

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary arrest, temporary detention and charges brought against of Mr. Nawaf al-Hendal for his human rights activities including monitoring a peaceful protest, as well as in an alleged act of reprisal for his cooperation with international organizations and following his participation at the 28th session of the UN Human Rights Council in Geneva.**

Mr. **Nawaf al-Hendal** is a human rights defender advocating for human rights in Kuwait, with a particular focus on the rights of the Bedoun community. He founded the Kuwait Watch Organisation for Human Rights in early December 2014, which is a non-governmental organisation that monitors and documents human rights violations in Kuwait and the Gulf region. Mr. Al-Hendal also works to defend the rights of stateless persons by organising peaceful protests to highlight their situation, as well as by documenting and monitoring human right violations.

According to the information received:

In January 2015, Mr. Al-Hendal was in Geneva to attend the United Nations' Universal Periodic Review (UPR) of Kuwait, which took place on 28 January 2014. When he was in Geneva, he learnt that an arrest warrant had been issued against him on 22 January 2015 by the State Security Apparatus of the Ministry of the Interior for tweets that he had posted on his Twitter page that were allegedly deemed offensive to the deceased King Abdullah Bin Abdulaziz of Saudi Arabia. The arrest warrant was issued under article 4 of the Act (31) 1970 of State

Security Crimes. On his return to Kuwait on 1 February 2015, he was interrogated by officials at the Kuwait International Airport with regard to the purpose of his participation at the UPR in Geneva and the details of meetings he had held on the margins of the session.

In March 2015, Mr. Al-Hendal returned to Geneva to attend the 28th session of the United Nations Human Rights Council. On 20 March 2015, he delivered an oral statement regarding the human rights situation in Kuwait, during which he raised concerns about freedom of expression and opinion and the ongoing attacks on human rights defenders and online activists in Kuwait. He returned to Kuwait the following day.

On 23 March 2015, in his capacity as Director of Kuwait Watch Organisation for Human Rights, Mr. Al-Hendal organised an observer team to monitor a protest outside the National Assembly in Al-Erada square in Kuwait City. The protest, attended by approximately 800 protesters, aimed to call for reform of the judiciary and the release of detained activists. The protest remained peaceful throughout its duration, and Mr. Al-Hendal and his colleagues monitored and documented the protest without taking part in it directly.

At approximately 8.45 p.m., the Kuwaiti Special Police Force blocked the road leading towards the National Assembly and ordered the peaceful protesters to disperse immediately. Subsequently, approximately 100 police officers began to physically disperse the protestors by beating them with their batons. Mr. Al-Hendal was identified and also beaten by the officers. He was subsequently arrested and detained alongside 19 other individuals.

Mr. Al-Hendal and the 19 other individuals were held at the Criminal Investigation Department in Al-Salmiya pending interrogation. While in detention, Mr. Al-Hendal did not have access to his family, his lawyer or medical personnel.

On 25 March 2015, Mr. Al-Hendal and ten other persons were released from detention. A travel ban has been imposed on him. He is currently awaiting trial on charges of “participating in an illegal demonstration” with possible sentence of one year’s imprisonment.

Serious concern is expressed at allegations of the arbitrary arrest, temporary detention and charges brought against Mr. Nawaf al-Hendal may be a result of his legitimate human rights work and exercise of his rights to freedom of expression and peaceful assembly. Serious concern is expressed that the arrest, detention and prosecution constitute acts of intimidation and reprisals for his cooperation with international organizations and the United Nations, its mechanisms and representatives in the field of human rights. Further concern is expressed regarding the disproportionate and excessive use of force during the dispersal of the peaceful protest as well as the subsequent arrest of 19 individuals in connection with the protest.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Al-Hendal and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the above-mentioned allegations related to reprisals, arrest and detention as a result of Mr. Al-Hendal's work as human rights defender and his cooperation with international organizations and the United Nations human rights mechanisms. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate what measures have been taken to ensure that the rights to rights of freedom of opinion and expression and of peaceful assembly and of association are respected and that the physical and psychological integrity of those exercising these rights is guaranteed.
5. Please provide information about the directives issued by the Government to law-enforcement personnel concerning the precise circumstances in which the use of force is authorized, and indicate how these measures comply with Kuwait's international human rights obligations.
6. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in a safe and enabling environment and interact freely with the United Nations without fear of harassment, stigmatization or restrictions of any kind.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In this connection, the above alleged facts indicate prima facie violations of the rights to freedom of opinion and expression and to freedom of peaceful assembly and of association as set forth in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) which Kuwait acceded to on 21 May 1996.

We would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, [...] and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In connection to the violent dispersal of a protest and the arrest of protestors, we would like to refer to report A/HRC/20/27 of the Special Rapporteur on the rights to freedom of peaceful assembly and of association which further highlights a series of best practices, underlining notably “that no one [should be] criminalized for exercising the rights to freedom of peaceful assembly and of association” (para. 84 (c)). The Special Rapporteur also calls upon States to also ensure “that administrative and law enforcement officials are adequately trained in relation to the respect of the rights to freedom of peaceful assembly and of association” (para. 84 (h)) and “that law enforcement authorities which violate the rights to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law” (para. 84 (i)).

With regards to Mr. Al-Hendal and his colleagues monitoring and documenting the protest, we highlight that “[s]tates should also ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies” (para. 94).

Furthermore, we would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, article 5 of the Declaration provides for the right to meet or assemble peacefully; article 9 includes the provision for the right to unhindered access and communication with international bodies; and article 12 holds that the State must take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2007 (A/62/225, paras. 91 and 93), which underlines the importance of human rights monitors during demonstrations in providing an impartial and objective account of what takes place and in deterring human rights violations.

With regard to allegations that the reprisals against Mr. Al-Hendal relate to his cooperation with the United Nations and its mechanisms, we wish recall Human Rights Council resolutions 12/2 and 24/24, which condemn all acts of intimidation or reprisal by Governments and non-State actors against individuals who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights and call on States to ensure adequate protection from such acts.

Furthermore, the 2014 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/27/38) reiterates the Secretary-General's firm position that any act of intimidation or reprisal against individuals for cooperating with the United Nations, its representatives and mechanisms in the field of human rights is unacceptable and must be stopped (paragraph 48).