

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 situation of human rights defenders

REFERENCE:
AL KWT 1/2018

28 March 2018

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 situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning 70 Kuwaiti human rights defenders and members of Parliament sentenced, on 27 November 2017, to prison terms of up to nine years for holding a spontaneous peaceful demonstration against corruption in Kuwait's National Assembly in 2011. Among them were the following individuals:

1. **Dr Waleed Msaed Alsayed Ibrahim Al Tabtabaie**, currently serving as parliamentarian in the National Assembly. He was sentenced to seven years in prison and subsequently arrested on 27 November 2017 in the building of the Ministry of Interior.

2. **Dr Jamaan Dhaher Madi Al Harbash**, serving as parliamentarian in the National Assembly since 2006. He was sentenced to seven years in prison and subsequently arrested on 27 November 2017 in the building of the Ministry of Interior.

3. **Mr Abdullah Jamaan Zahir Al Harbash**, sentenced in absentia to one year in prison.

4. **Dr Faysal Ali Abdullah Al Musalam Al Otaibi**, he was serving as parliamentarian in the National Assembly in 2011. He was sentenced to seven years in prison.

5. **Mr Mubarak Mohamed Kenifez Marzouq Al Waalan**, serving as parliamentarian in the National Assembly in 2011. He was sentenced to seven years in prison.

6. **Mr Salem Namlan Modgham Al Azemi**, serving as parliamentarian in the National Assembly in 2011. He was sentenced to seven years in prison and subsequently arrested.

7. **Mr Musalam Mohammed Hamad Al Barrak**, former parliamentarian and renowned human rights defender. He had been previously sentenced to two years in prison in 2015 because of political comments he made during a speech in June 2012. He was released on 21 April 2017. He was sentenced in absentia to nine years in prison on 27 November 2017, and he was arrested upon his return to Kuwait on 21 January 2018.

8. **Mr Abbas Mohammed Gholom Abdullah**, sentenced to seven years in prison and subsequently arrested at home.

9. **Mr Ali Abdullah Barghash Al Qahtani**, head of department in the Ministry of Transportation. He was sentenced to seven years in prison and subsequently arrested.

10. **Mr. Khaled Mahdi Rammah Al Qahtani**, sentenced to seven years in prison and subsequently arrested.
11. **Mr Waleed Saleh Abdullah Al Shaalan**, sentenced to seven years in prison and subsequently violently arrested at his house by the police forces.
12. **Mr Hasan Faleh Hasan Al Subaie**, teacher. He was sentenced to five years and six months in prison, and he was subsequently arrested at his house.
13. **Mr Faris Salem Mahmoud Al Balhan**, entrepreneur. He was sentenced to seven years in prison and he was subsequently arrested at his home.
14. **Mr Abdulaziz Dahi Laila Alfadli**, sentenced to four years and six months in prison and subsequently arrested.
15. **Mr Nasser Mohammad Farraj Al Mutairi**, employee at the ministry of finance. He was sentenced to seven years in prison and subsequently arrested at work by security officers in civilian clothes.
16. **Dr Mashari Falah Awwad Rashid Al Mutairi**, surgeon. He was sentenced to four years and six months in prison and subsequently arrested.
17. **Mr Saad Dakhil Falah Al Rashidi**, currently unemployed. He was sentenced to two years in prison and subsequently arrested.
18. **Mr Mohammad Abdulaziz Abdullah Al Blehis**, entrepreneur in the food sector. He was sentenced to two years in prison and subsequently arrested.
19. **Mr Farhan Eid Farhan Al Enezi**, sentenced to two years and subsequently arrested at his home.
20. **Mr Sultan Saud Qalafis Mohammad Al Ajmi**, IT professional. He was sentenced to five years and six months in prison and subsequently arrested.

Mr Musalam Mohammed Hamad Al Barrak was the subject of one previous communication sent by 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 (KWT 5/2015), dated 13 August 2015, regarding his arrest and his subsequent prison sentence mentioned above. We acknowledge receipt of the response from your Excellency's Government respectively dated 14 September 2015. However, we remain concerned as a result of the present new allegations.

According to the information received:

Between September and November 2011, a corruption scandal involving politicians and parliamentarians surfaced in Kuwait. As a result, several demonstrations took place in the country, calling on the authorities to launch an investigation into these allegations and to restore accountability and morality in the political arena.

On 16 November 2011, a sit-in protest was held in front of the National Assembly, after the parliament blocked a request to question Prime Minister Sheikh Nasser Al Sabah about the alleged payment of bribes to 16 pro-government members of Parliament. The peaceful protestors – among whom several current and former members of Parliament – spontaneously decided to

march to the house of the Prime Minister. Pushed by the police, which came with batons to block the march and disperse the demonstrations, dozens of demonstrators sought shelter inside the National Assembly building. The demonstrators entered the main hall (“Abdullah Al Salem Hall”), chanted the national anthem and left the building shortly after, following the intervention of a mediator.

