

AMNESTY INTERNATIONAL PUBLIC STATEMENT



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Kuwait: Prisoner of conscience Musallam al-Barrak must be released immediately

In advance of a Court of Cassation hearing scheduled for 20 April 2015, Amnesty International calls on the government of Kuwait to release former parliamentarian, Musallam al-Barrak and to drop charges against him relating to a speech he made in October 2012.

The organization also calls on the government to drop charges against the approximately 67 others who have faced charges or who have been convicted in connection with repeating parts or the entirety of the speech.

Amnesty International echoes repeated international recommendations for Kuwait to bring its laws and practices on freedom of expression in line with the international standards the government has pledged to uphold, notably the International Covenant on Civil and Political Rights (ICCPR).

The government of Kuwait should end the practice of criminal prosecution for defamation or insult and replace it with a legislative provision that allows the aggrieved person(s) to seek redress through a civil suit.

On 15 October 2012 Musallam al-Barrak addressed a public gathering in Erada Square, adjacent to Kuwait's parliament. He spoke out against government "time-wasting and the squandering of resources" and he criticized the Amir of Kuwait, declaring: "Your highness, in the name of the nation we shall not allow you to engage in autocratic rule.[...] Your Highness, how do you want to go down in history? Do you want it to be recorded that under the rule of Sheikh Sabah al-Ahmed, opinion formers [leaders] were imprisoned?"

Amnesty International believes that the statement made by Musallam al-Barrak did not incite to violence or hatred and represented his conscientiously held beliefs. He is a prisoner of conscience and must be released immediately and unconditionally.

Musallam al-Barrak was arrested on 29 October 2012. He was deemed to have "insulted" and "undermined the status of the Amir". The authorities released him on bail four days later, amidst nationwide protests. On 15 April 2013, a lower Criminal Court handed down a five-year prison sentence in connection with his speech. He remained on bail pending his appeal. On 17 April 2013, a solidarity rally was held at his family residence where some 67 people recited the speech before those assembled were dispersed.

In January 2015, an appeal court reduced the sentence to two years. On 1 March 2015, Musallam al-Barrak handed himself to the authorities. He has been held since then as bail was refused. The Court of Cassation, Kuwait's highest court, will determine whether the legal basis of the conviction will stand.

Amnesty International calls on the authorities to likewise drop charges against the approximately 67 people who recited the 2012 speech at the rally held in support of Musallam al-Barrak in April 2013. The 67 people sought to assert their freedom of expression in Kuwait by taking part in the mass recitation of the speech.

Those facing charges include members of a Kuwaiti human rights group, the National Committee for Monitoring Violations (NCV), including Munther al-Habib, Abdullah al-Rafdi and Rana al-Saadoun, who

did not take part in the rally but uploaded the recitation to a social media website. The 67 individuals are being tried in at least five separate groups.

According to a press report in the Kuwaiti Arab Times, on 16 April 2015, a lower court sentenced Fuhad al-'Ajmi and Ahmad al-Damkhi to five years' imprisonment, with labour, for retweeting on social media platform Twitter extracts from Musallam al-Barrak's speech made in October 2012.

Background

Article 36 of Kuwait's Constitution states that that "Freedom of opinion [...] shall be guaranteed" and that "Every person shall have the right to express and propagate his opinion verbally, in writing or otherwise" but adds, "in accordance with the conditions and procedures specified by law". Article 54, however, declares the person of the Amir to be "immune and inviolable", rendering him above criticism.

Article 25 of the Penal Code (1970 amendments) criminalizes all "public criticism" of the Amir and persons convicted could face imprisonment of up to five years.

In contrast, Article 19 of the ICCPR guarantees "freedom of expression," including "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, [...] or through any other media of his choice," and imposes few limitations on the scope of these freedoms.

The Human Rights Committee, the independent body that reviews states' implementation of their obligations under the ICCPR has stated that "All public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition," and that there is a need for "uninhibited expression" in public debate concerning public figures.

It has added that "imprisonment is never an appropriate penalty" in defamation cases, because it will always be disproportionate, and has declared that defamation and insult laws should not be used to shield government leaders from criticism."

In a 17 July 2014 letter to the government of Kuwait about the case of Musallam al-Barrak, Amnesty International stated that if he were to be imprisoned solely for exercising his right to freedom of expression and assembly, Amnesty International would consider him a prisoner of conscience and would call for his immediate and unconditional release.

In a response to Amnesty International dated 18 September 2014, the government of Kuwait asserted that there are no detainees who are held on the grounds of the opinions they hold, and noted that freedom of expression is enshrined in Article 36 of the Constitution. The government noted the caveat that this is limited "as per the terms and conditions provided for in the law".

Amnesty International

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