

**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 torture and other cruel, inhuman or degrading treatment or punishment**

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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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing and deportation order against human rights defender Mr. **Abdulahkim al-Fadhli**, as well as allegations of torture against him during interrogation.

Mr. Abdulhakim al-Fadhli is a Bidoun human rights defender, advocating on behalf of the stateless people Bidoun in Kuwait. He was the subject of two previous communications sent by various Special Procedures, dated 31 July 2014 and 25 February 2015. We acknowledge receipt of the responses from your Excellency's Government respectively dated 19 September 2014, 8 October 2014 and 9 April 2015. However, we remain concerned as a result of new allegations.

According to the information received:

Mr. Abdulhakim al-Fadhli has allegedly been arrested several times since the beginning of the Bidoun protest began in February 2011. Hundreds of stateless people in Kuwait, known as Bidoun, reportedly took to the streets in early 2011 demanding citizenship and other rights. The government allegedly promised to restore to the Bidoun social benefits, including government-issued documentation, free education and health care. However, Bidoun claims to Kuwaiti citizenship reportedly remain unresolved.

On 24 February 2014, he was arrested and held in Kuwait's Central Prison for three months. He was allegedly beaten for four hours immediately after his arrest and threatened with rape. Mr. al-Fadhli was allegedly interrogated without a lawyer present. He complained to an investigating prosecutor that he was tortured by the police in order to force him to sign a "confession".

On 7 July 2014, Mr. al-Fadhli was arrested while participating in a peaceful demonstration. During his arrest, he was allegedly beaten by a security forces officer. 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 still awaiting the verdict of the appeal filed against the Misdemeanour Court's sentence.

On 29 January 2015, a Court of First Instance convicted him of public order offences for his participation in an "illegal gathering" on 10 December 2012 in Taima, west of Kuwait City. This gathering marked human rights day, calling on the Government to extend citizenship rights to the stateless Bidoun community living in Kuwait. The Court sentenced Mr. al-Fadhli to one year in prison with hard labour on charges of "inciting Bidouns in Kuwait to protest and cause chaos". The Court also issued a deportation order that would come into effect at the end of his prison sentence.

On 20 February 2016, the Appeal Court upheld Mr. al-Fadhli's sentence. On 18 April 2016, he was arrested at a peaceful private gathering at the residence of a prisoner of conscience and former Kuwaiti parliamentarian. Mr. al-Fadhli was detained in Bloc 4 of Kuwait's Central Prison, a high security section. He has been on hunger strike in protest at his sentence and detention since his arrest. He is checked three times per day by a doctor and is allowed regular phone calls. However, his family is unable to request prison visits as their national identification cards were previously confiscated by a government body called the Central System to Resolve Illegal Residents' Status.

On 16 May 2016, the Kuwait Court of Cassation upheld the one-year imprisonment sentence followed by deportation. It seems that the Court did not address his allegations that he had been tortured during interrogation.

Concern is reiterated about the sentencing of and the deportation order brought against Mr. al-Fadhli, which are allegedly related to his peaceful and legitimate work advocating for the rights of Bidoun people in Kuwait, as well as the exercise of the Bidoun people's rights to freedoms of peaceful assembly, opinion and expression. Grave concern is expressed at the judicial proceedings against Mr. al-Fadhli, the use of torture and ill-treatment to elicit information during his interrogation, and the lack of investigation into the ill-treatment and alleged torture he has been subject to.

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), ratified by Kuwait on 21 May 1996, which provide for the rights to freedom of expression and freedom of 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 (i) 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 refer to articles 5, 6 and 12 of the said Declaration.

In connection with the above allegations and concerns, we would like to refer to the absolute prohibition of torture and other forms of ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Kuwait ratified in 1996, as well as its article 15 which prohibits the use of information obtained under torture as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and its article 12 which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed.

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.”

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 the above-mentioned person(s) 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 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. In particular, please explain how the application of criminal law against the legitimate exercise of the rights to freedom of expression and freedom of assembly is compatible with Kuwait's obligations under international human rights law.
3. Please provide information about the legal basis for the deportation order issued by the Court, and explain how this measure is compatible with international human rights law.
4. Please provide information concerning legal basis and justification for the confiscation of the national identification cards of Mr. al-Fadhli's family, and explain how this is compatible with international human rights law and standards.
5. Please provide information about the judicial proceedings against Mr. al-Fadhli and measures taken to ensure that his right to due process and fair trial has been guaranteed.
6. Please explain what measures have been taken to ensure the physical and mental integrity of Mr. al-Fadhli.
7. 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.

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.

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

David Kaye  
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