]-[40] of Dr Yom's report in full, as it provides his reasoning as to why he concludes that the appellant's period of imprisonment, imposed following the Fintas Group trial, is in excess of that

permitted by Kuwaiti law. I have referred to [36] of Dr Yom's report above, in the context of the WhatsApp conversation evidence. [34]-[36] of his report follow:

"34. Whereas the Kuwaiti judiciary and criminal justice system suffer from procedural weaknesses and lack of independence from the royal executive, it is also imperative to highlight how political motives have more specifically manipulated these institutions to target outspoken figures like HAH. Key to this strategy is the prejudicial interpretation of open-ended criminal statutes, which constitutes another reason why I cannot view HAH's conviction is the result of a fair and impartial legal process. Further, in my evaluation, HAH has been and continues to be a target of political retribution.

35. I have previously accessed documentation from the PPO related to the Fintas Group trial, including police witness statements and prosecutorial memoranda used against HAH and the 12 other defendants, while conducting previous research. These were released by request to various lawyers representing the defendants, and in turn was shared with me. They inform my conclusion that within the PPO's investigation, I believe the chronology of events and procedures followed by prosecutors raises extreme alarm because they illuminate multiple opportunities and moments in which outside pressures and political interests penetrated the entire process, thereby shaping a predetermined outcome of indictment followed by the trial proceedings. What the Kuwaiti authorities present as an ordinary criminal matter is, in my view, another conduit of political repression but through legal means.

36. The sequencing of major events, which are publicly known and also mentioned by the witness statements, within this criminal investigation invokes my suspicion. The instigating event for the Fintas Group case was the arrest of protesters outside parliament on 23 March 2015 - a demonstration spurred by the PPOs decision several days earlier, on 18 March 2015, to not press criminal charges against Sheikh Nasser and Jassim al-Khurafi regarding the coup videotape, and to declare the recordings were fake. Sometime after the arrest, the police discovered on the mobile phone of one detained individual, Abdul Mohsen al-Ateeqi, the alleged WhatsApp chat group that included HAH, as well as messages pertaining to an online video showing bribery of senior judges. The PPO then took control of the investigation, downloading the phone contents. As per Kuwaiti law, the phone and its contents were in the possession of the police. Yet despite its supposed safekeeping, the contents were leaked widely during the first week of April, leading the Speaker of Parliament, Marzouq al-Ghanim, to demand that the entire Fintas Group be prosecuted, despite that parliamentarians normally have no authority to order or interfere with the criminal justice system. However, it was not until 10 May 2015 that the CID conducted a formal investigation that it would later submit to the PPO. It did so after receiving a complaint on 10 May from the Deputy Minister of the Emir's Diwan (i.e. the Royal Court). On 5 June, the CID sent its concluding report to the PPO, and on 7 June the PPO requested that the SSD conduct a specialized investigation. The SSD enquiry finished in weeks and sent its findings to the PPO by 28 June, which delivered indictments against HAH and co-defendants on 13 August. The sequence and timing of these events not only reveal abnormal inconsistencies, but also indications that the process moved forward under political instruction from the royal executive.

    a. First, the CID's investigation into Fintas Group case did not formally begin until after 10 May 2015, more than six weeks after the initial arrest of al-Ateeqi and subsequent discovery of the WhatsApp chat group. On 18 April, however, Kuwaiti media reported that authorities requested Interpol's assistance to arrest HAH for involvement in the fabrication of the videotapes implicated with the group. This is informative, because the entire videotape case as pressed by Sheikh Ahmad was thought to have ended after his televised public apology the previous month. One explanation is that the PPO was developing an independent criminal case against HAH, but HAH's criminal prosecution was predicated upon his involvement in the WhatsApp chat group. The more likely possibility is that the PPO, acting under royal instructions, was attempting to utilize all means necessary to secure HAH's return to the country, where he could face the full brunt of political harm. This indicates an intentionality for prosecution well before any formal investigation into the Fintas Group case began. It is also still significant that HAH's motives were described by the PPO in a way that does not make chronological sense in terms of the WhatsApp communication. HAH was described as harbouring the motive to defame the Kuwaiti

judiciary (among other allegations), which apparently so threatened the Kuwaiti state that it justified the involvement of Interpol. However, the WhatsApp chat group was created a year earlier on 11 April 2014, and at that time HAH was not facing any of these criminal charges. To my mind, this suggests the intentional invention of such charges by the PPO at a very late stage.

b. Second, the CID's investigation into the videotapes showing judicial bribery was activated by the Royal Court's second highest-ranking official through the 10 May complaint, well after the March discovery of the WhatsApp messages implicating HAH. Put another way, the investigation was formally opened at the urging of the royal executive despite the police having obtained the key piece of evidence much earlier. Indeed, during this six-week interim period, the Interior Ministry sent the Royal Court a communiqué dated 29 April 2015 regarding social media chatter regarding the videotape, which further suggests that political orchestration was fuelling the criminal justice process. In my experience, this sequence is not surprising, as it is well-known among Kuwaiti researchers that the Royal Court and Interior Ministry regularly communicate regarding matters involving potential threats and political opposition.

c. Third, the two-day turnaround time between 5-7 June between intake of the CID evidentiary report and the launching of a State Security probe is rare in its rapidity. In my experience, the PPO usually operates at a far slower pace because the entire judiciary suffers from a large backlog of cases. Overworked prosecutors focus on a high volume of simultaneous issues while an understaffed bench must draw upon foreign judges to staff all courts. I have only seen the same speed to which the Fintas Group matter was referred to the SSD in cases involving terrorist violence and other matters considered pertinent to national security. That it happened here suggests a prejudicial objective to treat HAH's involvement as a felonious threat as quickly as possible, and build the strongest possible case.

d. After 28 June, the PPO formally began its evaluation of the case before issuing its formal indictment on 13 August. During that interim period, there is evidence the PPO was acting not only under guidance from the royal executive and Sheikh Nasser, but also the latter's key ally in the Khurafi business family, with whom HAH has been engaged in commercial disputes. One of the 13 individuals investigated by the PPO in the Fintas Group case recounted the following irregularities observed personally in June-July 2015:

    i. As part of its formal review, the PPO instructed this individual to accept a session of formal questioning that lasted for approximately two hours. During this discussion, the assigned prosecutor admitted he could not find enough relevant questions to ask because the basis of the entire criminal case was an extremely narrow one - a private chat on the WhatsApp smart phone app. The prosecutor conceded that many Kuwaitis likely utilised WhatsApp to discuss their political opinions and critical debates, and that the interview was *pro forma*.

    ii. Afterwards, this individual was summoned by Louay al-Khurafi, son of Jassem al-Khurafi (who had just passed away in May 2015), and who was among the family's heirs to its business fortune. While Louay and HAH's history of interactions has been outlined in HAH's witness statement, the relevance here lies in Louay's puzzling involvement as a private citizen with no formal governmental standing within the criminal justice process. Louay al-Khurafi sent an intermediary to ensure this individual could privately meet in Louay's office. During that meeting, this individual recounted seeing multiple boxes of files pertaining to the ongoing investigation, including legal memoranda, internal communiqués, CID reports, and other materials that should have only been in the possession of the PPO. Louay pressured this individual to turn as witness against HAH, promising that should he be willing to give false testimonies in order to help the PPO build stronger case against HAH and other co-defendants, 'one phone call to the Diwan Emiri will get you off the hook.' On the other hand, this individual was threatened that refusing to do so would guarantee an arrest warrant and ultimate conviction.

iii. This individual refused. Approximately two weeks later, Louay approached this individual again through an intermediary, and offered a different deal. He asked that this individual turn witness against HAH in the ongoing commercial disputes related to Tatweer Infrastructure Company, specifically by fabricating evidence that HAH committed financial improprieties and forged documents. As before, Louay stated that he possessed sufficient influence to clear this individual's name and involvement from the Fintas Group case so long as there was cooperation. Again, this individual refused the offer. This individual was not surprised when, therefore, the PPO issued his arrest warrant in July and included him as part of its indictment on 13 August."

335. I note that, in the footnote to [36] of Dr Yom's report, he indicates that his contact with the unidentified political activist was via a telephone conversation on 23 July 2018. Whilst Dr Yom has protected his source, and therefore *arguably* less weight should be given to that element of the evidence, I have no reason at all to conclude that Dr Yom did not have the conversation to which he refers. Indeed, Mr Clarke did not seek to argue otherwise. The evidence of that activist is, of course, to the effect that Loay Al Kharafi, who held no government post, apparently had access to all of the confidential ongoing investigation files in the Fintas Group proceedings. I have taken into account this evidence, as part of my consideration of the evidence as a whole and, having done so, I find it to be reliable evidence.

336. At [64] of her skeleton argument, Ms Laughton also refers to [40]-[47] of Dr Yom's report. I have set out [40] thereof, as being pertinent to the sentences imposed upon the appellant, which follows:

"40. HAH's finding of guilt stemmed from criminal offences laid out in three statutes: (c) Article 147.1 of the Penal Code, (d) Article 15 of the National Security Law, and (e) Article 70.1 of the Telecommunications Law. To my mind, it is significant that HAH received a 10-years' imprisonment sentence despite that the maximum punishment that could be given under the statute is 6 years. While it is possible HAH was charged multiple times for each offence, the First Court ruling does not mention multiple charges. This suggests a strong intention (in my view, motivated by political prejudice) to target HAH and apply disproportionately harsh punishment in excess of the statutory maximum."

337. In his oral submissions, Mr Clarke indicated that the sentence of 10 years was, indeed, explicable by the fact that there were multiple charges. That may be so but I do not find this issue to be determinative of my findings in this appeal.

338. At [40]-[47] of his report, Dr Yom details the inherently political nature of the offences of which the appellant was convicted in Kuwait which, he indicates, must be placed within the general context of the deployment of loosely-worded laws as political weapons and the overall pattern of worsening repressive crackdowns in Kuwait since the Arab Spring.

Risk of persecution if removed to Kuwait (also addressed in the context of humanitarian protection and Article 3 below)

339. This issue has also been addressed with reference to certain country material set out above. At [65] of her skeleton argument, Ms Laughton indicates that both of the appellant's experts, namely Dr Ulrichsen and Dr Yom, refer to the specific risk of torture to the appellant in the event of his return to Kuwait. This is addressed by Dr Ulrichsen at [90]-[92] of his report and by Dr Yom at [51]-[55]. Reference is made to

Dr Yom also addressing, at [56]-[70] of his report, the inhuman and degrading treatment which would be faced by the appellant in prison in Kuwait, which analysis is accompanied by details from interviews with serving prisoners and photographs and videos. Dr Yom's evidence relating to these issues formed part of the subject matter of his cross-examination and subsequent oral submissions, as referred to in further detail below.

340. At [66] of Ms Laughton's skeleton argument, she sets out material elements of [90], [93] & [95] of Dr Ulrichsen's report. I also consider it appropriate to set out [91]-[92] thereof, as such are relevant to my consideration of Article 3 below. Those paragraphs follow:

"90 It is the firm belief of this Expert Report that should HAH) be returned to Kuwait (voluntarily or involuntarily) there is a strong likelihood that he would be subjected to any one of the measures that have been applied to other individuals perceived to have been aligned with Sheikh Ahmad in his power struggle with Sheikh Nasser, which could include the stripping of his citizenship. In addition, the prospect of HAH) being granted the opportunity to argue his case in front of an impartial judge and clear his name in a free or fair trial also appear remote in light of recent developments in Kuwait since 2013, such as the fact that HAH) already has been sentenced to 10 years' imprisonment in absentia in connection with the 'Fintas Group' case. The risks that HAH may be subject to mistreatment, and even torture, and sentenced to death for his involvement in a case that the Kuwaiti authorities have labelled a threat to the very heart of State Security, is very real and entirely consistent with past and recent practice in Kuwait.

91 Indeed, in March 2014, just over three years after al-Mutairi's death in police custody in January 2011, Human Rights Watch reported a new allegation of torture in a Kuwaiti prison involving Abdulhakim al-Fadhli, a member of Kuwait's stateless ('bidun') community who had been detained by the police in February 2014 charged with participating in an 'unlawful' demonstration calling for the granting of rights to stateless people. Human Rights Watch reported as follows al-Fadhli's claims of mistreatment

They beat me severely in the car on the way to their headquarters. They interrogated me at the state security headquarters for four hours. During that time they hit me all over my body with their hands and used a stick to hit me in the chest and back. They demanded that I write and sign a confession to the charges against me that they would dictate to me. I refused and when they realised that they could not force me to, one officer pushed me against the wall and said, 'Do what we say, or we will rape you.' I refused and demanded to see a court order for my arrest and the ID cards of the officers interrogating me. They refused.

92 The experience of Gulet Mohamed, an 18-year old US citizen of Somali origin who was stopped at Kuwaiti International Airport in December 2010, detained, and held for two weeks without charge, is also instructive as an indication of the (mis)treatment that likely would await HAH upon re-entry into Kuwait. Renowned investigative journalist Glenn Greenwald investigated Mr. Mohamed's case and recounted in January 2011 how

...he was told by the visa officer that his name had been marked in the computer, and after waiting five hours, he was taken into a room and interrogated by officials who refused to identify themselves. They then handcuffed and blindfolded him and drove him to some other locale. That was the start of a two-week long, still ongoing nightmare during which he was imprisoned for a week in an unknown location by unknown captors, relentlessly interrogated, and severely beaten and threatened with even worse forms of torture.

... Mohamed says he was repeatedly beaten with a stick on the bottom of his feet and his palms, hit in the face, and hung from the ceiling. He also says his captors threatened him with both the arrest of his mother and electric shock, and told him that he should forget his family. He still does not know why he was detained and beaten, nor does he know what is happening to him now [January 2011]... He's been charged with no crime and presented with no evidence of any wrongdoing.

93 Should HAH be forced to return to Kuwait or extradited to Jordan, the fact that the crimes he has been accused of fall under the expansive State Security label in both countries mean that he almost certainly would be subject to mistreatment in detention. The use of torture in Kuwait and in Jordan has been documented at various points in this Expert Report, which

also has noted the added vulnerability of HAH [redacted] should the Kuwaiti government continue with its practice of stripping citizenship from government critics associated with Sheikh Ahmad al-Fahd and rendering Mr. al-Haroun stateless.

95 ... Should HAH [redacted] be forced to return to Kuwait, it is a near-certainty that he will be arrested immediately upon arrival at the airport (as happened to Salem Abdullah Dossari upon his arrival in Kuwait from the United Kingdom on 31 March on the charge of publishing 'offensive videos and sarcastic comments' about Kuwaiti and Gulf leaders), held without access to proper legal representation and very likely subjected to torture in light of the gravity of the State Security-designated charges he faces, convicted in a politically-motivated trial in which the independence of the judge, especially a foreign judge, would be compromised by the heavy publicity given to the 'coup' case by members of the government who have publicly called for an 'iron fist' against government critics, and sentenced to the highest possible penalty, given that few judges in such an environment would wish to defy the government and the Emir and appear soft on State Security..."

341. I reiterate that, of course, Dr Ulrichsen's report was prepared prior to the completion of the Fintas Group trial. The appellant was not sentenced to death and the respondent's position, as argued by Mr Clarke, is that the appellant has not been stripped of his Kuwaiti citizenship, although such possibility remains an issue in contention, as elaborated upon below.

