

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the human rights of migrants

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 43/20, 42/22, 43/4 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Musaed Al Musailim**, who is facing imminent risk of extradition to a country where he would allegedly be exposed to arbitrary detention and conditions and treatment amounting to torture and other cruel, inhuman or degrading treatment or punishment.

According to the information received:

Mr. Al Musailim is a Kuwaiti individual born on 25 October 1981. He was first arrested in Kuwait in 2011 on allegations of defamation of the late Emir of Kuwait and of the judiciary on his personal Twitter account. Subsequently, he was released on bail several times and found not guilty of most of the accusations brought against him. While in detention, it is alleged that he was subjected to torture and ill-treatment by the state security forces. On one occasion he was hospitalised due to the injuries he sustained from the physical assault by the prison guards.

In 2015, Mr. Al Musailim was arrested in Kuwait on accusation of insulting the Kingdom of Saudi Arabia through his tweets, pursuant to Article 25 of Act No. 31 of 1970 amending various provisions of the Criminal Code, which prohibits any public expression that disrespects the Emir, challenges his rights or authority, or is deemed to commit lese-majesty. The Law No. 37 (2014) on communications and Law No. 63 (2015) on cybercrime were also evoked during a later stage of his trials.

Mr. Al Musailim was also charged with possession of arms and ammunition without a license. It is reported that the gun and rifles he was accused of possessing were retrieved during a security raid at his father's house, although they were not registered in his name nor in his possession.

The General Prosecutor accused Mr. Al Musailim of threatening the relationship between Kuwait and Kingdom of Saudi Arabia through his tweets.

However, he was released on bail and left Kuwait before the trial was concluded. The Court of First Instance acquitted him on the charges related to social media activities against the Kingdom of Saudi Arabia. However, he was found guilty of the illegal possession of weapons described in the court order, and sentenced in absentia to five years of imprisonment with labour.

The Court of Appeal upheld the judgment of the Court of First Instance in 2016. In 2018, the Court of Cassation confirmed the court orders of the Court of First Instance and the Court of Appeal from 2016. Furthermore in 2018, the Kuwaiti National Security Crimes Court issued a new order accusing Mr. Al Musailim of “carrying out a hostile act against the United Arab Emirates and defamation in particular against the Emir of the United Arab Emirates Khalifa Bin Zayed Al Nahyan” through his Twitter activity. In July 2019, the Court sentenced him to five years’ imprisonment and issued a fine of 10 000 Kuwaiti Dinars. It is alleged that the accounts from which the tweets were sent did not belong to Mr. Al Musailim, and that some of them may have been created in order to frame him. These alleged fake accounts are now closed and the tweets can no longer be accessed.

On 4 December 2019, the Kuwaiti Criminal Court sentenced Mr. Al Musailim in absentia to seven years in prison on charges of defamation and also for having “insulted the judiciary, misused the phone and spread false news,” bringing his prison sentence term to 82 years. On 9 December 2019, Mr. Al Musailim was sentenced to an additional five years in prison by the Kuwaiti Criminal Court on the charges of insulting the country’s late Emir, and spreading false news. In total, Mr. Al Musailim faces 87 years in prison.

Since July 2017, Mr. Al Musailim has resided in Bosnia and Herzegovina where he is registered as an asylum seeker. On 10 April 2020, Interpol in Bosnia received an extradition request from the Government of Kuwait for Mr. Al Musailim. Following this request, Mr. Musailim was placed under house arrest by the Bosnian authorities as part of the ongoing investigation. A public session by the Court of Sarajevo is scheduled to take place on 5 February 2021 to decide on the extradition order.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned at the risk of extradition of Mr. Musaed Al Musailim to Kuwait. Should the court hearing on Friday, 5 February 2021 rule to extradite, we are concerned that upon being returned to Kuwait, he is at risk of being arbitrarily detained and exposed to torture or other cruel, inhuman or degrading treatment or punishment.

The prohibition of a return to a place where individuals are at risk of torture and other ill-treatment is enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by your Excellency’s Government in 1993. This article provides that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”; and that, “[f]or the purpose of determining whether there are such grounds,

the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be protected against torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

Further, paragraph 9 of the General Comment No. 20 of the Human Rights Committee, states that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement”.

We also wish to refer your Excellency’s Government to article 9 of the International Covenant on Civil and Political Rights which guarantees the right not to be deprived arbitrarily of liberty. In this regard, we recall that arrest and detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion and expression (art. 19), is arbitrary. We also refer to article 13 of the Covenant, whereby an alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

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, 2, 11 and 12(2) of the Declaration.

We would like to draw the attention of your Excellency's Government to the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants, of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and UN Special Rapporteur on the human rights of migrants.¹ In the Joint Guidance Note, the Experts called on States to suspend deportations or forced returns during the pandemic to protect the health of migrants and communities, and uphold the human rights of all migrants, regardless of status. Furthermore, the Experts recalled that enforced returns can only be carried out if they comply with the principle of non-refoulement and the prohibition of collective expulsions, as well as procedural guarantees, including due process, access to lawyers and translators, and the right to appeal a return decision.

¹ [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants.](#)

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Al Musailim and not to extradite him in compliance with international instruments.

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 detailed information on the risk assessment carried out by Bosnia and Herzegovina authorities to ascertain whether Mr. Al Musailim is at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment, if he is extradited and, if no such assessment has been conducted, how this is compatible with the international standards mentioned above.
3. Please provide detailed information about the current extradition proceedings, including whether Mr. Al Musailim would be able to contest a possible extradition decision, with the assistance of a lawyer of his own choosing?
4. Please indicate which concrete measures are being taken by your Excellency's Government to fulfil its obligations under the principle of non-refoulement.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary

Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Elina Steinerte

Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan

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

Felipe González Morales

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