

Mandates of the Working Group on Arbitrary Detention; 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 Working Group on Arbitrary Detention; 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 33/30, 34/18, 41/12, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning allegations of the use of excessive and lethal force by security forces, including live ammunition, against peaceful protesters, reports of deadly targeted sniper fire against and targeted killings of protesters, resulting in dozens of deaths and thousands of injuries, as well as the arbitrary arrests and detentions of protesters and civil society activists, an internet shutdown, the forced closure of several satellite TV channels, and the intimidation and harassment of journalists and civil society activists, in cities and governorates across central and southern Iraq, including in Baghdad, since the beginning of October 2019.

According to the information received:

On 1 October 2019, peaceful protests took place across central and southern Iraq, including in central Baghdad and in the governorates of Basra, Maysan, Al-Muthanna, Al-Najaf, Karbala, Babylon, Diyala, Dhi Qar and Al-Qadisiyah. Protesters were demonstrating against high levels of unemployment, government corruption, poor public services and restrictions on public freedoms, with broad participation of Iraqi youth. As part of their response, Iraqi security forces, including riot police, reportedly used live ammunition, tear gas and hot water cannons to disperse demonstrators, with reports of a protester death and many injuries.

On 2 October 2019, the peaceful protests continued with further reports of the use of excessive and lethal force by security forces, including continued use of live

ammunition, as well as indiscriminate use of stun grenades, with further protester deaths and injuries reported. Later that evening, it is reported that protesters who had returned home from a demonstration were victims of a targeted killing by masked gunmen.

On 2 October and on 3 October 2019, the authorities imposed a curfew in several governorates as well as an internet shutdown, including social media platforms and messaging apps, across much of the country, including in Baghdad. The internet shutdown has since been lifted and then re-imposed several times, with social media platforms remaining blocked.

On 5 October 2019, the curfew was eased in parts of the country, including in Baghdad, amidst a continued heavy security presence. On the same day, armed individuals allegedly stormed several satellite TV channels in Baghdad, which had reportedly aired footage of the demonstrations, forcing their closure.

Over the next few days the number of reported deaths and injuries of protesters sharply escalated.

As of 11 October 2019, over 100 protesters had reportedly been killed and an estimated 6,000 injured, some seriously, amidst reports of continued use of excessive and lethal force by security forces. Reports suggest that many of the dead and injured protesters are as a result of as of yet unidentified targeted sniper fire from the tops of buildings, allegedly coming from behind the line of security forces, including the targeting of individuals tending to the dead and injured. The use of armoured vehicles has also been reported, which on two occasions were allegedly used to run down protesters, causing injuries. Reportedly, in one area of Baghdad injured protesters were prevented from reaching nearby hospitals by security forces.

From 1 October to the present, security forces have also allegedly arrested and detained over 800 protesters and civil society activists, both during and after demonstrations, amidst reports of arrests of wounded protesters from inside hospitals in Baghdad. An estimated 500 of those detained have reportedly since been released. Furthermore, there are reports of a campaign of harassment and intimidation against journalists and civil society activists, including accusations of reporting false information, threatening phone calls and indirect warnings telling them to “keep silent” and that they have been added to “a list” compiled by intelligence services for “supporting” protesters.

We express serious concern at what appears to be severe violations of several human rights of protesters across cities and governorates in central and southern Iraq, including in Baghdad. In this regard, we would like to draw attention to articles 2, 6, 7, 9,

14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 25 January 1971. These articles guarantee the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest and detention, right to liberty and security of person and the rights to freedom of opinion and expression and of peaceful assembly, respectively. We would also like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Iraq on 25 January 1971, which enshrines the right to physical and mental health.

We first remind the authorities that the State remains responsible for the acts of its State agents "even if it exceeds its authority or contravenes instructions", see article 7 of the Articles on State Responsibility for Internationally Wrongful Acts. Furthermore, we recall that the general obligation to ensure rights under the ICCPR entails that the State can be held responsible for the acts of non-State actors, if it permits or fails to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by acts by private persons or entities, CCPR/C/21/Rev.1/Add. 13, para. 8.

We express our utter dismay at the alleged use of excessive and lethal force by security forces to disperse protesters, including the use of live ammunition and the ramming of protesters with armoured vehicles, and through the use of less lethal means, such as stun grenades. We further express our shock and dismay at the targeted killings of protesters and those tending to the dead and injured by sniper fire, and the targeted killing of protesters after demonstrations. The use of force has resulted in significant loss of life and thousands of injuries, some of a serious nature. We also express our concern at the large number of alleged arbitrary arrests and detentions of protesters and civil society activists, both during and after demonstrations. Additional concern is expressed by reports that some individuals have been beaten and prevented from reaching hospitals in Baghdad, and that arrests of wounded protesters have allegedly taken place from inside hospitals.

