

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

REFERENCE: AL
KWT 5/2015:

13 August 2015

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 and Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolutions 25/2 and 24/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest of Mr. **Musallam Al-Barrak** and his subsequent prison sentence allegedly as a result of political comments he made during a speech in June 2012.

According to the information received:

On 29 October 2012, Mr. Musallam Al-Barrak, a former representative of the People's Assembly in the State of Kuwait, was arrested pursuant to Law No. 31/1970 for allegedly having "insulted" and "undermined the status of the Amir" in a speech he made earlier that year. The authorities reportedly released him on bail four days later, amid nationwide protests.

On 15 April 2013, a lower Criminal Court in Kuwait sentenced Mr. Al-Barrak to five years in prison in connection with the above-mentioned speech; however, he was freed on bail immediately afterwards pending an appeal. On 17 April 2013, a solidarity rally was held at his home, at which some 67 people recited the same speech he had made in 2012, before being dispersed by the authorities. These 67 people were later prosecuted.

On 22 February 2015, a Kuwaiti Appeal Court reduced Mr. Al-Barrak's sentence from five years to two years imprisonment. Mr. Al-Barrak handed himself over to authorities on 1 March 2015, but was released on bail on 20 April 2015 pending a verdict from the Kuwaiti Cassation Court.

On 18 May 2015, the Cassation Court upheld the two-year jail sentence handed down to Mr. Al-Barrak on 22 February 2015 and it is reported that he is currently serving his sentence in prison. This verdict from the Cassation Court is final and cannot be appealed.

The arrest and imprisonment of Mr. Al-Barrak has reportedly taken place during a climate of increasing restrictions on freedoms of expression, association and peaceful assembly of those individuals who are critical of the authorities.

We express concern that the arrest and sentencing of Mr. Musallam Al-Barrak may be related to the exercise of his legitimate rights to freedom of expression and opinion and freedom of association. We are further concerned at the increasingly limited space for individuals, including public figures, to express dissenting opinions in Kuwait.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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.

We would like to appeal your Excellency's Government to take all necessary measures to guarantee the right to freedom of expression of persons carrying various political opinions. The legitimate exercise of this right is of central importance in the effective functioning of a democracy.

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 our observations on the following matters:

1. Are the facts summarized above accurate?
2. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
3. Please provide detailed information on the legal grounds for Mr. Al-Barrak's arrest and sentencing, indicating how these sanctions are compatible with international human rights norms and standards, in particular articles 19 and 22 of the ICCPR.
4. Please provide detailed information on the measures taken by the authorities to guarantee the exercise of the rights to freedom of expression and opinion, association and peaceful assembly in the Kingdom of Kuwait.

We would appreciate receiving a response within 60 days.

While awaiting reply, we urge that all necessary interim measures be taken to stay Musallam Al-Barrak's current adjudication and prevent the re-occurrence of detentions based on the expression of political opinions.

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights, acceded by the Kingdom of Kuwait on 21 May 1996, which guarantee the right to freedom of expression and the right to freedom of association respectively.

In paragraph 11 of its General Comment No. 34, the Human Rights Committee provides that ideas of all kinds are guaranteed protection and that this extends to "political discourse" and commentary on one's own and on public affairs. The Human Rights Committee has elaborated that the expression rights granted by the ICCPR are particularly high in circumstances of public debate concerning the political domain. Accordingly, Kuwait should not undermine this fundamental right by sanctioning individuals for expressing their political opinions.

We would also like to take this opportunity to refer to your Excellency's Government to paragraph 79 (f) of the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Human Rights Council (A/HRC/14/23) where he emphasizes that "Laws imposing restrictions or limitations must not be arbitrary or unreasonable and must not be used as a means of political censorship or of silencing criticism of public officials or public policies."

Moreover, we would like to draw your Government's attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which "reminds States of their obligation to respect and fully protect the [right] of all individuals to... associate freely, online as well as offline... including human rights defenders... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the [right] to freedom of... association are in accordance with their obligations under international human rights law".