342. At [67] of her skeleton argument, Ms Laughton sets out [75] of Dr Yom's report (which comprises his conclusions to his report), also with reference to the question of the prospective ill-treatment which the appellant might suffer, if removed to Kuwait, which follows:

"75. After reviewing the details of HAH's circumstances, and analyzing academic studies, multilingual news, confidential sources, and my own knowledge, I conclude that HAH has been targeted by political repression in the past, and that forcible return to Kuwait would expose him to imminent human rights violations in contravention of the European Convention of Human Rights.

a. The motives behind HAH's criminal convictions in Kuwait within the Fintas Group case were inherently political. By this, I mean that HAH was specifically targeted by the royal executive due to his critical political opinions evidenced by his actions over the necessity of eliminating high-level corruption and enhancing democratic transparency. This also relates to his known affiliation with Sheikh Ahmad, whose own losing intra-royal struggle with Sheikh Nasser sealed the fates of HAH and affiliated democratic advocates who helped investigate video tapes containing coup discussions, royal abuses, and judicial bribery. The extreme lengths to which Sheikh Nasser specifically, and the royal executive and judiciary more broadly, has gone to punish HAH indicates the exceptional threat that HAH and his associates are perceived to pose to the Sabah monarchy. It also reflects the intensifying climate of fear and repression installed since the Arab Spring.

b. HAH's prosecution was politicized due to institutional weaknesses in the Kuwaiti judiciary and criminal justice system. By design, police, prosecutors, and judges are vulnerable to external manipulation and political pressures, especially in high-stakes cases. In the Fintas Group episode, the prosecution and trial process was also marked by many irregularities, among them the technical content of the charges (including the statutes invoked), the nature of the PPO's investigation, and the involvement of a private citizen, Louay al-Kharafi, into these processes. Such disregard for rule of law and due process can also be witnessed in additional examples of the royal executive inflicting political harm to opponents through legal means, such as the revocation of citizenship (for which HAH remains vulnerable), closure of independent media, and violent abuses by police, among others. Kuwaiti authorities have, and will continue to use, legal institutions and criminal statutes to curb democratic voices.

c. In the hypothetical scenario of HAH's return to Kuwait, physical and mental brutalization including conditions equivalent to torture await. He would face serious risk of violence in several ways. Either under the instruction of, or complicit with, the authorities, the police may inflict severe physical harm upon HAH whilst in their custody - a practice for which they are well accustomed when dealing with political opposition, as past cases reveal. Afterwards, HAH will serve his imprisonment in an extremely crowded prison complex where security, housing, sanitary, medical, nutritional, and infrastructure conditions fall far short of international standards. Based also upon past records of violence, it is unlikely there will be sufficient safeguards to protect HAH's personal safety for the full 10-years' imprisonment given by the Fintas Group trial, which leaves open the potentiality that he will not survive."

343. As indicated, Dr Yom gave oral evidence before the Tribunal and was asked a number of questions by both representatives. He was cross-examined extensively by Mr Clarke and I am satisfied that he stood up well to such cross-examination, he providing, in my view, generally satisfactory responses and explanations in response to that cross-examination. I found him to be an impressive witness and his extensive expertise is evident.

Prosecution v persecution

344. At [74] of Ms Laughton's skeleton argument, she notes that the appellant has been convicted and sentenced to imprisonment for several offences, emanating out of four different sets of proceedings. She notes that he has been imprisoned for a total of 30 years (10+10+7+1+2), although it is difficult, from the documents available, to be clear as to the precise period in respect of which the appellant has been sentenced, in terms of imprisonment. It is certainly at least 10 years. In any event, Ms Laughton notes that, in the RFRL, the respondent does not appear to dispute the fact that the appellant will be imprisoned on return to Kuwait, although the total length of his prospective imprisonment is questioned.

345. Ms Laughton's argument is that the respondent "blindly asserts", without any further consideration, that such imprisonment would amount to prosecution and not persecution. It is argued that such conclusion by the respondent is without any consideration of the political motivation behind the charges, without any consideration of the background and expert evidence relating to the suppression of dissent being dressed up with criminal charges in Kuwait and the inherently political nature of the charges and convictions themselves. It is argued that the overburdening of an individual with various different criminal charges is a common method of persecution/punishment in Kuwait, in order to stifle dissent and to deter others. I acknowledge that this is what, indeed, the expert evidence submitted on behalf of the appellant also contends. There appears to be no dispute or disagreement between the appellant and the respondent, to the effect that prosecution is *capable* of amounting to persecution. However, in the present instance, the respondent's position is firmly to the effect that the appellant has been properly convicted of criminal offences in Kuwait and that he has been properly and justifiably sentenced to imprisonment as a result.

346. I reiterate that, in the present instance, the appellant's position is that the offences in question, for which the appellant has been convicted in Kuwait, are inherently political, for the reasons set out above. Ms Laughton notes that the charges were not common law offences, such as murder or theft but, rather,

included charges of insulting the Emir, undermining judicial confidence, deliberately circulating false or malicious news abroad and deliberately misusing his phone. Ms Laughton adds that the charges, and the convictions, are the very same offences which have been condemned by human rights organisations as being used to suppress dissent, as addressed above.

347. Ms Laughton argues that the prosecution of the appellant in Kuwait was in relation to the exercise of fundamental human rights; namely, freedom of expression. It is also argued, on his behalf, that there is political motivation behind the prosecutions and convictions and that the Fintas Group trial itself was flagrantly unfair, the appellant having no prospect of being acquitted. Further, Ms Laughton argues that the punishment itself is disproportionate, the appellant having been sentenced to 10 years' imprisonment, which is in excess of the maximum penalty and which is manifestly disproportionate to the offences for which the appellant was convicted. It is also noted that the appellant received a further 10-year sentence for leaving Kuwait when a travel ban was in place, which is also, it is argued, disproportionate, the appellant in any event disputing the claim that there was any such travel ban in place at the point that he left Kuwait. I would add, bearing in mind Mr Clarke's submissions, that it is far from clear that the appellant was sentenced to 10 years in prison for having left Kuwait in breach of a travel ban but, again, I do not find this issue to be determinative.

348. The Convention reason relied upon by the appellant is that of actual or imputed political opinion. It is contended on his behalf that there are three motives for the prospective persecution to which the appellant would be likely to be subjected, if returned to Kuwait. First, it is argued that such persecution would arise as a result of the political power struggle between Sheikh Ahmed and Sheikh Nasser, as clearly set out in the expert evidence. There appears to be no argument or disagreement over the fact that the current Emir and the Crown Prince have sided with Sheikh Nasser. Thus, it is argued that the persecution which the appellant would face would be for actual political opinion; namely his clear support for Sheikh Ahmed, a political rival.

349. Second, it is argued, on the appellant's behalf, that, in Kuwait, any criticism of the government or the judiciary is seen as criticism of the State and, by extension, of the Emir and that, consequently, it is both politicised and criminalised. I consider that the expert evidence supports such contention.

350. Third and finally, it is argued that the exposure of corruption amounts to a manifestation of a political belief. It is contended that the appellant's acts, in attempting to expose corruption within the very highest echelons of power in Kuwait, amount to a direct challenge to the authority of the Kuwaiti State.

Deprivation of citizenship and risk of transfer to Jordan

351. One of the limbs of the appellant's case is his claim that there is a risk that, should he be removed Kuwait, he would be stripped of his Kuwaiti citizenship, which would then render him stateless and at risk also of being removed by the Kuwaiti authorities to Jordan, where he also, of course, faces criminal charges. His

argument is that he would also face persecution in Jordan. The risk to the appellant, of being stripped of such Kuwaiti citizenship, is referred to in the expert reports.

352. At [81] of her skeleton argument, Ms Laughton refers to the said interview with Mazen Jarrah Al-Sabah, a general in the Kuwaiti police, who stated: "*We have stripped over 900 citizens from their citizenship... We strip citizens if citizen is a threat to our leadership and political system*" (B1 Tab 1).

353. At [82] of her skeleton argument, reference is made to [85] of Dr Ulrichsen's report, wherein he states:

> "85 ... Given the frequency with which the Kuwaiti government has withdrawn citizenship from its citizens on several dozen occasions since 2014, and has used this tactic against other people associated with Sheikh Ahmad al-Fahd and Musallam al-Barak (such as Ahmad Jabir al-Shammari and Sa'ad al-Ajmi), it is highly likely that the Kuwaiti government would apply the same penalty to Mr. al-Haroun should he be forced to return to Kuwait, rendering him stateless in breach of international obligations and increasing exponentially his vulnerability to official mistreatment and denial of due process both in Kuwait and in Jordan."

354. At [83] of her skeleton argument, Ms Laughton also refers to [47b.] of Dr Yom's report, wherein he confirms:

> "47b. ... the Kuwaiti state has also clamped down upon opposition by revoking citizenship. The Nationality Law (No. 15 of 1959) empowers the Interior Ministry to withdraw the nationality of any citizen who undermines the economy, society, or national security. There is no appeals process for the withdrawal of nationality. Only the executive can restore citizenship through a pardon - an equally arbitrary act that has no judicial or legislative mechanism of oversight. The justification given by its defenders is one of preserving stability, with one official recently claiming that more revocations were needed because 300,000 of Kuwait's 1.3 million citizens allegedly held forged nationality papers. Curiously, however, this practice has only become commonplace since the Arab Spring, and seems to only target political dissidents. The former owner of *Al-Yawm*, Ahmad al-Shammari, represents one example that resulted from the feud between Sheikh Nasser and Sheikh Ahmad **(see para. 23c)**. There are hundreds of others, however. One such target, Abdullah al-Barghash, was a former MP who saw dozens of his family members also lose Kuwaiti citizenship. Another activist and affiliate of Musallam al-Barrak, Saad al-'Ajmi, was deported to Saudi Arabia as further punishment. To my mind, the only reason Musallam al-Barrak has avoided this fate is his sheer popularity from past activities as an elected legislator, one that has made him well-known to international media and human rights monitors. However, HAH is not a public figure, being neither a parliamentarian nor well-known outside of Kuwait. For that reason, I believe the withdrawal of his Kuwaiti citizenship as an additional form of political retribution by the royal executive is extremely plausible"

355. I consider it worthwhile and appropriate setting out [23c.] of Dr Yom's report, as it is pertinent to what he states at [47b.] and it is also relevant to a consideration of the claimed political elements of the appellant's case. It is a paragraph which is also consistent specifically with Sheikh Khalifa's evidence, set out above. It follows:

> "23.c. There are no more independent newspapers perceived to be sympathetic to opposition, as authorities exploited the Press and Publications Law to shutter critical outlets **(see para. 47.a)**. Two of the last were *Al-Watan*, the largest circulated daily, which was part of a media conglomerate that included an eponymous satellite TV station, and owned by one of HAH's co-defendants, Sheikh Khalifa Ali al-Khalifa al-Sabah); and *Alam al-Yawm* (also part of a larger media group with an eponymous satellite TV station, and owned by Ahmad al-Shammari, a supporter of Sheikh Ahmad). The Ministry of Information revoked the license of the al-*Yawm* group in July 2014 after it broached (*sic?*) the media blackout to report on the

videotape scandal; the same month, al-Shammari and his family (including four children) lost their Kuwaiti citizenship. In January 2015, the Ministries of Information and Commerce revoked the licensing of the *Watan* group shortly after Sheikh Khalifa - also a member of Sheikh Ahmad's investigative team - testified during the official investigation, as set out in his witness statement. It is notable that Sheikh Khalifa descends from a respectable political line within the Sabah family. His father, Sheikh Ali, is the former Minister of Oil, a sensitive and important cabinet post reserved for the most competent and loyal Sabah princes, since the Oil Ministry manages the hydrocarbon sector - the lifeblood of the entire economy and the source of the Sabah dynasty's fortune. By contrast, newspapers perceived to be financially supported by Sheikh Nasser and his allies, such as *Al-Horiyah*, *Al-Sabah and Al-Rai* (which is published by a close relative of the Khurafi family), suffered no such shutdowns."

356. At [84] of her skeleton argument, Ms Laughton refers to the Court of Appeal's judgment in EB (Ethiopia) v SSHD [2007] EWCA Civ 809, it being held, at [67] thereof:

"67. The reason is that, if a State by executive action deprives a citizen of her citizenship, that does away with that citizen's individual rights which attach to her citizenship. One of those most basic rights is to be able freely to leave and freely to re-enter one's country. (There may well be others such as the right to vote.) Different considerations might arise if citizens were deprived of their nationality by duly constituted legislation or proper judicial decision but a deprivation by executive action will almost always be arbitrary and, if EB had in fact been deprived of her citizenship by the removal of her identity documents by state agents, it would certainly have been arbitrary."

357. Ms Laughton's argument is that, in circumstances where deprivation of citizenship is a punishment for the expression of political dissent, then it clearly amounts to persecution. I agree with that indication and the respondent does not disagree with it. However, the respondent's position is that it is not reasonably likely that the appellant will be deprived of his citizenship, for reasons set out below.

358. As indicated, it is also argued, on the appellant's behalf, that there is a risk that the appellant, having been deprived of his Kuwaiti citizenship, would then be transferred to Jordan by Kuwait, in order to face criminal charges in Jordan. At [86] of her skeleton argument, Ms Laughton acknowledges that, in general, the Kuwaiti constitution prevents extradition of a Kuwaiti citizen. However, her argument is that it is clear that the appellant's case is an extremely unusual one, involving state persecution at the very highest level. Thus, it is contended on the appellant's behalf that, if he is deprived of his citizenship, then it is clear that there is a reasonable likelihood that he will be extradited to Jordan. I note that the risk of deprivation of Kuwaiti citizenship is also confirmed by the appellant's expert evidence, as referred to above.

359. At [87] of her skeleton argument, Ms Laughton also argues that, even if the appellant is not deprived of his citizenship, there is still a real risk that he would be transferred to Jordan, bearing in mind that there has been a high level of cooperation between Jordan and Kuwait. An example of this is given, with reference to a letter, dated 12 April 2015, from the Kuwait Public Prosecutor (B4 Tab 105), which states that there is an international arrest warrant from Jordan and ordering the arrest of the appellant and for him to be brought to Kuwait, in order to be handed over to Jordan. I have read the translation of that letter (B4 Tab 105 p 374) and I am satisfied that that letter states exactly as is indicated by Ms Laughton. Ms Laughton argues that the content of that letter "*is the clearest possible evidence*"

that Kuwait intended to extradite the appellant, despite their constitution. I accept that it is evidence which is materially supportive of such contention at the time that that letter was written. Of course, I have to consider the situation as at the date of hearing, which includes the fact that the appellant has now been sentenced to a lengthy period of imprisonment in Kuwait, as noted by Mr Clarke.

360. At [60] of his skeleton argument, Mr Clarke contends that the appellant's claim, that he will be deprived of Kuwaiti citizenship, is wholly unevidenced. He notes that the appellant has already been convicted and sentenced in Kuwait and that there has been no indication at all from the Kuwaiti authorities that they have any intention of depriving him of his Kuwaiti citizenship. He adds that it defies logic that the Kuwaiti government would wait for the appellant to return to Kuwait, only then to deprive him of citizenship. At [61] of his skeleton argument, Mr Clarke takes note of the said letter of the Kuwaiti Public Prosecutor but notes that that letter is dated 12 April 2015, prior to any prosecutions or convictions in Kuwait.

361. Also at [87] of Ms Laughton's skeleton argument, she refers to *Al Rai* newspaper, on 18 April 2015, which indicates that the head of the Felony Criminal Investigation Department was organising efforts with colleagues in Jordan and sending a delegation to the Jordanians, as they might have a better chance of capturing the appellant. Reference is made to *Al Rai* newspaper (it is actually the *Arab Times*), on 1 May 2015, referring to the fact that Jordan may be successful in returning the appellant from Britain because of a treaty between the two countries (B4 Tab 107 & B1 Tab 14 p 480). It is argued that this evidence again demonstrates cooperation at the very highest level between Kuwait and Jordan and I accept that it is strong evidence to support the indication that, in 2015, such may very well have been the intent of Jordan and Kuwait. However, I reiterate the fact that, since then, the appellant has been convicted and sentenced to a lengthy period of imprisonment in Kuwait, which was not the case in 2015. Such does not, of course, preclude the possibility of Jordan seeking the appellant's extradition from the UK, if it is deemed to be unsafe for the appellant to be removed to Kuwait, although such has not, of course, occurred and is, to an extent, speculative.

362. In oral submissions at the hearing, Ms Laughton noted Mr Clarke's contention, that deprivation of the appellant's Kuwaiti citizenship was no longer reasonably likely, as the Kuwaiti authorities had not deprived him to date of such citizenship. However, Ms Laughton argued that Mr Clarke's submission upon this point failed to take into account the fact that, were the Kuwaiti authorities to deprive him of his citizenship prior to his prospective removal to Kuwait, then such would remove the prospect of him being removed to Kuwait. I find such argument to have arguable merit and, having taken into account the expert evidence upon the issue of deprivation of citizenship, which includes the Kuwaiti state's current propensity to deprive individuals of such citizenship, I conclude that there is a real risk of such happening to the appellant, to the requisite lower standard of proof.

