

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
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22 April 2016

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 freedom of religion or belief; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 22/20, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged intimidation of a woman human rights defender, Ms. **Shaikha Binjasim**, for the exercise of her right to freedom of opinion and expression as well as freedom of thought, conscience and religion or belief.

Ms Shaikha Binjasim is a human rights defender, writer and professor of philosophy at Kuwait University. She has been advocating on social media for freedom of conscience and freedom of speech in Kuwait. She is also involved in several activities dedicated to the protection of the rights of women and minorities in the country. Her writings have touched on such topics as tolerance, democracy and rule of law in Kuwait.

According to the information received:

On 8 March 2016, Ms. Shaikha Binjasim was interviewed on a Kuwaiti television channel, Al-Shahed, during which she discussed the separation of religion from politics. She stated that "anyone who believes that the Quran, or Shari'a, or the interpretations of these religious texts are above the constitution is betraying the state of Kuwait." She further said that Shari'a is a source of legislation in the constitution, however the source of authority should be exclusively the constitution and placing the Quran above it is considered undemocratic. She expressed concern about the use of religious law against women, minorities, and freedom of expression.

On 11 March 2016, several members of the Kuwaiti National Assembly requested that the Minister of Higher Education of Kuwait dismiss Ms. Binjasim from Kuwait University. Ms. Binjasim continues to teach.

After the interview, a lawyer also filed a complaint to the public prosecutor over statements made by Ms. Binjasim. On 14 April 2016, Ms. Binjasim appeared before the public prosecutor for questioning on the accusations of contempt of religion. She was released the same day.

On 19 April 2016, Ms. Binjasim received a second summons to appear before the public prosecutor's office in the Houli area, Kuwait. If charged and convicted, Ms. Binjasim could face up to one year's imprisonment under the blasphemy law.

Concern is expressed at the possible charges and conviction for blasphemy of Ms. Binjasim and at the intimidation that she has suffered following her statement at an interview on TV by the threats of dismissal from her job as well as being brought in for questioning by the public prosecutor. Despite not being charged or dismissed from her employment as a professor, we are concerned that this may impose undue restriction on the peaceful and legitimate conduct of her human rights work, as well as exercise of the right to freedom of opinion and expression and freedom of thought, conscience and religion or belief, as provided in articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Kuwait in 1996. We are also concerned on the broader impact this may have in the self-censorship on political and public issues and have a deterrent effect on the free exchange of ideas on such matters. Consequently, such forms of intimidation and potential criminalization may limit the free flow of information and ideas in society as a whole.

In this connection, we reiterate our concerns at the provisions of blasphemy that represent a serious limitation to the right to freedom of expression and belief and call on the Government to revise these provisions in order to put them in line with international human rights norms and standards.

We call on the Government to respect and guarantee that right and ensure an enabling environment for human rights defenders to carry out their activities, both online and offline, without fear of persecution, intimidations and criminalization.

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.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the justification for bringing Ms. Binjasim in for questioning and how this is compatible with international human rights norms and standards as stated, inter alia, in the ICCPR and the UN Declaration on Human Rights Defenders.
3. Please provide information about the measures taken or to be taken to put legislation, in particular provisions on blasphemy and contempt of religion, in conformity with international human rights norms and standards on freedom of expression, such as articles 18 and 19 of the ICCPR.
4. Please provide information about measures taken or to be taken to ensure that Ms. Binjasim can continue her employment at Kuwait University despite the attempts aimed to intimidate her.
3. Please explain what measures have been taken to ensure that human rights defenders in Kuwait, in particular Ms. Binjasim, can carry out their peaceful and legitimate activities without fear or threat of persecution, criminalization or intimidations of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kuwait on 21 May 1996, which provide for the rights to freedom of thought, conscience and religion or belief and freedom of opinion and expression.

The right to freedom of expression includes all forms of expression, including political discourse and expressions on religion, whether expressed online or offline. As noted by the Human Rights Committee, free communication of information and ideas about public and political issues between people is essential. Limitations to this right must meet the high threshold established by article 19(3). The Human Rights Committee has stated that provisions on blasphemy and contempt of religion are incompatible with the ICCPR, except in the specific circumstances envisaged in article 20(2) and even in such cases they must meet the threshold of article 19(3) (General Comment 34, CCPR/C/GC/34). Moreover, article 19 establishes an active obligation for all levels of the state to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression, including an obligation to ensure that the rights contained in article 19 are given effect to in the domestic law of the state.

The Human Rights Committee also stressed that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of 4 the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26 of the ICCPR. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

Human Rights Committee General Comment 22 (para. 10) also states that if a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

We also wish 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, we would like to refer to articles 1 and 2 of the Declaration, which 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, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and

- article 8 which provides for the right to submit to governmental bodies criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

In this connection, we would also like to refer to Human Rights Council resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law (OP 5), and further indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).