

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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: AL
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25 February 2015

Excellency,

We have the honour to address you in our capacity 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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18, and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **charges brought against Mr. Mohammed al-Ajmi and the sentencing of Mr. Abdulhakim al-Fadhli in Kuwait, both human rights defenders.**

Mr. **Mohammed al-Ajmi** is a blogger and a member of the National Committee for Monitoring Violations, which documents violations of the right to freedom of expression in Kuwait. He also advocates for the rights of the stateless people Bedoon in Kuwait.

Mr. **Abdulhakim al-Fadhli** is a Bedoon human rights defender advocating on behalf of the stateless people Bedoon in Kuwait. He was the subject of a previous communication sent by various Special Procedures, dated 31 July 2014. We acknowledge receipt of the responses from your Excellency's Government dated 19 September 2014 and 8 October 2014.

The case of Mr. Mohammed al-Ajmi

According to the information received:

On 28 January 2015, Mr. Mohammed al-Ajmi was arrested by State security officers in front of his house. His family was unaware of his detention until they received a telephone call from State security officials requesting that his medications be delivered to him. The family delivered the medication to the State Security headquarters where he was being held, but were denied access to him.

On 29 January 2015, Mr. al-Ajmi was transferred from the State security premises in South Surra to the Office of the Public Prosecutor, where an interrogation was conducted regarding comments that he had posted on his Twitter page. These comments are reportedly considered 'offensive' by the authorities due to the references they allegedly contain concerning the death of King Abdullah Bin Abdulaziz of Saudi Arabia. Mr. al-Ajmi was not granted access to a lawyer. Following the interrogation, he was charged under article 4 of the External State Security Act, according to which: "Any person who (...) performs aggressive acts against foreign countries that would expose Kuwait to the risk of war, or threaten its political relation with other countries, shall be punished by imprisonment of not less than the interim term of three years. If such acts result in the occurrence of war or the severing of diplomatic relations, the penalty shall be life imprisonment." If convicted, Mr. al-Ajmi could be sentenced to at least three years imprisonment. He was detained in the State Security headquarters and was released on 2 February 2015. The charges against him are still pending and it is not certain when his trial will start.

The case of Mr. Abdulhakim al-Fadhli

According to the information received:

On 7 July 2014, Mr. Abdulhakim al-Fadhli was arrested while participating in a peaceful demonstration. During his arrest, he was allegedly beaten by an officer belonging to the security force. Mr. al-Fadhli was detained until 7 August 2014.

In September 2014, the Misdemeanour Court sentenced him to six months' imprisonment for insulting a police officer during the said peaceful demonstration. Mr. al-Fadhli's defence team is awaiting the verdict of the appeal they presented against the Misdemeanour Court's sentence.

On 29 January 2015, in a separate court case against him, the Criminal Court sentenced Mr. al-Fadhli to one year in prison with hard labour on charges of "inciting Bedoons in Kuwait to protest and cause chaos". The Court also issued a

deportation order that will come into effect at the end of his prison sentence. His defense team is planning to appeal the sentence.

Mr. al-Fadhli has not yet been detained. However, his sentence may reportedly be executed at any time.

Concern is expressed about the charges brought against Mr. al-Ajmi, as well as the sentencing of and the deportation order brought against Mr. al-Fadhli, which are allegedly related to their peaceful and legitimate work advocating for the rights of Bedoon people in Kuwait, as well as their exercise of their rights to freedoms of peaceful assembly, opinion and expression.

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.

As 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 any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the prosecution of Mr. al-Ajmi and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
3. Please provide information concerning the legal grounds for the prosecution and conviction of Mr. al-Fadhli and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
4. Please indicate what measures have been taken to ensure that human rights defenders in Kuwait are able to carry out their legitimate work, including exercising their rights to freely associate, assemble and express opinions in a safe and enabling environment without fear of intimidation and criminalization of any sort.

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 responsible of 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

Gabriela Knäul
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer to articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) and articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kuwait in 1996.

We would also 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, 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. We would also like to refer to articles 5, 6 and 12 of the said Declaration.

Furthermore, we would like to refer to Human Rights Council resolution 24/5, which “[r]eminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including [...] persons espousing minority or dissenting views or beliefs [and] 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 rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

Regarding the case of Mr. al-Ajmi, we would like to remind your Excellency's Government of his right to have access to legal counsel, as enshrined in article 14 of the ICCPR and the UN Basic Principles on the Role of Lawyers.