363. In any event, the appellant's position, as set out at [88] of Ms Laughton's skeleton argument, is that, if the appellant is extradited to Jordan, then there is a clear risk that he would suffer ill-treatment in Jordan. In that regard, Ms Laughton places reliance upon [100]-[139] of the appellant's solicitors' April 2016 submissions, as well as the statements of Mr Khreis. Ms Laughton notes that this

aspect of the appellant's claim is not referred to at all in the RFRL, despite it forming part of his protection claim as submitted to the respondent in 2016. I note that, more specifically, the question of potential risk to the appellant of ill-treatment in Jordan, is set out at [118]-[134] of the April 2016 submissions, which submissions, in part, rely upon [93] & [95] of Dr Ulrichsen's report. For the sake of completeness, I set out those paragraphs of the 2016 submissions in full, as they are relevant to my overall findings in the appeal, which follow:

"118. The background evidence is clear that there is a real risk of torture of detainees in torture (*sic*). In December 2011, Felice Gaer, the Rapporteur for Follow-up on Concluding Observations at the Committee against Torture (under the auspices of the UN High Commissioner for Human Rights), addressed a letter from the UN Committee against Torture to Jordan's Deputy Permanent Resident to the UN Office in Geneva that stated that

"The Committee [against Torture] is deeply concerned by the numerous, consistent and credible allegations of a widespread and routine practice of torture and ill-treatment of detainees in detention facilities, including facilities under the control of the General Intelligence Directorate and the Criminal Investigations Department. The Committee is further concerned that such allegations are seldom investigated and prosecuted and there would appear to be a climate of impunity resulting in the lack of meaningful disciplinary action or criminal prosecution against persons of authority accused of acts specified in the Convention...

... The Committee expresses its concern at the high number of complaints of torture and ill-treatment by law enforcement, security, intelligence and prison officials, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are to be investigated."

119. A *Human Rights Watch* report, entitled 'Torture and Impunity in Jordan's Prisons: Reforms Fail to Tackle Widespread Abuse,' dated 2008 reported that they had uncovered instances of torture at all seven of the prisons in Jordan (out of ten in total in the country) that their investigative team had visited, and that no fewer than 66 out of 110 prisoners they interviewed 'told us that they had experienced some form of torture or ill-treatment at the hands of guards' and concluded that 'torture and ill-treatment of prisoners by guards remained a widespread and regular occurrence throughout Jordan's prisons.

120. The annual 'Freedom in the World' report on Jordan produced by Freedom House states:

"Prison conditions are poor, and inmates reportedly undergo severe beatings and other abuse from guards. Torture allegations are rarely prosecuted or result only in minor disciplinary penalties."

121. Further, the Freedom House report also illustrates that the rule of law and right to due process are selectively applied, at best, and wilfully ignored with impunity when necessary

"The judiciary is subject to executive influence through the Justice Ministry and the Higher Judiciary Council, most of whose members are appointed by the King. Provincial governors can order administrative detention for up to one year under a 1954 Crime Prevention Law that leaves little room for appeal."

122. The expert report also refers to a briefing paper for the Arab Reform Initiative which concluded that 'corruption is inherent in the state regime' as

"In Jordan, a network of laws is in place that acts to entrench corruption. A complex, interlinked system, this network of laws undermines the oversight of the judiciary and the overarching constitutional and legal norms that safeguard the rule of law. Oversight and its related tools remain in the hands of the executive authority to mobilise when, against whom, and in which case it wishes."

123. The paper found also that

"The laws of the Anti-Corruption Commission and the State Security Court, and the Economic Crimes Law, which are mutually referential, guarantee that the government maintains its grasp over the prosecution of crimes related to public funds. Their application increases the spread of corruption by

granting extraordinary powers to bodies that infringe upon the independence of the civil judiciary, and the rights and personal freedoms of individuals, on the pretext of combating corruption and "supreme national interests"."

364. [124] of the April 2016 submissions reiterates what has been set out above and I have therefore not quoted it here. Those submissions continue at [125], with reference to Dr Ulrichsen's report, in which, at [67]-[70], he confirms the increasingly close relationship between Jordan and Kuwait. At [126] of those submissions, indication is given that Dr Ulrichsen refers to the risk of the appellant being stripped of his Kuwaiti citizenship, at which point he would be liable to be extradited in any event to Jordan. The submissions continue at [127] *et sequor*, which follow:

"127. If HAH is extradited to Jordan, it is clear he will be at risk of serious harm. He is facing serious criminal charges in an attempt to discredit him during the arbitration proceedings. The proceedings are politically and economically motivated. This is evident due to the fact that:

- The need for the Jordanians to discredit the e-mails sent in the arbitration proceedings and to discredit HAH ;
- The fact that the torture of Mr Al Amri was carried out under the supervision of and direction of the SSIF lawyers;
- The enormous pressure, including torture placed upon suspects to implicate HAH ;
- The fact that the subsequent charges against HAH were sent to the arbitrators;
- The fact that the trial is being delayed and "strung out" for no good reason.

128. It is important to note that others charged in the same proceedings have been detained and tortured. It is therefore highly likely that the same will occur to HAH . This is corroborated by Tamer Khreis who stated in his statement (Tab 43):

"I have no doubt that they will use all the means at their disposal to break him to coerce him into giving false evidence against KRIC to run their propaganda war against Qatar in the media. I have no doubt that they will torture him with the same methods they used on Nader (or worse), either by beating him and/or electrocuting him. He will not have recourse to lawyers or be allowed to be seen by anyone other than the interrogators. They can keep him in detention without sending him to the court for many days in violation of the procedural law to the contrary and they can obtain illegal permissions from the governor to keep him at their offices for public safety. Their conduct towards HAH *is unlikely to be more humane than that afforded to the two Lebanese accused in this case or Nader whose mistreatment has been documented. The digital media is full of reports about detainees dying in custody as a result of torture and in Jordanian prisons generally due to inhumane conditions. Given the nature of this case it is most likely that* HAH *will be treated most harshly by the Jordanian authorities at all stages, from arrest to conviction, sentencing and imprisonment, without any regard for gross human rights violations. These violations are often highlighted by international human rights NGOs and government departments by they are too (sic) albeit the system in Jordan remains the same."*

129. Importantly, as noted by the expert report (at §77) constitutional amendments to the 2006 anti-terrorism law that were rushed through the Jordanian parliament in 2014 expanded the jurisdiction of the State Security Court far beyond its initial remit (of crimes of high espionage, drugs, terrorism, treason, and currency counterfeiting) to encompass 'nonviolent offences, such as using information networks to support, promote, or fund terrorism, as well as acts to harm Jordan's relations with a foreign country.' As clearly stated by Tamer Khreis in his statement, the crimes have been classified as a national economic crime. As noted by the expert, this would fall into the 'economic security crimes' category and thus be a matter for the State Security Court, which would deny HAH any right of due process, transparency, or appeal (§80 of the expert report).

130. At §81 of the report, the expert concludes that:

"As such, it appears extremely likely that the charges made against HAH ... in Jordan are not only politically motivated but also part of the Kuwaiti attempt to utilise the Jordan-UK extradition treaty (and Interpol) as a means of capturing HAH ..., particularly given that Kuwait does not have a similar treaty with the United Kingdom (although the Kuwaiti government was reported in March 2015 to be actively seeking an extradition treaty with the UK)."

131. It is submitted that HAH is at risk of:

(i) pre-trial detention based on unfounded criminal proceedings;

(ii) ill-treatment contrary to article 3 ECHR while in detention;

(iii) a risk of ill-treatment in any attempt to secure a 'confession';

(iv) deprivation of citizenship;

(v) unlawful deprivation of liberty contrary to article 5 ECHR;

(vi) breach of the right to a fair trial contrary to article 6 ECHR;

(vii) a long and unjustified prison sentence; and

(viii) a real risk of the death penalty.

132. This is corroborated by the background evidence (see above).

133. It is further submitted that HAH is likely to be tried using the evidence that was obtained by Mr Al Amri, evidence that was obtained by torture. As was clearly held by the ECtHR in Othman (Aby Qatada) v the UK, the use of evidence obtained by torture amounts to a breach of Article 6:

"263...Accordingly, it is appropriate to consider at the outset whether the use of trial of evidence obtained by torture would amount to a flagrant denial of justice. In common with the Court of Appeal (see paragraph 51 above), the Court considers that it would."

134. The experts clear conclusions at §93 and 95 is:

"Should HAH ... be forced to return to Kuwait or extradited to Jordan, the fact that the crimes he has been accused of fall under the expansive State Security label in both countries mean that he almost certainly would be subject to mistreatment in detention. The use of torture in Kuwait and in Jordan has been documented at various points in this Expert Report, which also has noted the added vulnerability of HAH ... should the Kuwaiti government continue with its practice of stripping citizenship from government critics associated with Sheikh Ahmad al-Fahd and rendering HAH stateless.

...

Moreover, with Jordan and Kuwait both having resumed capital punishment (in 2013 and 2014 after a hiatus of six and eight years respectively), ... Both Kuwait and Jordan have ended their moratorium on capital punishment and executed people convicted of crimes other than murder in the last three years, and there is little clarity in either state over which crimes carry the death penalty and under what circumstances that penalty might be imposed, beyond a general sense that they include crimes that fall under the rubric of State Security - as the charges laid against HAH ... in Kuwait and almost certainly in Jordan would too."

365. I reiterate that, of course, the appellant has not been sentenced to the death penalty in Kuwait. The extracts from the April 2016 submissions, which in turn refer to elements of Dr Ulrichsen's report, are consistent with Mr Khreis', and other, evidence, with regard to the claimed torture of Mr Al Amri whilst in detention in Jordan which, of course, and in turn, is relevant to the question of the reliability of,

and the motive behind, the Jordanian prosecution of the appellant and others. In turn, it impacts upon the reason for the instigation of the Swiss prosecution. What is set out above is also, of course, relevant to the question of the appellant's prospective removal to Jordan, whether immediately or subsequently, should he be removed to Kuwait. It is also relevant to his Article 3 appeal, in terms of his claimed fear of ill-treatment, whether it be in Kuwait, or subsequently in Jordan. I have taken it into account as part of my consideration of the evidence as a whole.

Further elements of the respondent's case and evidence developed at the hearing

366. As I have indicated above, the respondent's skeleton argument was not produced until a very late stage indeed, in breach of the Tribunal's directions. Ms Laughton gave initial indication that she was potentially disadvantaged by this, having noted that arguments raised within Mr Clarke's skeleton argument should have been raised at an earlier stage, thereby providing her with an opportunity to have prepared to address those arguments in advance. As indicated, I provided Ms Laughton with the opportunity to consider her position, after which she indicated that the appellant wished to proceed with the hearing. I have set out below the salient arguments raised by Mr Clarke in his skeleton argument, in addition to referring to oral evidence and submissions made at the hearing itself, which address those issues. The issues in question are relevant to, and impinge upon, the evidence and issues to which I have already referred within this decision.

367. As referred to by Mr Clarke, at [26]-[36] of his skeleton argument, it is the respondent's position that the Trekell arbitration, between Trekell and Sheikh Ahmed, was, indeed a sham, the respondent's position being that, consequently, the subsequent Swiss prosecution of the appellant and others was entirely justified and appropriate, as were the various prosecutions brought against the appellant in Kuwait. In other words, the respondent's position is that the appellant's claim, that all charges brought against him are politically motivated, is without foundation.

368. At [26] of his skeleton argument, Mr Clarke notes that the findings in the Trekell arbitration are the cornerstone of the appellant's claim that the videotapes in question are genuine and that, as such, the consequential prosecutions in Kuwait were politically motivated and the trials fixed. Mr Clarke notes that, in WS4, at [7] and [49] (CB Tab 13), the appellant claims that the impending Swiss prosecution has been manufactured by Sheikh Nasser and the Al Kharafi family, in order to "*discredit the video tapes in every jurisdiction*".

369. At [27] of his skeleton argument, Mr Clarke submits that both parties to the Trekell arbitration, Trekell and Sheikh Ahmed, had a vested interest in its outcome; namely, the same outcome. At [3]-[4] of his skeleton argument, Mr Clarke states as follows:

> "3. The Appellant states that in late 2012 he was approached by the then Deputy Prime Minister Sheikh Ahmed Hahad Al-Sabah ... to assist in verifying evidence of corruption "*that might affect national security*" (AIR9). The Appellant was involved in this investigation from mid 2013 - March 2015, when (Sheikh Ahmed) gave a public apology on TV (AIR23).
>
> 4. To facilitate the investigation a Special Purpose Vehicle (SPV) company was used (WS, CB 1 @197). This company was Trekell Group LLC, it was created by an associate of the Appellant's

working at Holman Willans Geneva (*this is a reference to Matthew Parish - my words*) and was controlled by an employee of the Appellant's "*before transferred to the investigators as a part of their remuneration*" (*this appears to be a reference to Babu – my words*). The Appellant confirms the company was created to protect the investigators and that (Sheikh Ahmed) chose this company from a list created by Matthew Parish. At AIR19 the Appellant confirms that (Sheikh Ahmed) chose the Appellant because of his network with different law firms."

370. At the hearing, it was confirmed that Matthew Parish had previously been a lawyer with Holman Fenwick Willans lawyers in Geneva but that he subsequently set up his own law firm, Gentium Law, as referred to above. At [197] of WS1 (CB Tab 1), as referred to in the preceding paragraph, the appellant states as follows:

"197. In the interim, Sheikh Ahmed had signed a contract on 28 March 2014 with an American company or Special Purpose Vehicle "SPV", Trekell Group LLC. Trekell agreed to provide certain investigative and consultancy services in exchange for keeping any profits it may earn from publishing the video clips. Sheikh Ahmed chose Trekell from a list of investigative companies provided and created by Matthew Parish team to camouflage group of investigators for their own safety especially that are helping us in finding and trace assets and funds that are mentioned in the tape, Terkell (*sic*) was first created by the help of one of the Associates working at Holman Fenwick Willans Geneva and controlled by one of my employees before transferred to the investigators as a part of their remuneration for their services and findings, Terkell (*sic*) was created as a solution to make sure that certain investigators will be protected especially those who were working in Kuwait and the Middle East ..."

371. As indicated above, it is common ground that, on 28 April 2014, an addendum clause was added to the contract dated 28 March 2014, between Sheikh Ahmed and Trekell, which stated:

"A difference having arisen between the parties undersigned concerning the Consultancy and Advisory Agreement between the parties dated 28 March 2014, and in particular the authenticity and content of the video-clips transferred pursuant thereto, the parties hereby agree that the difference shall be referred to and finally resolved by arbitration in Geneva under the terms Chapter 12 of the Swiss Federal Private International Law Act of 1987. ..."

372. In other words, an arbitration clause was added to the said contract, to enable the parties to go to arbitration. Again as noted above, SB was appointed as the sole arbitrator in those proceedings. (see the final arbitration award at B4 Tab 79, pp6-7). Clause 4 of the arbitration award begins by stating: "*Initially the Contract did not provide for the governing Law and Forum. However, when the Claimant (*namely Trekell - my words*) questioned the authenticity of the videos, by Addendum Number 1 to the Contract dated 28 April 2014 the parties agreed as follows:*" There then follows the amendment set out above, making provision for the arbitration.

373. At this stage, I consider it worthwhile setting out [5]-[9] of the Trekell arbitration award, as it is relevant to an assessment of the appellant's credibility in relation to this specific issue, as raised by Mr Clarke in his skeleton argument and in his subsequent submissions. The Claimant is, of course, Trekell and the Respondent is, of course, Sheikh Ahmed:

"5. The parties were essentially in agreement on all of the procedural issues. The only issue of substance for me to decide has been whether upon the materials before me there is any evidence or reason to believe that the video footage is inauthentic or tampered with.

6. In support of its claims the Claimant relied on various newspaper articles in Kuwaiti and other media. It seems that the videos have been reviewed in a closed session by a 15 Kuwaiti MPs together with the Kuwaiti Parliament Speaker, Mr Marzouk Al-Ghanem and the Prime Minister, Jaber Al-Mubarak Al-Hamad Al-Sabah. Mr Marzouk said that the Prime Minister "*showed reports by specialized foreign sides affirming without doubt that the audio recordings and the videotapes which they examined had been tampered with and do not represent genuine and reliable copies*". [Arab Time Kuwait English Daily "All video, audio tampered with 'SPEAKER DEFERS TO PROSECUTION ON 'COUP TAPE'", 15 April 2014].

7. On the basis of the foregoing the Claimant claimed that it should be compensates (*sic*) for the profits that it had lost as a result of not being able to publish the videos and costs of these proceedings.

8. The Respondent denied the Claimant's claims. The Respondent asserted that the videos were genuine and should be presumed to be genuine until there is cogent evidence to the contrary.

9. The Respondent said the expert reports based on which the Prime Minister concluded that the videos were not genuine have never been disclosed. Also, in the Respondent's view, neither the Prime Minister, nor the Speaker, nor his close circle of 15 MPs could give an objective judgment as to the authenticity of the videos, because those videos could indicate that the parliamentary elections which ultimately resulted in them coming to power were illegally interfered with."