We remind your Excellency's Government that the right to life under article 6 of the ICCPR entails a duty to take "all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials", CCPR/C/GC/36, para. 13. In the policing of assemblies, the primary duty of law enforcement agencies is to facilitate peaceful assemblies and protect individuals from harm, CCPR/C/AGO/CO/1, para. 21 and A/HRC/31/66, para. 50. Where justified, the State is under a duty to adopt the minimum force necessary to achieve its protective aim, see Basic Principles on the Use of Firearms by Law Enforcement Officials, principle 4, see also CCPR/C/GC/36, para. 14.

We would like to call the attention of your Excellency's Government to the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions,

which affirms that even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights protected under the ICCPR, subject to the normal limitations. No assembly should thus be considered unprotected. (A/ HRC/31/66, para. 8-9). Furthermore, the report of the Special Rapporteur on Torture (A/72/178) states that, “any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment.”

As indicated by the Human Rights Committee, States parties are “under a due diligence obligation to undertake reasonable positive measures, which do not impose on them disproportionate burdens, in response to reasonably foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State. Hence, States parties are obliged to take adequate preventive measures in order to protect individuals against reasonably foreseen threats of being murdered or killed by criminals and organized crime or militia groups, including armed or terrorist groups”, CCPR/C/GC/36, para. 21.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the concerned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR.

We also express serious concern at the imposed restrictions on media freedoms, including the intimidation and harassment of journalists and alleged forced closure of several satellite TV stations in Baghdad, as well as the reported internet shutdown in many parts of Iraq. We would also like to remind your Excellency's Government that attacks against a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, is not compatible with article 19 of the ICCPR, see CCPR/C/GC/34, para. 23. Furthermore, internet shutdowns affect the capacity of human rights defenders to carry out their work and document human rights abuses. Shutdowns fail to meet the established test for restrictions on the right to freedom of expression under article 19 (3), and of peaceful assembly found in article 21 of the ICCPR. In most cases, network shutdown orders lack a legal basis. Where a legal basis does exist, shutdown orders are often coupled with broad and vague provisions and lack adequate independent oversight. While these measures are typically justified on grounds of national security and public order, they are a disproportionate – and generally ineffective – means of achieving those legitimate aims. (A/HRC/41/41, para. 51-52).

We would also like to refer to 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 articles 1, 2, 5(a) and 12, paras. 2 and 3.

We welcome President Barham Salih's call on 7 October 2019 to open a constructive dialogue with demonstrators and to open a judicial investigation into the causes of the violence and use of excessive force by security forces. We recall that Article 2 (3) of the ICCPR entails that "a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant", CCPR/C/21/Rev.1/Add. 13, para. 15. The government must ensure that the investigation is prompt, independent, impartial, and effective and transparent, and ensures that all those responsible for the use of excessive and lethal force and targeted killings of protesters are held to account.

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 protect the right to life 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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken by your Excellency's Government to carry out a prompt, impartial, independent and effective investigation into the use of excessive and lethal force and deadly targeted killings of protesters. If no investigations have yet been undertaken, or if they have been inconclusive, please provide information as to the reasons thereof.
3. Please provide information on measures taken to open up a dialogue with protesters to address their legitimate claims. Please provide information also on which measures are being taken to ensure that any victims of human rights violations have access to effective remedies.

4. Please provide information on the factual and legal basis for the arrest and detention of peaceful protesters. Please include information on how many detained protesters have since been released, and whether those still detained have been charged with a recognizable criminal offence, have been granted access to a lawyer of their choice, and have been promptly brought before a judge to determine the validity of their detention.
5. Please indicate information on whether measures taken to ensure that those injured are receiving appropriate and unimpeded medical attention.
6. Please provide information on which measures the State has taken to ensure that any restrictions on journalists and other media have been lifted, and on what measures have been taken to investigate the attacks against journalists and other media covering the protests. Please provide information also on what basis, and under which conditions, internet shutdowns are being carried out.
7. Please indicate what measures have been taken to ensure that human rights defenders in Iraq are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment 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.

We intend to 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.

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

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Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Clement Nyaletsossi Voule
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