

**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 3/2016:

6 October 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 and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the criminalization of the legitimate exercise of the right to freedom of expression through the arrest, detention and conviction of Mr. **Abdulhameed Dashti**, human rights defender and member of Kuwait's National Assembly.

Mr. Abdulhameed Dashti is a member of Kuwait's National Assembly. He was elected to Kuwait's National Assembly in the July 2013 general polls, and is one of nine Shia members of parliament. He was until recently also the chair of the Human Rights Commission of Kuwait's National Assembly. Mr. Dashti is a human rights lawyer and president of the International Council Supporting Fair Trial and Human Rights, Geneva. He is currently in self-imposed exile in the United Kingdom of Great-Britain and Northern Ireland.

According to the information received:

Between September 2014 and February 2016, Mr. Dashti posted statements critical of Bahrain and Saudi Arabia on his Twitter and other social media accounts. During that period, the governments of both States filed complaints about his statements with the Government of Kuwait.

On 25 September 2014, Bahraini authorities filed a complaint against Mr. Dashti and requested that legal action be taken against him based on the posts he had made on social media about protests that took place in Bahrain. Kuwaiti authorities subsequently charged Mr. Dashti under Article 4 of the National Security Law No.31 of 1970, which criminalizes any act considered as hostile which would expose Kuwait to the risk of war or cutting of political relations. The minimum sentence under this law is three years' imprisonment.

The first hearing of the case began on 17 November 2014, while Mr. Dashti still enjoyed parliamentary immunity. The criminal court referred the case to the National Assembly which lifted the immunity by a decision taken in closed session on 13 January 2015, and referred the case back to the court.

On 23 April 2015, following Mr. Dashti's statements made during TV-interviews, Saudi Arabian authorities filed two complaints similar to the one filed previously by the Bahraini authorities. Kuwaiti authorities subsequently filed two new cases against Mr. Dashti based on Article 4 of the National Security Law no. 31, as well as on Articles 14, 15 and 25 of the Penal Code. These provisions criminalize the questioning of the authority of the Emir, the spread of false information during wartime as well as the spread of false information that prejudices the national interest of the country.

On 16 July 2015, a new case was filed by two Kuwaiti nationals accusing Mr. Dashti of "affecting their national feelings". The accusation is based on Article 15 of the National Security Law. The Parliament lifted the parliamentary immunity of Mr. Dashti for this case on 12 April 2016.

Since February 2016, five new cases have been instigated against Mr. Dashti, which in addition to Article 4 of the National Security Law, are based on Article 30 of the National Security Law; Article 147 of the Penal Code; Articles 6, 10 and 11 of the Law on Fighting to Prevent Information Technologic Crimes; Articles 21 and 27 of the Law on Publication and Distribution; and Article 70 of the Law on Development of the Authority to Organise Telecommunication and Information Technology.

In March 2016, Mr. Dashti took leave of absence for two months in connection with medical treatment in the UK. He has not returned to Kuwait since.

On 27 July 2016, Mr. Dashti was convicted and sentenced in absentia to a total of fourteen years and six months in prison. He was sentenced to eleven years and six months for criticizing Saudi military involvement in Yemen and for accusing Saudi Arabia of "supporting terrorism" and "destroying the Gulf region as a whole". He was sentenced to another three years on the charge of "insult to the Bahraini government".

We express concern at the conviction of Mr. Dashti which represents a criminalization of the legitimate exercise of the right to freedom of expression. We express further concern that the provisions upon which the arrest and conviction were made do not meet international human rights standards. We express equal concern at the broader impact this may have on the self-censorship of the free exchange of ideas on political and public matters. Consequently, such forms of intimidation and criminalization may limit legitimate human rights work and the free flow of information and ideas in society as a whole.

In connection with the above alleged facts and concerns, please refer to the **Reference to international human rights law annex** attached to this letter which cites international human rights instruments and standards relevant to the situation.

As it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention, we would be grateful for your observation on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.
2. Please specify the legal basis for revoking Mr. Dashti's parliamentary immunity. In this respect, please also explain measures taken to ensure Mr. Dashti's ability to challenge the revocation of his parliamentary immunity.
3. Please provide information about how the legal basis for Mr. Dashti's conviction complies with Kuwait's obligations under international human rights law.
4. Please provide information about measures taken to bring Article 4 of the National Security Law and its enforcement in compliance with international human rights law.
5. Please indicate the measures taken to ensure that human rights defenders and individuals with dissenting political views, are able to exercise their right to freedom of expression and to work in a safe and enabling environment without fear of harassment and criminalization.

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(s) responsible for 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

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 appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kuwait on 21 May 1996, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

Furthermore, we refer to General Comment no.34 in which the Human Rights Committee underlines that all governmental and public institutions and figures, including those exercising the highest political authority, are legitimately subject to political criticism and opposition. The mere fact that forms of expression are considered to be insulting to a government or a government official is not sufficient to justify the imposition of penalties (CCPR/C/GC/34).

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).