374. Mr Clarke's contention, as set out at [27] of his skeleton argument, which was developed during his oral submissions, is that both Trekell and Sheikh Ahmed had a vested interest in the outcome of the Trekell arbitration, as both stood to gain from a finding that the videos were genuine; Trekell because, as confirmed in the arbitration award (see [7] of the Trekell arbitration award set out above), it intended to make money from publication of the tapes, and Sheikh Ahmed, because of his personal political agenda, as recognised by the appellant's own experts.

375. At [28] of his skeleton argument, Mr Clarke states:

"28. It is submitted that the chronology of events reinforces this view. As set out at paragraph 7 above, the Appellant asserts that tapes were obtained at the end of 2013 and investigations into authenticity began straight away, presumably under the cover of Trekell. On 28/3/14 (Sheikh Ahmed) signs a contract with Trekell and on the 28/4/14 the contract was amended to allow Trekell to sue (Sheikh Ahmed) for losses arising from the videos being nongenuine. It is wholly incredible that Trekell would legitimately bring an action questioning the genuineness of the videos when Trekell was apparently created to investigate whether the videos were genuine in the first place. It is equally incredible that (Sheikh Ahmed) would update a contract purely to put himself at financial risk."

376. Mr Clarke proceeds, at [29]-[30] of his skeleton, in the following terms:

"29. It is submitted that the evidence of the Arbitration was not tested, it was agreed. As set out at paragraph 9 above, the parties appointed joint experts (*namely, companies called CY40R, Afentis Forensics and Emmerson Associates - my words*) and the Arbitrator recognised "*the only issue of substance for me to decide has been whether upon the materials before me there is any evidence or reason to believe that the video footage is inauthentic or tampered with*". Whilst it is recognised that experts are often agreed, what is astonishing is that the claimant, Trekell, did not seek to challenge the reports in any way; despite the fact that there were newspaper articles in the public domain confirming the videos as false and the obvious impact this would have on revenue from publishing the impugned videos. After all Trekell allegedly brought the litigation for "*compensation for the profits that it had lost as a result of not being able to publish the videos and the cost of these proceedings.*" (judgment p6)

30. It is submitted, as set out at paragraph 4 above, Trekell was controlled by an employee of the Appellant's *"before transfer to the investigators as a part of their remuneration"* (WS, CB1 @ 197). The investigators in question included the Appellant (AIR 19), Athbi F Al Sabah, Ahmed D Al Sabah, Khalifa Ali Al Sabah, Falah Al Hajraf, Abdul Mohsen Al Ateeqi, Yousef Al Essa (AIR17). At all times the Appellant was therefore in control of Trekell and had a financial interest in the outcome of the Swiss arbitration."

377. Subsequently in his skeleton argument, and also in his oral submissions, Mr Clarke also seeks, as part of the contention that the Trekell arbitration was a sham, to argue that the expert evidence produced and relied upon in that arbitration was wholly inadequate. At [31]-[36] of his skeleton argument, he states:

"31. In relation to the "expert evidence" relied upon (bundle 4, Tab 79), it is submitted that it is wholly inadequate. Two key observations that are unfathomably not taken into account in the reports or the arbitration are: First, there is no audit trail of the videos at all prior to memory sticks being given to the writers of the reports. The Appellant's evidence as set out in paragraph 5 above is that he does not know who even made the films. All the Appellant knows is that copies of these films have at some point been on a Swiss lawyer's laptop. Taking the Appellant's evidence at its highest these films were possibly 2 years old by the time he received any copies. This raises 2 sub-points, first, none of the impugned people allegedly in the films will ever have the opportunity to attest to where they were at the material times. Second, there is clearly no record of what processes occurred from date of filming up until the date the memory sticks are given to the experts. The second key observation is that the experts at no point compare audio from the impugned people against the audio in the films.

32. The first report from CY4OR was undertaken by Michelle Bowman. The criticisms @33 above (*sic*) are brought into sharp focus when considering the detail of this report. The report deals with 6 video clip (*sic*) and fails to deal with any of the points addressed @33 above (*sic*). At para 5.1 the first clip in question focuses only on a door frame, no one is visible. Clip 5.2 *"voices can be heard in the background and two individuals are seen in an adjacent room"*. It is submitted that it is somewhat surprising that the expert does not even indicate whether the voices are deemed to emanate from the individuals in the adjacent room or even confirm whether the mouths of those individuals are moving in sync with the audio. Clips 5.3, 5.4, 5.5 and 5.6 the expert fails to even identify what is in these clips, if anything at all. It is submitted that this report is worthless.

33. The second report from Ross Patel at Media analysis (*this is the Afentis report - my words*), whilst recognising the importance of an audit trail at p5 and the fact that the videos do not have an audit trail at p8, fails entirely to consider any processes that could have been under taken (*sic*) during the period before receipt of the memory stick that could explain any of his findings. It would appear that the videos identified @p7 of the report are the same videos considered by Michelle Bowman. At p14 the expert concludes *"the author has not inspected the handling procedures and chain of custody records.....as such no comment can be made as to the provenance of the exhibits.....without access to digital versions of the original/mater evidence exhibits, it is not possible to calculate the MD5 fingerprints for verifying the integrity of the recordings served...."* It is submitted in light of these findings that the report cannot support the Appellant's claim that the videos are genuine.

34. The next report by N Millar is a facial comparison report (*this is the Emmerson Associates report - my words*). At p5 Mr Miller confirms the report is specific to facial comparisons of Jasim Al Kharafi and Nasser Mohamad Al Sabah to individuals contained in 6 clips of video. It is more than a little surprising that this report, which is specific to visual identification, appears to deal with videos other than those considered within the Audio reports addressed @34 and 35 above (*sic*) -as the clips are not identified as the same. The summary of the report found at 107 of tab79 of bundle 4 finds:

- At para 1: *"At first glance, there is a noticeable similarity between Jasim Al Kharafi and male 1. However there is limited detail of the facial features and landmarks. Some of*

the more obvious features such as hairline/baldness, right ear can be identified which would not allow me to totally rule out Jasim Kharifi". It is submitted on the basis of *"not being able to totally rule out Jasim Al Kharafi as a candidate for male 1"* the expert finds @2 "moderate support" for Al Kharafi and male 1 being the same person.

- At para 3: *"There is limited facial detail and landmarks of Nasser Mohamad Al Sabah available. However, some of the more obvious features such as the appearance of the hair; its density and stylistic appearance, the build and body shape, the appearance of the eyebrows, I believe his strongest characteristic, do not allow me to totally rule out Nasser Mohamad Al Sabah as a candidate for male 2."* It is submitted that again the expert on the basis of *"not being able to totally rule out Jasim Al Kharafi as a candidate for male 2"* finds in this instance the imagery provides strong support.

35. It is submitted that the evidence above is hopelessly inadequate in proving the "genuineness" of the impugned videos. A factor which is somewhat astonishing in its absence is that the Appellant claims at AIR32 that *"the Swiss police forensic department which is the Swiss lab for forensics, that facility had a look at those videos and approved their authenticity".* This report was not relied on at the arbitration and is not in evidence at the asylum appeal. Equally in A's WS@187 (CB 1) there is reference to *"The French intelligence confirmed the tapes to be genuine".* Again this evidence was not relied on at the arbitration and is not in evidence at the asylum appeal.

36. It is of note that the Kuwaiti Court in the Fintas trial found that actors had been used (judgment p9). His finding does not appear to have been challenged by any of the defendant's in the Fintas trial."

378. I have, of course, taken into account fully the extensive written and oral submissions of both representatives. Despite what is set out above, in terms of Mr Clarke's criticism of the expert evidence relied upon by the arbitrator, SB, in the Trekell arbitration, as elaborated upon in Mr Clarke's oral submissions, I am satisfied that the key issue, in relation to this element of the evidence, and in terms of the issues to be determined in this appeal, is not whether the videotapes in question are genuine. Rather, the key issue is whether the arbitrator could conceivably have reached the conclusion which he did, based upon the available evidence.

379. Mr Clarke is incorrect, at [35] of his skeleton argument, in stating that the Swiss police report was not relied upon in the Trekell arbitration. It clearly was, as it is referred to by the arbitrator, in some detail, at [12] & [23] of the arbitration award, as referred to above (B4 Tab 79). The expert reports are annexed to the award. The Trekell arbitration award contains transcripts of the narratives contained in the relevant videos and their translations into English. At [11] of the award, it is confirmed that the parties agreed to appoint the three experts referred to, in order *"to determine the authenticity of the video footage and its audio tracks".* At [12] of the award, the following is stated:

"12. The parties also agreed to request the *Police cantonale, Police de sûreté* (Security Police) of the Vaud canton in Switzerland in collaboration with the Federal Polytechnic University of Lausanne to test one of the reports."

380. At [13] of the award, reference is made to the respondent's counsel, Holman Fenwick Willan, having engaged the experts in question. At [14] of the award, the sole arbitrator, SB, states:

"14. The outcome of this case being for the most part dependent on the conclusions of the reports produced by the party appointed experts, the parties have asked me to attach the expert reports

to the final award and agreed that there should be no oral hearing and that the case should be decided on the papers only."

381. At [21]-[22] of the arbitral award, the arbitrator refers to the CY40R report of Michelle Bowman, as follows:

"21. On 29 April 2014, Ms Michelle Bowman, a forensic investigator in CY40R, produced a report bearing a reference CY4-107590 MB/01 and named WELLES. The report is found in Annex 2 to this award. CY40R randomly selected 6 clips out of the 11 clips provided to it by the Respondent. It conducted the following types of analysis of these clips:

a. frame analysis;
b. critical listening analysis;
c. waveform analysis;
d. phase analysis;
e. spectrum analysis; and
f. frequency analysis.

22. The conclusion of the analysis was:

After completing my analysis of the sample of video clips I chose I have concluded that in my expert opinion there is no evidence to suggest the clips have been tampered with, fabricated or altered in any way."

382. At [23] of the Trekell arbitration award, reference is made to the Swiss police analysis, as follows:

"23. On 15 May 2014 *Police cantonale, Police de sûreté* of the Vaud Canton in Switzerland, having consulted with the Federal Polytechnic University of Lausanne, issued its conclusion on the report which is found in Annex 3 to this award. It provides: ..."

383. There then follows a narrative of the original letter of the Swiss police in French, followed by an English translation, [23] of the award continuing with that translation, as follows:

"... We certify that on 14 May 2014 the ad hoc laboratory of the Federal Polytechnic School of Lausanne reported to us as follows:

"Protocol of verification of authenticity and integrity of the recordings checked on 29 April 2014, ref. CY4-107590, report ref MB/01, case WELLES, produced by CY40R,

- is fully compliant with the standards in force in the country, and the report in question is uncontestable as presented".

No records or documents have been retained.

The matter has not been recorded on our files."

384. At [24] of the arbitral award, reference is made to the Afentis Forensics report, as follows:

"24. On 13 May 2014 Mr Ross Patel, a forensic expert in Afentis Forensics, produced another report on the authenticity of the videos (**Annex 4** hereto). He also randomly selected 6 video clips of the 11 provided to him. His conclusions were that:

The digital code forming each file has been manually reviewed and no discrepancies or elements identified that would suggest modification or revision.

The six selected audio sequences were manually reviewed and found to flow in a normal manner, with no discrepancies or elements which would cause concern or indicate possible manipulation/tampering.

Detailed and sophisticated tests have been conducted upon all available audio media, including frequency modulations, Discreet Fast Fourier Transform (DFFT), frequency scalogram, and Temporal Frequency Analysis (TFA).

No discrepancies were identified nor elements which would cause concern or indicate possible manipulation/tampering.

Detailed assessment and analysis of the structure and form of the audio present in each of the respective digital files, show no signs of modification or manipulation.

In conclusion, for the six (6) selected audio recordings there is no evidence to suggest tampering, revision or modification."

385. At [25] of the arbitral award, the arbitrator, SB, refers to the Emmerson Associates report, in the following terms:

"25. On 22 May 2014 Emmerson Associates produced another report, this time focusing on whether the individuals in the video footage were indeed the former Prime Minister of Kuwait and the former Speaker of Kuwaiti Parliament (**Annex 4**). The conclusions of the report were as follows:

...

5. I have reviewed all of the covert imagery provided to me.

6. I have captured a number of images from the covert imagery and have attempted to extract as much discernible detail as possible to use for comparison with Jasim Al Kharafi and Nasser Mohamad Al Sabah.

7. In regards to Jasim Al Kharafi, at first glance, there is a noticeable similarity between both individuals however, there is limited detail of the facial features and landmarks. Some of the more obvious features such as the hair line/baldness, right ear etc can be identified which would not allow me to totally rule out Jasim Al Kharafi as a candidate for Male 1 or vice versa.

*8. I am of the opinion that the imagery provided when compared to the known reference symmetry, the limited comparable detail available lends **moderate support** bordering on **Support** that Jasim Al Kharafi and Male 1 are the same person.*

9. There is limited facial detail and landmarks of Nasser Mohamad Al Sabah available. However, some of the more obvious features such as the appearance of the hair; its density and stylistic appearance, the build and body shape, the appearance of the eyebrows, I believe his strongest characteristic, do not allow me to totally rule out Nasser Mouhamad Al Sabah as a candidate for Male 2 or vice versa.

*10. I am of the opinion that, when compared to the known reference symmetry, the comparable detail available of the imagery provided lends **Strong Support** that Nasser Mohamad Al Sabah and Male 2 are the same person."*

386. [26]-[28] of the Trekell arbitration award also merit setting out in full, as they constitute a material finding of the arbitrator in that arbitration, which follow:

"26. I have reviewed the foregoing reports. It appears to me that they have been issued by reputable independent companies of international standing who appear to be specialists in their field. Furthermore I note that one of those reports has been the subject of a review by the national

security police of the canton of Vaud and the Federal Polytechnic School of Lausanne who have confirmed its results. In the absence of any evidence placed before me to the contrary, I can therefore only conclude that on the basis of the material before me, the contents of those reports are correct and I have no reason to doubt the authentications those reports provide. In the circumstances the limited issue before me is one which I can only resolve in one way.

27. I am not prepared to conclude that the videos are forged on the basis of the triple hearsay produced by the Claimant (Kuwaiti media - Kuwaiti Parliament Speaker - Prime Minister - expert reports) in the face of the expert reports which indicate that the videos are authentic. Accordingly I conclude that the Respondent was not in breach of his Contract with the Claimant with regard to the authenticity of the videos.

28. The claimant's claim for lost profit therefore fails and so does its claim for the costs of brining (*sic*) of these proceedings."

387. I turn further to Mr Clarke's skeleton argument. At [37]-[40] thereof, I reiterate that he seeks to argue that the Trekell arbitration was a sham, thereby undermining the appellant's credibility. In doing so, he relies upon the warrant of arrest issued by the Swiss authorities, as being evidence supportive of, and consistent with, the respondent's contention that the Trekell arbitration proceedings were a sham. At [37] of his skeleton argument, Mr Clarke refers to the warrant itself, a copy of which appears at H2 of RB, wherein, inter-alia, it is stated that the appellant "*... is charged with having participated, in 2014, in the setting up of a simulated arbitration between TREKELL GROUP LLC and Ahmad FAHAD AL-AHMAD AL-SABAH resulting in an arbitral award dated 28 May 2014, which does not reflect reality.*"

388. At [38] of his skeleton argument, Mr Clarke notes that the co-defendants under that warrant include Matthew Parish (Sheikh Ahmed's lawyer in the arbitration proceedings). Mr Clarke also notes that, in WS1, the appellant confirms: "*Sheikh Ahmed chose Trekell from a list of investigative companies provided and created by Matthew Parish team to camouflage group of investigators*" (CB Tab 1 para 197). Mr Clarke notes that the other defendants, in addition to Matthew Parish and the appellant, are Sergiy Fedorovsky (Trekell's representative at the arbitration proceedings), the arbitrator himself, SB, and Sheikh Ahmad.

389. At [39] of his skeleton argument, Mr Clarke indicates that the warrant describes the appellant's fraud as "*... actively participated in the production of several forged documents (Faux intellectuels" translator's note: documents containing false allegations implying legal consequences), namely an agreement dated 28 March 2014, an arbitration clause dated 28 April 2014 and an Arbitral award dated 28 May 2014. He also participated in the use of the said forged documents, in Switzerland, in particular Geneva, as well as in Great Britain and Kuwait".*

390. At [40] of his skeleton argument, Mr Clarke proceeds by indicating that the evidence relied upon by the Swiss authorities, as noted in the warrant (RB H2), was consequential to raids on the offices of SB, Matthew Parish and Holman Fenwick (the lawyers in Geneva for whom Matthew Parish previously worked). Mr Clarke argues that, in the absence of any evidence of illegality or corruption by the Swiss authorities in the seizure of that evidence, there were serious reasons for considering that the appellant had committed the crimes of which he was accused.