A few days after the incident, 70 demonstrators were summoned by the Public Prosecution and accused of “illegal gathering”, “entry into a state property in order to commit the crime of unlawful assembly”, “damage to public property” and “insulting public officials.”

Their initial trial before Kuwait’s Criminal Court started on 25 June 2012 and continued until 9 December 2013. On that day, the accused were acquitted of all charges by the court of first instance, because of the lack of evidence to establish the existence of a premeditated criminal intent when they entered the parliament. The court found that the protesters’ activities were related to the peaceful expression of their opinions, and that there was no evidence that any of the defendants “intended to attack or hurt anyone or to bring damage to public property, and it was not proved that they had deviant or dissenting opinions, that they called for seditions, undermined the public order, threatened national unity or had other criminal intents”.

Nine days after the initial judgement, the Public Prosecution appealed this ruling and, on 29 January 2014, the Court of Appeal started a four-year long trial characterised by continuous postponing and repeated adjournments. On 27 November 2017, the court of appeal overturned the acquittal decision of the Criminal Court and sentenced 67 defendants to prison terms ranging from one to nine years. The defendants protested that they had not been able to examine all defence witnesses and that they had not been informed of the dates for the hearing of the defence.

In its judgment, the Court of Appeal found that there was “evidence that the accused intentionally broke into the hall in accordance with a pre-established criminal plan” and that they “abused of their right to freedom of opinion and expression to endanger public security and to cause chaos.” The court found that the members of the parliament “violated the sanctity of the National Assembly”, and that the leaders of the demonstrations influenced the Kuwaiti youth with “empty rhetoric.” In particular, the ruling referred to articles 4 and 16 of the Law on Public Meetings and Gatherings, which defines any gathering without permission in a public area as a crime, punishable with up to two years in prison. Similarly, the judgement invoked article 34 of the National Security Law No. 31/1970 amending dispositions of the Penal Code, which provides for prison terms of one year for anyone who participates in an assembly of at least five people in a public area “causing public disorder” and who refuses to comply with orders to vacate the area.

The convicted appealed this ruling, which is currently under review before the Court of Cassation. On 28 January 2018, the Prosecutor of the Court of Cassation examined the admissibility of the case, arguing that the ruling of the Court of Appeal was indeed “null”, as the trial was marked by irregularities and serious breaches to fair trial rights, including the right to defence. Defence lawyers requested the suspension of their prison sentence and their release on bail.

However, on 5 February 2018, the day the decision upon this request was issued, the judge unexpectedly stood down from the case, without providing reasons for his resignation. The new judge immediately ruled out the release on bail of the detainees, without taking adequate time to examine the documentation of the case, raising concern about the possible interference of the executive in the proceedings.

Grave concern is expressed at the arrest of the 70 Kuwaiti human rights defenders and members of Parliament, as well as their subsequent sentencing and imprisonment, which appear to solely relate to their legitimate exercise of the rights to freedom of expression and of assembly, as enshrined in articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Kuwait on 21 May 1996. We are further concerned at the increasingly limited space for individuals, including public figures, to express dissenting opinions in Kuwait.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 and conviction of 70 Kuwaiti human rights defenders and members of Parliament and how these measures are compatible with international norms and standards mentioned in annex.
3. Please provide information about the judicial proceedings against the 70 Kuwaiti human rights defenders and members of Parliament and measures taken to ensure that their right to due process and fair trial has been guaranteed.
4. Please indicate what measures have been taken to ensure that human rights defenders in Kuwait, regardless of their citizenship status, 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. 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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Kuwait on 21 May 1996, which provide for the rights to freedom of expression and freedom of peaceful assembly. We wish to reiterate that restrictions to these rights are prohibited unless they meet the high threshold of articles 19(3) and 21. In this regard, we refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls upon States to refrain from imposing restrictions that are inconsistent with paragraph 3 of article 19, including on discussion of government policies and political debate; reporting on human rights, government activities and corruption in government, engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

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 bring to the attention of your Excellency's Government article 5 of the Declaration, which states that everyone has the right, individually and in association with others, at the national and international levels to meet or assemble peacefully.

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."

In addition, we would like to refer to the United Nations Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/23/39 (24 April 2013), according to which the exercise of the right to freedom of peaceful assembly should be "governed at most by a regime of prior notification regarding the holding of peaceful assemblies, in lieu of a regime of authorization.