391. In his oral submissions, Mr Clarke elaborated upon, and relied upon, his skeleton argument. He argued that the whole arrangement, in terms of the contract signed between Trekell and Sheikh Ahmed, and the Trekell arbitration, was self-evidently a sham, for additional reasons. Specifically, Mr Clarke noted that Babu, as acknowledged by the appellant in his oral evidence, had been the appellant's employee and that Babu had, according to the appellant's evidence, initially been in control of Trekell. Mr Clarke argued that the fact that the appellant's employee, Babu, had control of Trekell, was clear evidence of the appellant's close involvement in the arbitration and of the appellant controlling the situation.

392. In his oral evidence, the appellant indicated that, although the Trekell arrangement provided for profits to be earned by the investigators, through the medium of Trekell, in terms of the sale of the videotapes, the appellant himself had no profit motive and was involved in the investigation of the videotapes purely in order to expose corruption among certain high-ranking individuals within the Kuwaiti state. Mr Clarke noted the appellant's evidence had been to the effect that the Trekell arbitration was undertaken as a private arbitration, in order to avoid inappropriate publicity. However, Mr Clarke argued that such contention by the appellant lacked credibility, when considered in the context that the investigators, as referred to in the arbitration award, were to gain profits from selling and publicising the videos. Thus, the essence of Mr Clarke's argument was that profit was throughout the motive, in which profit the appellant also intended to share.

393. Also in his oral submissions, Mr Clarke noted that the appellant's evidence was that Trekell was set up in order to protect or camouflage the investigators, who undertook the investigative work, as a medium for the investigators to email and correspond with each other under cover. However, Mr Clarke argued that there was no good reason for Trekell to have been set up for that purpose. He contended that cover could have been provided for the investigative team without Trekell being set up. He noted that the appellant's evidence was that the investigation into the videotapes began in mid-2013, and yet Trekell was not set up until February or March 2014, at which stage the investigation had been ongoing for about six months.

394. Mr Clarke noted that the videotapes were fundamental to the Trekell arbitration and that, for the appellant to indicate that he did not know what was going on with reference to Trekell, at the stage of the prospective arbitration, was not credible, bearing in mind that the arbitration was specific to the appellant's role. Mr Clarke contended that it was evident that the appellant's core role was to deal with the very evidence at the hearing of the Trekell arbitration and yet, in cross-examination, the appellant claimed that he knew nothing about the arbitration or about the clause that enabled Trekell to make money out of the tapes. Mr Clarke submitted that the whole purpose of the arbitration award was to enable Trekell to make money out of those tapes or, alternatively, if that was not the case, then the whole premise of the arbitration was a fraud. He asserted that the appellant intended to make money out of the tapes. He noted that the appellant's declared earnings, during the preceding year, were US$3 million but Mr Clarke noted that the videos themselves had been bought for $11 million, which was substantially more than the appellant's earnings, thereby suggesting that the appellant stood to gain a significant amount of money from his involvement in the videotape investigation.

395. Indeed, in his oral submissions, Mr Clarke noted that, on 14 June 2014, a month after the arbitration award, Sheikh Khalifa appeared on his own media TV, in order to show some of the evidence, which evidence was mainly arbitration evidence, in order to confirm the authenticity of the tapes and included transcripts. He contended that such indicated that there was no intention to keep the findings of the arbitration quiet, even though the appellant's evidence was that the arbitration was undertaken, as the outcome would be secret. He contended that it was clear that the Trekell arbitration outcome was to be used publicly and that the appellant was material to the signing of the contract between Trekell and Sheikh Ahmed, as that contract involved the appellant's employee, Babu.

396. Thus, in essence, Mr Clarke's argument was that the appellant's account, as to why Trekell was set up, lacked credibility and that the real reason why Trekell was set up, was for the purpose of the Trekell arbitration being undertaken, as a simulated arbitration, in order falsely to establish the genuineness of the videotapes, in order to enable the appellant and others to profit from the sale.

397. Additionally, Mr Clarke raised the point that Sheikh Ahmed had a political motive for manufacturing the tapes, bearing in mind the power struggle, as to who ultimately was to succeed as Emir, between him and Sheikh Nasser, Mr Clarke noting that there was also a history of allegations of corruption against Sheikh Ahmed in his own right, as indicated in the expert evidence. Mr Clarke argued that it was not surprising that the appellant and others were subsequently prosecuted in Kuwait, bearing in mind the import of the publication of videotapes which, Mr Clarke contended, were demonstrably false. He contended that the Kuwaiti prosecution was clearly well-founded.

398. As noted by Ms Laughton in her oral submissions, the allegation of corruption previously levelled against Sheikh Ahmed is that referred to at [36] of Dr Ulrichsen's report, which relates to allegations of improprieties in government contracts, leading to Sheikh Ahmed's resignation as Deputy Prime Minister in the first half of 2011. There is no suggestion of any other financial impropriety on his part or, indeed, no evidence produced to suggest that that allegation was actually established or pursued further.

399. Following on from this line of argument, in his oral submissions, Mr Clarke then also proceeded to impugn the expert evidence of CY40R, Afentis Forensics and Emmerson Associates, together with the reliability of the information contained in the Swiss police report relied upon by SB, the sole arbitrator in the Trekell arbitration. Those criticisms were on similar lines to those set out in Mr Clarke's skeleton argument, and do not require specific elaboration at this stage.

400. I consider that Mr Clarke's preceding oral submissions, part of which was to the effect that the Trekell arbitration was obviously a sham, as there was no point in undertaking an arbitration in which both parties wanted the same outcome, should be considered in the context of [72] of Dr Yom's report, wherein he specifically addresses the question of why Trekell was set up. At [71]-[72] of his report, Dr Yom states:

"71. Before delivering the Report's conclusions, it is within my expertise to directly address several arguments within the Home Office's explanation given for the rejection of HAH's asylum application. I believe some assumptions have been made on an incorrect reading of factual circumstances, upon which I wish to briefly comment as an expert on Kuwait.

72. There are doubts regarding why Sheikh Ahmad and his investigative group, of which HAH was part, created Trekell Group LLC, and why this entity brought arbitration proceedings against Sheikh Ahmad. Although it is not for me to proffer an opinion on the underlying criminal charges, I consider that I do have the necessary expertise to explain why in such circumstances, authentication via the Swiss arbitration proceedings would have been sought. As HAH's own witness statement concedes, there is no disputation this was merely an instrumental entity created for the specific purpose of forcing a Swiss arbitration that would validate the authenticity of nearly a dozen videotapes that showed, among other things, acts of high-level corruption between Sheikh Nasser, Jassem al-Khurafi, senior judges, and other individuals. In turn, that arbitration ruling was contested later, resulting in Swiss proceedings in which HAH must appear.

a. The creation of an instrumental entity to force Swiss arbitration proceedings to authenticate the videotapes was the best and only way to solidify evidence of high-level corruption. Given the combined financial and political power of the figures shown on the videotapes, and the systemic reality of Kuwait's legal system suffering fundamental flaws and deficiencies, to my mind there was no alternative. Sheikh Ahmad, and certainly not HAH, could not simply present videotapes to the police and PPO, given their biases and influence under the same Kuwaiti elites shown on the tape. Given the inherent weaknesses of the judiciary as well, I cannot imagine any circumstance in which the Kuwaiti legal system could offer an arbitration framework that could be as objective as the Swiss version. ..."

401. Dr Yom then proceeds, at [72b.] of his report, which I have already set out above. I find that he provides a cogent explanation as to why the contract was entered into between Trekell and Sheikh Ahmed and why the matter then proceeded to arbitration.

402. The difficulties which I have with Mr Clarke's submission, at [40] of his skeleton argument, is, in part, the fact that the appellant has not actually been convicted of any crime(s) in Switzerland at this stage. There has been no trial. I reiterate that I do not know what evidence the Swiss authorities seized or what evidence they are relying upon. Additionally, and this links in to the evidence relating to corruption in Kuwait and the political motivations referred to above, I bear in mind that the Swiss charges appear to have arisen as a result of claims made by people who, quite clearly and properly, can be described as Sheikh Ahmed's political opponents and, indeed, individuals also opposed to the appellant, for political/economic reasons; namely, Sheikh Nasser and the Al Kharafi family. The reference to Great Britain in the warrant would appear, so far as I can ascertain, to be a reference to the fact that a judge of the UK High Court, Commercial Court, Field J, made an order in June 2014, granting leave to enforce the Trekell arbitration award.

403. I consider that, at [42]-[43] of his skeleton argument, Mr Clarke conflates the reliability of the expert evidence which was before the arbitrator, SB, in the Trekell arbitration, with the reliability of the WhatsApp conversation referred to and relied upon by the Kuwaiti court in the Fintas Group prosecution. These are two separate matters. Mr Clarke comments, in his skeleton argument, that the Fintas Group judgment sets out a complete chain of evidence which supports the contention that, first, the WhatsApp conversation in question is genuine and, second, that the appellant was part of that conversation. However, I consider that these elements of

the evidence require to be considered in the context of the evidence as a whole, which includes what has been set out above regarding the reliability of that evidence and in the context of the appellant's own telephone number.

404. The Trekell arbitrator, SB, has, in his arbitral award document, accurately recorded the findings of the various experts and the content of the Swiss police letter, I having had the opportunity to read the three expert reports and the police letter in their entirety. I take judicial notice of the fact that all three of the expert companies instructed are well-established and reputable UK-based expert companies, in the fields in which they were instructed. Whilst Mr Clarke's criticisms of the findings of those expert reports may, or may not, have some validity, as set out in his skeleton argument and oral submissions, he did not seek to suggest that the experts had deliberately produced false data in their reports; rather, he appeared simply to contend that those reports were unreliable, for the reasons indicated, and that the conclusions therein were manifestly unsustainable.

405. One of the documents submitted and relied upon by Ms Laughton is from *The Bucks Herald* newspaper, which article refers specifically to Michelle Bowman of CYFOR and to a visit to CYFOR by David Liddington MP. It is an article which is consistent with my conclusion that CYFOR is most clearly a reputable organisation. I note that it is Michelle Bowman's report which was considered by the University of Lausanne, with reference to the said Swiss police letter, that Swiss police letter raising no criticism of the content of the CYFOR report.

406. I do not consider that it was for SB to start to pick apart the findings of the produced expert reports and for him to find reasons, in the absence of any indication that he should have done so, as to why those expert reports might be less than reliable; if indeed they are. I find that the available evidence falls materially short of establishing such conclusion, when considered in the context of the evident expertise and standing of those experts who produced those reports. The respondent has not produced any evidence of his own which might establish otherwise.

407. Thus, I find as a fact that there is no cogent evidence which might cause me to conclude that the findings in those expert reports are other than findings which were available to the respective experts, based upon the evidence which was produced to them. There is no suggestion that any of those experts have been challenged in terms of their *bona fides* and no suggestion that they have been complicit in any untoward activity. Even if those reports are limited in their scope and analysis, as strenuously argued by Mr Clarke in his skeleton argument and oral submissions, that evidence forms the bulk of the evidence which was before the arbitrator, SB. It is then something of a leap, and I find too great a leap, to conclude that such then establishes that the Trekell arbitrator acted fraudulently or that the arbitration was a sham. Clearly, the arbitrator could only arrive at a conclusion based upon the evidence which was before him. It is difficult, if not impossible, to see how he could have reached any different conclusion in the arbitration, based upon the available evidence.

408. So far as I am aware and can ascertain, the documents relied upon by Trekell, in terms of the evidence considered by certain members of the Kuwaiti parliament,

was not disclosed to the arbitrator, as indicated at [16] of the arbitration award. Consequently, he could not consider it. I also bear in mind that the letter of the Swiss police has not been challenged by the respondent in the present proceedings, in the sense that there is no contention that it is a forged letter. In his oral submissions, Mr Clarke criticised the reliability of the content of that letter, in terms of it providing worthwhile evidence as to the reliability of the CY40R report, I reiterating that it was that specific report which was considered by the Swiss police. However, it is evident that, at that stage, some form of consideration of that report was undertaken by the Swiss police, in conjunction with the University of Lausanne, and there was clearly no concern regarding the content and findings of the report. The arbitrator was obviously entitled to take that factor into account, alongside the three expert reports which were before him. I reiterate that the respondent has produced no expert evidence by way of seeking to challenge the findings arrived at in the three expert reports of CY40R, Afentis Forensics and Emmerson associates, as relied upon by SB in the Trekell arbitration.

409. I would add that there is reference by Mr Clarke, in his skeleton argument, to a French report, as referred to by Dr Yom in his report; my understanding is that that *may* be an erroneous reference to the Swiss police report. I bear in mind that SB is one of the people who is a defendant in the Swiss criminal proceedings but I reiterate that I have not seen what evidence is relied upon in those proceedings and consequently cannot comment upon it.

410. With reference to [41] of Mr Clarke's skeleton argument, I find his contention, that the videos examined by the experts, and as found to be genuine by them, could not possibly be genuine in the circumstances of their production, to be one which is unsustainable. I reiterate that I am not making a finding that they are genuine; rather, my finding is, based upon the evidence which is before me, that the arbitrator was entitled to conclude that the expert evidence before him was sufficiently reliable for him to conclude that they were genuine. In other words, I find that the arbitrator did not make a perverse finding.

411. Ms Laughton submitted that it was reasonable for the appellant to believe that the videotapes had been properly authenticated, he being a layperson and there being expert evidence which supported the claim that they were genuine. She also made reference to a letter at, B10 Tab 16. The letter in question is dated 4 May 2018 and is written by one Amir A. Fakhravar, the Senate Chairman of the National Iranian Congress (NIC) based in Washington. It is headed *Iran Sanctions Violations* and is addressed to the Office of Foreign Assets Control, United States Treasury Department. Its substantive narrative states as follows:

> "As Senate Chairman of the National Iranian Congress, I am submitting the attached report detailing blatant violations of US sanctions on Iran. Our organization, the National Iranian Congress ... is made up of Iranians in exile around the globe. As one of the leading voices against the theocratic regime in Iran, our organization is working to build a democratic future for Iran by promoting the development of a democratic constitution, supporting civil disobedience by protesters in Iran, and exposing rampant corruption by Iran and its allies.
>
> Our report details the laundering of billions of dollars by Kuwaiti nationals to the Iranian Expediency Discernment Council, the top government advisory body to the Ayatollah. Furthermore, these illegal transactions were conducted via middle east based American fast food franchises, such as KFC, Hardees, Olive Garden, and others, owned by the Americana Foods Group in Kuwait. In our efforts

to expose Iranian corruption, we have obtained evidence implicating Kuwaiti businessmen in their support of Iran in violation of US sanctions. We have verified this evidence with multiple sources and include extensive documentation and forensic verifications in the appendix of our report.

In closing, we strongly encourage your office to investigate these claims and prosecute those responsible to the fullest extent. For democracy to take hold in Iran, we must stop the flow of illicit cash to the corrupt and evil regime in Tehran. We hope that our report will help to expose some of this corruption, helping to pave the way for a free and democratic Iraq. ..."

412. I bear in mind that the letter above-quoted has an agenda, the NIC being vehemently opposed to the current regime in Iran. However, the report referred to is attached to the letter and refers, inter-alia, to Loay Al Kharafi, Jassem Al Kharafi and Americana Foods. I bear in mind that Americana Foods is the company owned by the Al Kharafi family and that the evidence indicates that it operates fast-food outlets in the Middle East. As acknowledged by Ms Laughton in her oral submissions, it is correct that it places reliance upon Michelle Bowman's CY40R report in part, the conclusions of which have been criticised by Mr Clarke but, as noted by Ms Laughton, the report attached to the NIC letter by no means exclusively relies upon the CY40R report. I find it to be evidence consistent with the contention that very significant funds were illegally transferred to Iran, this forming part of the videotape evidence relied upon by the appellant and his fellow investigative team members. I consider it to be evidence supportive of the appellant's case.

413. With reference to the Trekell arbitration, Ms Laughton noted that the purpose of the expert reports commissioned in relation to the Trekell arbitration was to consider whether there was evidence of tampering and that their remit was to analyse and listen to the available evidence. She acknowledged that those expert reports were not conclusive but that there was also police forensic evidence, which found that the CY40R report was not devoid of all weight by the Swiss police. She noted that there was no evidence that the appellant had been complicit in obtaining false expert reports or that he took an active part in the arbitration. Ms Laughton also noted that the appellant's oral evidence was that both parties wanted the truth. She noted that arbitration proceedings were sometimes brought when both sides wanted the same result, such as a definitive judgment, even if the parties were in agreement. Thus, she added that the fact that both parties wanted the same thing was not determinative of the Trekell arbitration being a sham and that, even if it was a sham, there was no evidence that the appellant was involved in it.

414. Further in her oral submissions, Ms Laughton noted that the appellant's evidence was clear and consistent, he stating that it was thought that the investigative team still had the cooperation of the Royal Court during the earlier stages of the investigation and that it was only when Sheikh Ahmed was warned, by the then Prime Minister, not to push things and to solve it quietly ([187] WS1), that it was decided to set up Trekell in 2014, the appellant saying in cross-examination that his enemies were powerful.

415. In her oral submissions, Ms Laughton also noted that there appeared to be confusion over the definition of the word "investigator", the wider team of investigators being the team who authenticated the work, as explained by the appellant in his oral evidence. She added that the point of Trekell was to contract

and instruct and that the appellant would not necessarily know all of the directors from the legal team and that they were not connected to the appellant. She noted that the appellant was not a lawyer and contended that he would not know the clauses in the contract. She added that it was common to insert an arbitration clause in a contract. She indicated that the appellant's evidence was that there was no financial motivation for him or his team but that the appellant said that, if there were some profits traced, then a percentage of those profits could be retained by the investigators (as opposed to the investigative team). She reiterated that the investigators were not part of the main investigative team, the investigative team comprising the appellant and others.

416. Ms Laughton noted that Mr Clarke had indicated that, the fact that the figure of $11 million paid for the tapes was referred to, then this suggested that the tapes were financially valuable to Sheikh Ahmed. However, Ms Laughton contended that that did not mean that the tapes were worth $11 million to anyone else. She also noted (B4 Tab 95 p336) that Sheikh Ahmad had invited the Kuwaiti prosecutor to go to the Swiss court, in order to examine the evidence, which fact did not suggest the presence of fraud.

417. At [41]-[46] of his skeleton argument, Mr Clarke refers to the Fintas Group prosecution in Kuwait. Rather than seek to paraphrase those paragraphs, I set them out in full:

> "41. It is submitted that the premise of the prosecution in Kuwait was entirely legitimate. The 3 crimes out of 6 for which the Appellant was found guilty (@paragraph 11 above, iii, iv, vi): spreading false and malicious rumours designed to weaken the state and shake confidence in the Judiciary, publicly abusing respect due to judges and abusing telephone communications were predicated upon the Appellant's involvement with the impugned videos. The substance of these videos as set out at paragraph 6 above is simply evil and if they were given any credence in the public domain they would cause immeasurable damage to the individuals involved and the State. It is the Secretary of State's case that the videos cannot be construed as genuine in light of the expert reports and the circumstances in which they were produced. In light of this it is wholly unsurprising that the Appellant was prosecuted.
>
> 42. It is of significant note that the integrity of the evidence chain, as identified at p64 of the Fintas judgment (tab 30 bundle 9) in respect of the second defendant's phone is complete. As set out in the judgment at p8 of the judgment the phone was seized from D2 at a demonstration (*this is a reference to the Kuwaiti lawyer, from RHA lawyers in Kuwait, Mr Al-Ateeqi - my words*). At p15 -27 the court sets out in considerable technical detail exactly what the phone was, what it contained and how it was linked to the Defendants. It is submitted that this is in stark contrast to the non-existent audit trail and quality of evidence relied on in the Swiss arbitration. The Court then sets out messages extracted from the phone @p28-43.
>
> 43. It is submitted that whilst the Appellant denies that the messages extracted are genuine, he does not deny in his asylum claim that a group of investigators, as set out at paragraph 32 above, consisted of Defendants 1-7 in the Fintas Group prosecution or that their aim was to produce videos and make money out of their publication. It is submitted that if the videos are not genuine then it is self evident that the Appellant is guilty of the crimes for which he was sentenced in Kuwait.
>
> 44. It is submitted that the Appellant and his expert's (Dr Sean Yom, CB 19) assertion, that the Fintas trial was politically motivated and biased is unsupported by the evidence. If that was indeed the case it is somewhat odd that the Court acquitted defendant 7,-8, 10-13 on all counts and dismissed half of the charges against the Appellant, as set out at paragraph 12 above. Furthermore the expert's position is inconsistent with the Court of Appeal finding, which went against the Public Prosecutor in respect of the charges that were not made out against the

Defendants (para 12 above). It is noted that Dr Yom asserts @33c of the report *"I believe there was no realistic chance that judges at any level, from the first instance to the High Appeals to Cassation Court would rule in favour of HAH"*. It is submitted that that finding is evidently wrong. It is also of note that A's expert KCU (*Dr Ulrichsen - my words*) @CB12 paragraph 94 confirmed that there were few known cases of the Emir applying any pressure on the Judiciary and the first charge which was specific to the Emir was thrown out.

45. It is submitted that Dr Yom's report is significantly undermined by the premise upon which he viewed the factual matrix of the Fintas Group prosecution. At paragraph 16 c of the report the expert refers to French intelligence validating the tapes. As set out at paragraph 37 above no evidence has been produced from French intelligence, it was not relied upon at the Swiss arbitration hearing and evidently Dr Yom has never seen it. Equally perplexing is the expert's finding @17, *"I watched two of these tapes when put online, and read the Swiss arbitration proceedings that found the tapes to be authentic, I do not have engineering expertise to comment on technical matters. I am aware that ultimately, it is for the Tribunal to make a final determination of credibility. However, as an expert on Kuwait whose career and reputation depends upon making the most accurate inferences linking evidence to outcomes, in my professional opinion, I am able to conclude with the highest confidence the opposite- **that the tapes are not fabricated**....."* It is submitted that these findings were not open to the expert and contrary to his acknowledgement that assessing credibility lies with the Tribunal he has in fact stepped into the Tribunal's remit.

46. It is submitted that the Counsel's submission at paragraph 64 the skeleton that, *"it is further extremely important to note that A was sentenced to 10 years imprisonment, despite the maximum cumulative sentences for the offences of which he was convicted being 6 years"*. With the greatest of respect this is wrong, at paragraph 40 the expert recognises that the 10 year sentence is explainable by A being charged multiple times for each offence."

418. In relation to the Fintas Group judgment, whilst it does, indeed, provide detail regarding the various charges, including with reference to the said WhatsApp group communication, I do not find that such detail, contrary to Mr Clarke's contention otherwise, adequately or satisfactorily gainsays the evidence of Dr Yom in relation thereto or my reasoning as set out above regarding the questionability of that evidence and charge. I confirm that I have read and considered the Fintas Group judgment in its entirety, including with particular reference to those paragraphs referred to, and relied upon, by Mr Clarke.

419. I agree with Mr Clarke's contention, that Dr Yom appears to have assumed the role of the Tribunal, in making a finding which was not one which was realistically open to him, by concluding that the tapes are not fabricated. I consider that the most that he should realistically have done, was to conclude that it was plausible that the tapes were not fabricated, bearing in mind the available evidence. Indeed, as I have indicated above, it appears to me that the salient issue, in relation to the videotapes referred to, is not whether they are, or are not, genuine; rather, it is whether the appellant and other members of the investigative team genuinely believed that they were genuine. I have insufficient evidence before me to conclude what the correct answer is to that question and make no finding on it. Of course, the fact that Dr Yom, I find, sought to make a finding which was one for the Tribunal to make, does not invalidate the balance of his findings and analysis, or the conclusions of Dr Ulrichsen; it is simply a factor to be weighed in the equation, when considering Dr Yom's reliability as an expert witness.

420. At [48] of his skeleton argument, Mr Clarke states as follows with reference to the prosecution of the appellant for leaving Kuwait illegally:

"48. It is submitted that the Appellant's claim that his prosecution for leaving the country illegally (WS CB 13 @31) was politically motivated is un-evidenced. No judgment has been produced despite A's evidence that he was assisting the lawyer defending the 3 immigration officers by sending them his original passport. Given that the Appellant claims @246 of the WS @CB1 that the prosecution was for leaving whilst under a travel ban it is wholly unclear why A would send his passport to someone else's lawyer in Kuwait. It is of note that the article relied upon in the WS @246 does not mention a travel ban or indeed that the Appellant was sentenced to 10 years for leaving Kuwait illegally but instead states, *"The Criminal Court has sentenced the prime suspect in the so called "Fintas Group, Hamad Al Haroun to 10 years hard labour and also sentenced in absentia three other Kuwaitis who helped him escape".* It is submitted that the 10 years evidently refers to the Fintas sentence not to the Appellant leaving illegally. It is further submitted that given that the Appellant claims @WS41 (CB13) that he had no right to defend himself in the Unicapita prosecution in Kuwait in his absence it is wholly unclear why the three Kuwaitis had lawyers in their absence."

421. At [49] of his skeleton argument, Mr Clarke refers to the Unicapita fraud prosecution of 25 January 2017. He argues that, in light of the absence of any documentary evidence relating to those proceedings (as set out at [17]-[18] of his skeleton argument) there is no evidence to suggest that the appellant is innocent of that alleged fraud or that the Kuwaiti courts acted improperly.

422. At [47] of his skeleton argument, Mr Clarke refers to a further Kuwaiti prosecution of 19 February 2018, involving the appellant and a number of the other defendants named in the Fintas Group prosecution, including Sheikh Khalifa, Sheikh Athbi, Mr Al-Ateeqi, Sheikh Ahmed Dawood, Mr Al-Hajraf and the appellant, brought on the basis of unlawful tapping, fraud, publishing and defamation. A copy of the relevant judgment relating thereto is at B10 Tab 31. In light of his other arguments, Mr Clarke contends that that prosecution was also valid and was not politically motivated. I have incorporated my consideration of this judgment, and the other legal proceedings referred to, as part of my consideration of the main Fintas Group prosecution. In short, it does not require separate consideration.

423. Finally in his skeleton argument, at [50]-[51], Mr Clarke refers to the ongoing Jordanian prosecution and to the parallel Swiss criminal proceedings, arising from the KRIC arbitration. Mr Clarke submits that, in light of the accepted fact that fraud was found to have taken place by KRIC in the parallel KRIC arbitration, and in the absence of any evidence of corruption by the Swiss criminal court, there was no reason to presume that the appellant did not have a case to answer in Jordan.

424. In oral submissions, Mr Clarke also noted that the appellant was not convicted of all of the crimes in respect of which he was charged in the Fintas Group trial. He noted that certain of the crimes, such as the alleged slander/criticism of the judges, was not pursued, as the judges had not made the requisite complaint. He also noted that the alleged crime against the Emir, which offence could carry 5 years' imprisonment, was not pursued, all of which suggested that the Fintas Group trial was not fixed but that it was a genuine trial in relation to criminal offences committed by the appellant.

425. In making his preceding submissions, Mr Clarke noted that Dr Yom's oral evidence was to the effect that Kuwait is what one might term a 'soft authoritarian regime', which regime typically behaves in such a way that it seeks to present its actions as legitimate and that court judgments have to appear to the uninformed as

though justice has been done. Put another way, I note that Dr Yom indicated that judgments had to be seen to be "*minimally justified and defensible*". However, Mr Clarke contended that the presenting facts indicated that the prosecution was, in fact, a genuine one and that Dr Yom's indication in this regard was based upon his assumption that the tapes were genuine. He also added that Dr Yom had not taken into account the fact that Sheikh Ahmed had good reason to prepare "dodgy videos". In any event, Mr Clarke contended that he could not see how the Tribunal could find that the videos were genuine in any event and, if not genuine, the Fintas Group prosecution could not be politically motivated.

426. I have to say that I found Dr Yom's oral evidence, upon the preceding issue, to be well-reasoned and persuasive, he being questioned quite closely by Mr Clarke upon this, and other, issues. I have, of course, considered the reliability of Dr Yom's oral evidence, and the evidence contained in his report, in the context of the evidence as a whole.

427. In relation to the question of whether the appellant had been sentenced to a period in excess of that permitted by Kuwaiti law, as referred to by Dr Yom in his evidence, Mr Clarke contended that the available documentary evidence rendered it unclear as to whether the appellant was sentenced to 10 years' imprisonment for leaving Kuwait contrary to a travel ban. I similarly find the evidence in relation to this issue to be unclear but do not find it to be determinative of the outcome of the appeal.

Article 3 and humanitarian protection

428. The appellant's humanitarian protection and Article 3 claim is not based upon precisely the same facts as his asylum claim. Its nature is summarised by Ms Laughton at [91]-[92] of her skeleton argument, which follow:

> "91. It is submitted that the evidence outlined above demonstrates that even if there is no political motivation (which is strongly disputed), A is nonetheless at real risk of a lengthy imprisonment in inhuman and degrading conditions and/or there is a risk of torture, which would amount to "serious harm". R appears to suggest that in fact the allegations against A are true (or maybe true) and as such he is a common criminal as opposed to a refugee. Even if this is true (despite his convictions being inherently political), it is evident that the nature of the convictions places A within the category of enemies of the state, who face a higher risk of ill-treatment in detention (see §§50-55 of SY expert report). He has been demonised in the press and accused of sedition. Whether the allegations are true or false are, in this context, irrelevant. A cannot be compared to an average detainee.
>
> 92. It is therefore submitted that even if there is no Convention reason, and/or it is a case of prosecution and not persecution, there is a real risk of serious harm on return. A submits that he is not excluded from Humanitarian Protection for the reasons already set out above. In the alternative, if A is excluded from Humanitarian Protection, it is submitted that he nonetheless would be at risk of Article 3 ill-treatment and his appeal should be allowed on this basis in the alternative."

429. In Mr Clarke's skeleton argument, at [62], he indicates that, due to time constraints, he has been unable to address the background evidence in relation to Article 3 risk in Kuwait. He adds that Article 3 is not conceded and that full submissions, by reference to the background evidence and expert reports, will be

made at the hearing. This is what occurred and I have referred below to his oral submissions in relation thereto.

430. In the RFRL, Article 3 is addressed by the respondent at [63]-[77] of the RFRL, as relied upon by Mr Clarke in his submissions and as elaborated upon therein. Those paragraphs state as follows:

"**Assessment of future fear and consideration of Article 3 of the ECHR**

63. Notwithstanding the fact that you have been excluded from the Refugee Convention and humanitarian protection, consideration has been given to your claims that your removal would lead to a breach of Article 3 of the ECHR.

64. You claim that you cannot return to Kuwait as you would face mistreatment as you believe you will be sentenced to life in prison and there is a chance you would be put on death row. In addition you state that if you are removed to Kuwait, you may be imprisoned, tortured or killed.

65. In light of the above conclusions, it is not accepted that your claims amount to persecution or serious harm as alternatively there is evidence to suggest you should be prosecuted for the crimes that you are accused of and committed.

66. Country of Origin Information Report - Kuwait, 25 April 2012, available at: http://www.refworld.org/docid/4f 9939cd2.html [accessed 26 January 2018]

67. United States Department of State, 2016 Country Reports on Human Rights Practices - Kuwait, 13 April 2016, states as follows

68. **EXECUTIVE SUMMARY**

Kuwait is a constitutional, hereditary emirate ruled by the Al-Sabah family. While there is also a democratically elected parliament, the emir holds ultimate authority. The 2013 parliamentary elections were generally free and fair, although some opposition groups boycotted them. Civilian authorities maintained effective control over the security forces.

69. **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

70. **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution and law prohibit torture and other cruel, inhuman, or degrading treatment or punishment, but there were reports some police and members of the other security forces abused detainees. Police and security force members were more likely to inflict such abuse on noncitizens, particularly non-Gulf Arabs and Asians.

The government stated in the past that it investigated allegations of abuse and punished some of the offenders. Although the government did not make public all the findings of its investigations or all punishments it imposed, it convicted a police officer in June for beating a female noncitizen. According to media reports, the police officer paid a 300 dinars ($1000) fine.

71. *Prison and Detention Centre Conditions*

Prison and detention centre conditions generally met international standards, but the facilities were sometimes overcrowded and lacked adequate sanitation. The country's human rights groups reported that conditions and living standards of prisons improved during the year.

Independent Monitoring: The Ministry of Interior permitted independent monitoring of prison conditions by some non-governmental observers and international human rights groups. Authorities permitted staff from the International Committee of the Red Cross and UN High Commission for Refugees (UNHCR) to visit the prisons and detention centers. The government also allowed the Kuwait Society for Human Rights and the Kuwait Association for the Basic Evaluation of Human Rights to visit prisoners during the year. A government official stated that approximately 70 local and international non-governmental organisations (NGOs) visited prisons during the year.

72. **e. Denial of Fair Public Trial**

The law and the constitution provide for an independent judiciary, and the government generally respected judicial independence. Although the constitution and law provide for an independent judiciary, the emir appoints judges; the renewal of judicial appointments is subject to executive approval. Judges who were citizens received lifetime appointments; judges who were noncitizens held one- to three-year renewable contracts. The Ministry of Justice may remove judges for cause.

73. *Trial Procedures*

The constitution provides for the presumption of innocence and the right to a legal trial for the accused with the right to a defence. The judiciary is not independent of the executive in the case of noncitizen judges, due to their re-appointments requiring approval by the emir. The law expressly forbids physical and psychological abuse of the accused. Under the law defendants also enjoy the right to prompt, detailed information on charges against them with free interpretation, as necessary. Criminal trials are public unless a court or the government decides "maintenance of public order" or the "preservation of public morals" necessitate closed proceedings. There is no trial by jury. The bar association is obligated upon court request to appoint an attorney without charge for indigent defendants in civil, commercial, and criminal cases, and defendants used the services. Defendants have the right to adequate time and facilities to prepare a defence. Defendants and their attorneys generally had access to government-held evidence, but the general public did not have access to most court documents. The Ministry of Justice generally provides defendants with interpreters when needed.

74. An article form (*sic*) Human Rights Watch explains that; https://www.hrw.org/world-report/2018/country-chapters/Kuwait - 18 January 2018

Unlike many of its Gulf neighbours, Kuwait continued to allow Human Rights Watch access to the country and engaged in constructive dialogue with the organization on a range of human rights issues.

75. [REMOVED]

76. In view of the findings that the charges against you are not politically motivated, but that you are wanted on a criminal matter, and the assessment above that the judicial independence is generally respected, it is concluded that you will not be at risk on return to Kuwait for the reasons that you would face mistreatment as you believe you will be sentenced to life in prison, that you will be put on death row and that if you are removed to Kuwait, you may be imprisoned, tortured or killed. Prison conditions in Kuwait have also been considered based on the guidance outlined above. It is noted that despite some prisons being overcrowded and lacking adequate sanitation, prison conditions in Kuwait have improved and generally meet international standards. They are therefore unlikely to reach the Article 3 threshold.

77. Consequently there are no substantial grounds for believing that there is a real risk that you would face treatment contrary to Article 3."

431. Clearly, events have demonstrated that the appellant is not facing the death penalty and that he has not been sentenced to life imprisonment.

432. At this stage, I consider it appropriate and worthwhile to set out the entirety of Dr Yom's observations regarding human rights abuses which might be faced by the appellant as a result of his detention and imprisonment, should he be removed to Kuwait; especially bearing in mind that this issue was the subject matter of extensive cross-examination of Dr Yom by Mr Clarke at the hearing, with subsequent oral submissions upon the issue. Dr Yom's evidence differs materially from that set out at [63]-[77] of the RFRL, with reference to the country material referred to therein, as does the evidence of Dr Ulrichson set out above. Thus, I have set out [51]-[70] of his report, which follow:

"51. The preceding sections highlighted the institutional shortcomings of the Kuwaiti judiciary and criminal justice system, as well as the politicised climate of repression generated by the dual crises of intra-royal conflict and the Arab Spring. To my mind, HAH was not prosecuted in an ordinary legal process, but rather systematically victimized and thus politically persecuted as retaliation from Sheikh Nasser and the royal executive. His 'crimes' were affiliation with the wrong faction and holding political beliefs now criminalized in Kuwait - that high-level corruption and financial bribery should be stamped out. However, there is a final factor to consider: because his criminal sentences are actionable, HAH will be immediately detained and thereafter imprisoned in Kuwait. While he will not be the only prisoner of conscience in Kuwait, HAH is vulnerable to additional brutalization by authorities under the current state of police detention and penal incarceration practices. I believe that human rights abuses including torture will occur, and that there is a realistic possibility that HAH will not survive his own imprisonment term. These human rights violations in the form of abusive detention and inhumane incarceration should be understood, in my view, as not only resulting from his political targeting by authorities. Even at their baseline, the policing and penal conditions are so injurious that they would present a severe threat to life against anyone convicted of felonies. That HAH has been politically targeted means that these baseline conditions will be elevated to an extent that his life may become forfeit.

52. In the scenario of forcible return to Kuwait, HAH would be subject to violent conditions in two stages: first, while being taken into custody and detained by the police; and second, while residing under the dangerous and unsafe conditions at Central Prison, Kuwait's only permanent incarceration facility for male citizens. Regarding the former, HAH would be taken into temporary custody by the police for processing and transfer to Central Prison to begin serving 10-years' imprisonment sentence from the Fintas Group case.

53. There are no legal safeguards to prevent the police from inflicting mental and physical abuse upon HAH while in transit custody, because Kuwaiti laws do not regulate this period of detention and do not guarantee the protection of basic rights. This period would likely range from several days to a week; but is unlikely to be longer given the interests of the Kuwaiti authorities to deliver HAH to prison as quickly as possible. HAH stands at particular risk of physical and mental abuse while in temporary custody for three reasons:

    a. Having publicly declared him a fugitive at large, presumably the authorities are aware he is currently in the UK, and are likely to see his actions to date as defiance against the will of the executive. He may be singled out to serve as an example to others, especially given past conflicts with Sheikh Nasser and Louay Al Khurafi. Further, the worsening repression against political critics under the Iron Fist Policy implies that authorities have tight control over the detention process. The police fall under the jurisdiction of the Interior Ministry, and the Interior Minister reports directly to the Emir. Thus, such legalized violence would take place with full complicity from the royal executive.

    b. The Kuwaiti police are known to brutalize detainees implicated in political cases. As an academic researcher who has tracked these practices for more than a decade, I have come across many cases of Kuwaitis who, having been held in custody for opposition-related activities, were subjected to injurious treatment amounting to torture. Such abuses persist today, and external monitors such as the US State Department have regularly

noted that physically degrading punishments continued to be meted out to political detainees at police stations. As further evidence, in its third periodic review of Kuwait in August 2016, the UN Committee Against Torture found credible evidence of Kuwaiti police torturing many dissidents after initial arrest, in addition to a reluctance on the part of medical personnel to indicate findings of torture from examining victims, for fear of reprisals. In one well-publicized incident, Abdulhakim al-Fadhli and his brother Abulnasser were said to be arrested, interrogated, and tortured while in police detention starting in February 2014. That torture included threatened rape, physical assault, and solitary confinement.

54. Kuwaiti officials have denied incidents of torture and other ill-treatment to detainees in police custody. However, respected international human rights monitors such as Amnesty International, Human Rights Watch, the Gulf Centre for Human Rights, AlKarama, and the Arabic Network for Human Rights Information have reached the opposite conclusion based upon independent investigations: the Kuwaiti police can and do brutalize political detainees. Further, there have been cases of individuals who have died whilst in police custody; the best-known is that of Muhammad al-Mutairi in 2011, in relation to which the Interior Minister only accepted responsibility after large protests by al-Mutairi's tribal community.

55. Further, during the Arab Spring, the police specifically targeted political dissidents with violence. For instance, Muhammad al-'Anzi, a noted activist affiliated with the Kuwaiti Observatory for Human Rights, was arrested in July 2014 while participating in a lawful demonstration, after which he suffered arbitrary detention and beatings by police officers. The leaders of the National Committee for Monitoring Violations, a non-governmental organization that pursues allegations of police and judicial misconduct, have particularly suffered. Co-organizer Sulaiman al-Jassem was arrested in October 2014 after observing a peaceful protest; during his arrest, he was shot with rubber bullets in the chest, arm, and shoulder, and beaten in the head by police officers who wore coats to conceal their identity.

56. Following temporary detention by the police, HAH will be transferred to Central Prison (run by the penal unit of the Interior Ministry). The only other prison in Kuwait equipped to deal with long-term detentions outside of police stations is the Talha Deportation Centre, a holding facility for foreigners awaiting repatriation. There is little public knowledge within Kuwaiti society about what occurs inside these prison complexes, with officials refusing to share even basic data to outside enquiry. The few non-governmental organizations allowed to inspect the prison do so under strict conditions to not share data with researchers.

57. In 2014, the latest year for which officially released figures were available, Kuwait's main prison complex held 3,762 inhabitants, including 319 women and 52 prisoners who were sentenced to death. The complex is divided into three separate facilities. First, there is a wing exclusively for women. Second, there is the General Prison, the low-security men's wing designed for misdemeanour offenders sentenced to serve under three years, and also the designated area for remand detention. Third, there is Central Prison, the high-security men's wing for felonious offenders (generally, those sentenced to more than three years' imprisonment such as HAH). Central Prison itself holds multiple units of varying security levels; generally, the highest security restrictions are devoted to death-penalty cases, such as those convicted of murder; what Kuwaiti lawyers call 'national security' inmates, such as those convicted for terrorism-related activities; and political oppositionists incarcerated due to they being considered a threat to the royal executive and it (*sic*) allies.

    a. This last category describes HAH. The marked increase in political repression since the Arab Spring has generated an influx of prisoners of conscience that has, by corollary, created conditions of extreme overcrowding. Although prison-wide figures have not been officially released to international monitors since 2014, in March 2018 the Interior Ministry admitted that the main prison complex holding all three jails (Women's, General, and Central Prison) was designed to hold 2,500 inmates but held 6,000. Several months earlier, the Kuwaiti press revealed that Central Prison, HAH's assigned jail, was designed to accommodate 1,200 inmates yet held 4,000.

58. Upon intake, new inmates are evaluated by a prison committee for sorting into the appropriate wing. Theoretically, HAH could be assigned to the low-security (i.e. General Prison) area, since none of his offences involved violence. However, I believe it is far more likely he will be sent to Central Prison, the high-security facility, because by law this is the designated area for felons with imprisonment sentences of more than three years, which matches HAH's situation. Regardless, male prisoners face grim perils to their health and well-being, and suffer the daily risk of human rights violations.

59. The graphic information and multimedia evidence that follows comes from two prisoners who communicated with me confidentially via the WhatsApp mobile phone chat program from inside the high security wing of Central Prison between 10 January and 21 January 2017, while I was researching the Kuwaiti penal system. One was of Western nationality ('Prisoner 1'), and the other Kuwaiti nationality (' Prisoner 2'). While inmates are denied access to fixed-line telephones (and indeed, are generally deprived of regular contact with their lawyers and families), some can bribe guards to smuggle in a mobile phone in exchange (in these two cases) for 600 Kuwaiti dinars (about £1,510). Prisoner 1 was serving a sentence for drug-related offences and Prisoner 2 was serving a sentence for violent offences. I came into contact with both through a mutual contact, a researcher working at a Kuwaiti non-governmental organization while working on an unrelated topic.

60. Prisoners 1 and 2 reported that inmates at Central Prison, regardless of their background or status, faced many sources of violence.

    a. Upon intake, many men are beaten by the guards in their first days as a form of initiation. One tactic is beating new inmates on the soles of their feet with batons, while others are beaten upon their backs in order to minimise the appearance of overt bleeding and other injuries.

    b. Prisoners have no protection against assault from guards. Prisoner 2 estimated the ratio of inmates to guards during the day at 6-7 guards for every 50 prisoners. There is little oversight of these officers, who can inflict arbitrary beatings. The officers know how to take advantage of the coverage gaps left by the prison's closed-circuit surveillance system in order to single out inmates for abuse.

    c. Prison guards can also punish individual inmates with the following three measures: curtailing meals for up to 7 days, solitary confinement for up to 7 days, and shackling arms and legs with iron cuffs for up to one month, which are measures explicitly allowed under the penal regulations. However, Central Prison does not track and record the frequency of such punishments, and there is no identifiable way of preventing their arbitrary infliction.

    d. Prisoners also face collective physical harm. Prisoner 2 reported that if contraband (such as drugs) is discovered on an inmate, all those suspected of helping him can suffer an informal penalty, such as turning off the water supply to the bathroom they share, taking blankets away from all sleeping cots in the cell, and withholding basic heating supplies such as plastic spoons.

    e. Prisoners also face violence from each other. Prisoner 1 accounted that assaults between inmates, often based upon religious vendettas or personal grudges, occur weekly. Offenders caught in the act of attacking other inmates can be placed in solitary confinement for a length of time determined by the supervising guard. Fighting is sometimes stopped by intervention from the prison's in-house riot control unit, which indiscriminately attacks all inmates until order is restored.

61. Despite being labeled the high security jail, Central Prison does not protect inmates - especially those for political offences - from violence. High-profile prisoners like HAH would be easily singled out, as the case of former MP Musallam al-Barrak shows. Al-Barrak was among the most visible allies of Sheikh Ahmad who was prosecuted in the political crackdown following the corruption videotape scandal. In February 2017, as he was finishing his two-year imprisonment sentence in Central Prison, Al Barrak was assaulted by an inmate. Al Barrak's lawyers believe the attack was orchestrated by a higher authority given suspicious circumstances: the assailant

was transferred to the prison wing just days before, but seemed to already know where Al Barrak congregated and thus went to attack. Al Barrak bled profusely from the assault and required external care.

62. In the following month, the same attacker was found dead from suicide. Further adding to these curious circumstances, the Attorney General led the investigation and concluded that the cause was not murder or poisoning. Given the highly political and sensitive nature of Al Barrak's conviction, and the fact that HAH is perceived to belong to the same circle of anti-corruption critics and democratic activists, it is reasonable to think that HAH would be imperilled by similarly targeted violence. Indeed, an assault from another prisoner could be presented by Kuwaiti authorities to outside enquiries as an unfortunate but inevitable occurrence of prison life.

63. Prison cells, where HAH would be sleeping and spending much of the daytime, are crowded and unsanitary. Prisoners 1 and 2 reported that each wing contains residential spaces (i.e. cells) measuring roughly 15 feet by 25 feet. Each of these cells holds around 22 prisoners, whose sleeping cots are double-stacked and located in close proximity to one another in very crowded quarters. Blankets and dirty clothes are used to divide cots, and are the only source of privacy. The confined space means that it is impossible for prisoners to circulate at the same time.

64. In terms of bathrooms, each 22-inmate cell has two open bathrooms, according to Prisoner 1. These are open-air with no doors allowing for controlled entry or egress. Each includes a single 'squat' toilet, shower, and hand sink. Toilets are not flushable, and never disinfected by prison staff so appear quite soiled. The sink is made of cement, and similarly is filthy. Some sinks do not have working taps. Due to the ageing plumbing and fixtures, bathrooms suffer drainage problems that can prevent prisoners from washing and relieving themselves.

65. Prison cells in Central Prison do not have windows. Prisoner 1 described ventilation within each cell as 'poor,' resulting in the stench from the bathroom often permeating the sleeping space. At best, guards may allow for the placement of 1-2 electric fans per cell in exchange for cash bribes, which most prisoners prefer to place by the cots at high-level in order to blow putrid air away from the sleeping environment.

66. Nutrition is monotonous and, according to Prisoner 2, 'barely adequate' in terms of caloric value. The effects of the inadequate nutrition are seemingly reduced only because most inmates are allowed just one hour daily for outdoor recreation, exercise, and other physical exertions. Breakfast is served to each in Styrofoam containers, and at the time of our confidential exchange, consisted of a single egg and a slice of processed cheese. Lunch is served semi-communally, with three to four inmates sharing a single plate consisting of small meat portions served atop rice. Prisoners 1 and 2 both confirmed that special requests for meals based upon dietary or religious restrictions were routinely denied excepting Islamic requirements for halal Islamic food. Prisoners are allowed a small cooking space, a counter adjacent to the bathroom used to reheat leftover food or items purchased from the commissary. A single heating pot is shared by all cellmates. Electricity provisions remain hazardous, with inmates continuing to 'hot wire' home-made power lines running from ceiling lights in order to operate their cooking pot or fan.

67. Some prison cells suffer from widespread illegal drug use. Prison guards are easily convinced through bribery to tolerate the internal trafficking of opiates and pharmaceuticals. The Interior Ministry does not post figures on prisoner deaths, but Prisoner 2 reported that two fatal drug overdoses had occurred among the male population at Central Prison from July through December 2016.

68. The infrastructure of Central Prison, already exacerbated by extreme overcrowding, is physically decrepit and endangers the lives of inmates. Prisoners 1 and 2 guessed that the electrical wiring inside the walls and plumbing fixtures had not been maintained or repaired in decades. This may have contributed to a short circuit that instigated a prison-wide fire in June 2016, which killed one inmate and injured 55. At the time of our exchanges six months later, both prisoners reported that the indoor damage from that blaze had not been fully repaired.

According to Prisoner 1, this so disrupted the flow of running water that prisoners had to stockpile water in plastic bottles under each sink to wash themselves.

69. Inmate grievances frequently go unheeded. For instance, prisoners often complain of being physically beaten by guards for no reason, but there is no evidence this results in administrative action. There are no published sources or news articles in Kuwait, including the Arabic media, that show that the Interior Ministry has disciplined prison staff due to excessive violence against inmates. Further, as both Prisoners 1 and 2 noted, urgent requests to repair damaged portions of Central Prison after the June 2016 fire have also gone ignored, despite conveying frustrations verbally to guards and through written complaints to the Interior Ministry. As another example, in autumn 2016, inmates requested that exposed live wiring located close to bathroom areas be insulated for safety reasons. However, officials refused, stating instead that resources were devoted to constructing a new prison complex. That new prison, however, is only at the design proposal stage, and construction may not be complete for at least a decade.

70. Medical services are minimal and frequently inadequate. Although by law, Central Prison should have a full medical clinic, Prisoners 1 and 2 both reported that most inmates have no regular contact with any medical practitioners outside a single annual perfunctory examination. That Musallam al-Barrak required external hospitalization after his February assault suggests that the infirmary is not equipped to deal with violent incidents. Furthermore, prisoners' medical requirements can be ignored in favour of expediency and cost. For instance, Prisoner 1 stated that he required blood pressure medication in August 2016, but was denied the requested drug. He was instead given an easily available alternative, despite his insistence that the alternative medication would trigger known allergic side effects. Prisoner 1 told me that he was forced to take the medication, which ultimately required hospitalization after nearly asphyxiating due to allergic reactions."

433. I appreciate that some of the commentary set out above by Dr Yom assumes that the appellant's case possesses a political dimension but much of his commentary relates to potential risk to the appellant even if one disregards such political element.

434. For the sake of completeness, I would add that, at [71]-[74] of his report, Dr Yom makes observations regarding the content of the RFRL. In the context of Article 3, [74] of his report is relevant, wherein Dr Yom states:

"74. There have been doubts regarding the actual danger HAH faces should he return to Kuwait. As a Middle East scholar, I must emphasize the importance of never underestimating the capacity of authoritarian states like Kuwait to brutalize dissidents, activists, and oppositionists. In my view, HAH is still alive for one reason: Kuwait's historical and cultural tendencies, as well as a post-Cold War international environment that frowns upon outright political murder, do not permit Kuwaiti power holders to undertake assassinations. Yet this should never connote that oppositionists are safe from mental and physical brutalities that amount to torture and could result in death. If they were, there would be no reason for human rights monitors to operate."

435. During oral submissions, following on from Mr Clarke's cross-examination of Dr Yom, he questioned Dr Yom's figures, contained in his report, regarding the level of overcrowding in Central Prison, as referred to above in the extract from Dr Yom's report. I also bear in mind that the country material, referred to and relied upon by the respondent in the RFRL, as set out above, is essentially to the effect that it is not reasonably likely that the appellant would suffer inhuman and degrading treatment, should he be removed to Kuwait, either as a result of violence directed towards him or as a result of prison conditions. In that regard, the respondent has placed reliance upon the USSD Report of 2016. Consequently, I have examined and referred to the references upon which Dr Yom relies in making certain comments as set out above, which follow. Prior to doing so, I also bear in mind Ms

Laughton's contention, as set out in her skeleton argument, that the references relied upon by the respondent, in terms of the content of the 2016 USSD report, are selective and limited and also that there is more recent evidence in addition which supports the appellant's case. Indeed, I have referred to much of that evidence above, which I have taken into account, as well as the evidence referred to in this section of my decision.

436. I would add that contentions raised by Dr Yom, with regard to abuses by the police, as referred to at [53]-[55] of his report, are well-, and convincingly, referenced at footnotes 69-75 of his report.

437. Dr Yom's figures, and references to prison overcrowding, as set out at [57] of his report, are again properly referenced to various items of country material referred to at footnotes 77-79. At [56], as indicated above, Dr Yom refers to the "*few non-governmental organizations allowed to inspect the prison do so under strict conditions to not share data with researchers.*". This is an issue which arose during oral submissions. Dr Yom's source for that conclusion, as indicated at footnote 76 to his report, is referred to as follows: "*For instance, I consulted the International Committee of the Red Cross' chapter in Kuwait in January 2017. I was informed that while staff had access to the Central Prison facility, they were not legally permitted to release this information*".

438. From the above, I am satisfied that the evidence referred to by Dr Yom, in terms of prospective ill-treatment whilst in police custody, while serving a prison sentence and in terms of the overcrowding figures to which he refers, have been properly sourced and that they, consequently, require to be given appropriate weight. I would add that, as part of my consideration to the weight to be given to this element of Dr Yom's evidence, I bear in mind that there are elements of Dr Ulrichsen's report which bear upon Article 3 issues, as set above as part of my consideration of risk to the appellant when considering his asylum claim, should he be removed to Kuwait.

439. Part of Mr Clarke's oral submissions related to Article 3 issues. He contended that it had not been established, with reference to Dr Yom's evidence, that the appellant would be ill-treated by the police on arrival in Kuwait. He noted that Sheikh Khalifa's evidence was that he, Sheikh Khalifa, had not been ill-treated when he returned to Kuwait and when he was then arrested by the police. However, Ms Laughton indicated, relying upon Dr Yom's evidence, that it was arguable that that was because Sheikh Khalifa was a member of the Royal family, whereas the appellant was not. Mr Clarke indicated that the appellant was nevertheless married to a niece of the Emir.

440. At [23] of Dr Yom's report, he makes reference to the crackdown on political freedoms in Kuwait. That paragraph of his report is extensive and I do not propose to set it out verbatim. However, in his oral submissions, following evidence-in-chief and cross-examination of Dr Yom, Mr Clarke specifically questioned Dr Yom's figures contained at [23a] of his report, wherein Dr Yom states:

"First, as part of a larger academic project on repression in the Arabian Gulf, I have catalogued over 1,150 Kuwaiti cases of arrest for non-violent crimes of a political nature after 2010, the vast majority of whom engaged in actions and speech interpreted by authorities as critical of the royal executive (e.g. public statements, Twitter posts, political protest, and generally running afoul of royal

powerbrokers like Sheikh Nasser). Instances of torture and other physical abuses upon political activists abound; in my dataset, of the 700 cases where data about arrest and detention conditions could be found, over half involve some form of police violence **(see paras 54-55)**. As an experienced researcher of Kuwait, the quantitative scale of this crackdown shocks me. I began studying this country in 2005, and at that time it was rare to find more than a few dozen such cases annually."

441. In his cross-examination of Dr Yom, and in his submissions, Mr Clarke sought to question Dr Yom's calculation methods, in terms of the numbers of abuse cases to which he refers at [23a] of his report. Mr Clarke noted that the sources for arriving at those cases had not been disclosed in Dr Yom's report, which resulted in an evidential problem in terms of the weight to be attached to Dr Yom's evidence in that regard. I disagree. Dr Yom is clearly an experienced and authoritative expert on the Middle East and Kuwait and, as noted by Ms Laughton, it would be wholly impractical to expect him to produce all of the research data to support the figures to which he refers. I have no reason at all to conclude that Dr Yom's evidence in relation to this issue is other than accurate and properly researched.

442. Mr Clarke also challenged Dr Yom's figures, at [57] of Dr Yom's report, with reference to the overcrowding in the prisons in Kuwait, Mr Clarke referring to B9 Tab 11, which comprises the USSD 2017 Kuwait human rights report. I note that, at [57] of his report, Dr Yom refers to Kuwait's main prison complex, in 2014, holding 3,762 inhabitants and to the Kuwaiti Interior Ministry, in March 2018, admitting that the main prison complex was designed to hold 2,500 inmates but held 6,000. Dr Yom notes that, several months earlier, the Kuwaiti press revealed that Central Prison was designed to accommodate 1,200 inmates but held 4,000. I note that Dr Yom has properly sourced where these figures have come from. However, Mr Clarke noted that the said USSD report indicated that Central Prison had capacity for 2,302 inmates but held 3,634 inmates; namely, a different figure from that referred to by Dr Yom, thereby calling into question Dr Yom's evidence regarding overcrowding in Kuwaiti prisons.

443. I accept that the said USSD report contains different figures from those referred to at [57] of Dr Yom's report. I do not find it to be material, as both sets of figures indicate overcrowding and both sets of figures would appear to be taken from different documentation sources and relating to different dates.

444. In his oral submissions, Mr Clarke indicated that, in some respects, the situation in the Kuwaiti prisons was indistinguishable from the UK's prisons, he adding that it was not clear what evidence was corroborated and what was not. Mr Clarke also challenged the reliability of the evidence of the two prison inmates spoken to by Dr Yom, as referred to at [59] of Dr Yom's report (as set out above), there being no statement from Dr Yom's source who, Dr Yom said, was a lawyer, and who provided the details of the two prisoners to whom Dr Yom had subsequently spoken. Mr Clarke argued that much of the evidence provided by those two prisoners was inconsistent with the USSD report (referred to in the RFRL). Mr Clarke accepted that the evidence indicated that the Kuwaiti authorities would not let in outside agencies, excepting the IRC, who were not allowed to disclose what they saw. However, Mr Clarke contended that the burden was upon the appellant to establish that there was an Article 3 risk. He argued that that burden had not been discharged. He indicated that the two unknown prisoners, referred to Dr Yom by an unknown lawyer, who had made assertions which were not wholly agreed with by

an international organisation, the IRC, rendered that element of the evidence unreliable.

445. In her oral submissions, Ms Laughton countered Mr Clarke's preceding arguments in two ways. She submitted that Dr Yom's evidence was clearly evidence upon which weight should be placed, she also confirming that the information provided by the said two prisoners was backed up by photographic evidence sent by those prisoners to Dr Yom. Such is correct, copies of those photographs being at B11 Tab 74. The photographs are extensive and, I find, materially supportive of the evidence of the two prisoners, with reference to prison conditions, as set out by Dr Yom in his report.

446. I acknowledge, that certain of Mr Clarke's submissions in relation to the Trekell arbitration, and other matters, have arguable merit, as have various submissions made by Ms Laughton, and have taken them fully into account when assessing the appellant's credibility, the credibility of his witnesses and, indeed, the evidence as a whole. Having considered the totality of the evidence, I arrive at the following conclusions.

447. As I have indicated above, I have found the evidence of the appellant, and his various witnesses, both oral and in statement form, to be detailed and consistent. It is supported by two very detailed and impressive expert reports. One of those reports, that of Dr Yom, was spoken to by him in oral evidence and I reiterate that I conclude that Dr Yom stood up well to very extensive questioning by Mr Clarke. I found that Dr Yom was able to answer, clearly and persuasively, the concerns raised of him by Mr Clarke in cross-examination. Similarly, the appellant was extensively cross-examined by Mr Clarke and he was, I find, able to answer those extensive questions clearly, cogently and persuasively. I found the evidence of Sheikh Khalifa, the appellant's wife and Mr Khreis similarly to be consistent and impressive. In summary, I accept, as credible and reliable, all of the material evidence of the appellant and his various witnesses. I consider the expert evidence of Drs Ulrichson and Yom to be reliable and to be evidence upon which reliance should properly be placed.

448. I do not propose to rehearse, at this stage of my decision, all of the very extensive evidence which I have set out above. Suffice to say, I have taken it into account in its entirety and find that the available evidence overwhelmingly establishes, applying the relevant lower standard of proof, the appellant's case in its material respects. Specifically, I make the following findings of fact arising from that evidence:

1) The appellant was genuinely involved in a genuine investigation of videotapes which, the appellant and his fellow team members, believed genuinely showed the corruption and other issues described;

2) The arbitrator in the Trekell arbitration, SB, was entitled to conclude as he did, based upon the evidence before him. I find that it has not been established, based upon the evidence before me, that that arbitration was a sham or was contrived. I reiterate that I do not have the evidence upon which the Swiss authorities seek to rely in terms of the Swiss prosecution but I conclude that that

prosecution was initiated as a result of a complaint made by Sheikh Ahmed's political adversaries, Sheikh Nasser and Jassem Al Kharafi;

3) It is not for me to conclude whether the videotapes in question are, or are not, genuine, as I have insufficient evidence before me to arrive at such conclusion;

4) I conclude that the appellant did not join the said investigative team for personal profit but, rather, that he did so in order to seek to expose the said corruption of Sheikh Nasser, Jassem Al Kharafi and the two senior judges referred to;

5) I find as a fact that the Fintas Group prosecution and conviction, and the other associated legal proceedings referred to, were politically motivated, that the Fintas Group trial was marred by irregularities, as indicated above, and that those convictions are unsafe. I find that they were initiated in order to seek to gag the political opponents of Sheikh Nasser, the Al Kharafi family and the senior judiciary referred to;

6) Based upon the evidence available to me, which is of course limited, I am not satisfied that the Swiss prosecution is well-founded but that, of course, is a matter for the Swiss authorities to determine, albeit I reiterate that I conclude that that prosecution was, it would appear, commenced at the instigation of political enemies;

7) The evidence before me causes me to conclude that the outcome of the KRIC arbitration is arguably unreliable, bearing in mind the strong evidence before me that an expert witness in those proceedings was bribed and that the arbitrator in those proceedings was informed, it would appear prior to the conclusion of that arbitration, that criminal proceedings were to be brought in relation to individuals who were supporting KRIC in that arbitration;

8) I find as a fact that the Jordanian charges are also politically motivated, for the reasons indicated above, and I am satisfied that a key witness in that prosecution, Mr Al Amri, was tortured in order to provide a confession which then implicated the defendants in relation to those charges. In other words, I find it to be a prosecution which is unsafe in terms of the reasoning behind it;

9) I conclude that there are substantial grounds for concluding that, were the appellant to be removed to Kuwait, he would be ill-treated, in the manner claimed, to the extent that such treatment would infringe his Article 3 rights;

10) I find as a fact that the appellant would not receive a fair trial or hearing in Kuwait, for the reasons clearly set out above, with reference to Article 6. I conclude that the appellant would be imprisoned for a lengthy period of time, in inhuman and degrading conditions and in respect of convictions which are politically motivated, such amounting to persecution;

11) I consider that there is a real risk that the appellant would be deprived of his Kuwaiti citizenship, in the event of his removal to Kuwait, and that there is also a real risk of him being removed to Jordan where, the available evidence

establishes, there are substantial grounds for concluding that he would suffer inhuman and degrading treatment at the hands of the Jordanian authorities.

449. Clearly, the question of sufficiency of protection does not arise; nor does the possibility of internal flight. I have already indicated above that I am satisfied that the appellant does not fall for exclusion from Refugee Convention protection; nor does he fall to be excluded from the potential of humanitarian protection, although the latter becomes otiose, as I am satisfied that the appellant's asylum appeal requires to be allowed, for the reasons I have indicated.

450. Thus, for the reasons I have stated, the appellant's asylum appeal is allowed, his humanitarian protection appeal is dismissed but his appeal, with reference to Articles 3 and 6, is allowed.

NOTICE OF DECISION

The appeal is allowed on asylum grounds.

The appeal is dismissed on humanitarian protection grounds.

The appeal is allowed on human rights grounds (Articles 3 & 6).

Direction regarding anonymity - Rule 13 of the Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Section 11 of the Contempt of Court Act 1981

In order to secure the anonymity of the appellant throughout these proceedings I DIRECT that no report or other publication of these proceedings or of any part or parts of them shall name or directly or indirectly identify him. Reference to the appellant may be by use of his initials but not by name. **Failure by a person, body or institution whether corporate or unincorporated (for the avoidance of doubt to include a party to this appeal) to comply with this direction may lead to proceedings for contempt of court.** This direction shall continue in force until this Tribunal, the Upper Tribunal (IAC) or an appropriate Court shall lift or vary it.

First-tier Tribunal
IMMIGRATION AND ASYLUM CHAMBER

Signed..... **Date**.....
Judge of the First-tier Tribunal Hodgkinson

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal, and because a fee has been paid, I have considered making a fee award and have decided to make a whole fee award of £140.00.

Signed..... **Date**.....
Judge of the First-tier Tribunal Hodgkinson

Approval for Promulgation

To be emailed to:	Promulgation Section
Email address:	[redacted]
Name of Judge issuing approval:	Mr C J Hodgkinson
Appellant's Name:	HAH
Case Number:	PA/04728/2018

Oral determination (please indicate) ☐

I approve the attached Determination for promulgation

Name: C J Hodgkinson

Date: 3/10/2018

Amendments that require further action by Promulgation section:

Change of address:

Rep: ☐	Appellant: ☐

Other Information:
