

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA IRQ 1/2020

13 February 2020

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/22, 41/12, 35/6, 34/18, 42/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arrest and subsequent detention of Mr. **Idrees Saleem Mohammed Rozhbeani**, a member of the Kurdistan Free Society Movement.

The Kurdistan Free Society Movement (Tavgarî Azadî) is a registered political party established in 2014 in Iraq.

According to the information received:

On 8 May 2019, Mr. Rozhbeani was arrested by Asayish security forces at a checkpoint in Erbil. He has remained in their custody at the Directorate General of Asayish – Political Department in Erbil to date.

The Directorate General of Asayish is responsible for security and intelligence throughout the Kurdistan Region, reporting to the Prime Minister of the Kurdistan Regional Government and the Chancellor of the Kurdistan Region Security Council. Asayish officials have reportedly refused to communicate the reasons for the arrest. The arrest appears to be part of a larger operation to arrest and detain members of the Kurdistan Free Society Movement in an effort to contain their political activism. Several other members of the party were recently arrested, allegedly for their affiliation with the party in different parts of the Kurdistan Region, and sometimes released shortly after.

Mr. Rozhbeani was arrested without a warrant or judicial order, he has not been informed of the charges against him, he does not have access to a lawyer and has not been brought before a judge. He has been subjected to torture and mental and physical ill-treatment, including humiliation and sleep deprivation, and detained in inhumane conditions. As stated by Asayish representatives, he was arrested and subsequently detained in relation to his membership with the Kurdistan Free Society Movement.

Mr. Rozhbeani reportedly has a physical disability following injuries he sustained as a soldier, in particular a wound in the shoulder, aggravated by his current detention conditions and the violent treatment to which he has been subjected. He is also experiencing worsening Alzheimer-like symptoms since being detained, including severe memory loss. There are no indications that as a prisoner with disabilities, Mr. Rozhbeani has received any reasonable accommodation in detention. In addition, he has regularly observed hunger strikes for periods of up to ten days, and the most recent is ongoing. Mr. Rozhbeani receives no medical follow-up nor health care in detention. He has not received a visit from any medical doctor and has not had access to medicine. There are serious concerns that he might lose his life due to the combination of these factors.

Mr. Rozhbeani is allowed to receive visits twice a month from one of his relatives. He also received a visit once, for a few minutes, by a member of Kurdistan Free Society Movement, with whom he was not allowed to speak freely. He has not been allowed to meet or speak with a lawyer since the beginning of his detention.

While we do not wish to prejudge the accuracy of the information received, we express our grave concern about the allegations that Mr. Rozhbeani was arrested without a warrant; that he was not promptly informed of the charges against him; that he has not been charged; that he has not been brought before a judge to determine the legality of his arrest and detention; that he has thus far not been tried; that he was subjected to torture and ill-treatment in detention; that he has been denied access to a lawyer to prepare his defence; and that he was denied medical care. We are further concerned, should these allegations be true, that he has been deprived of his liberty on the ground of his real or imputed political opinions.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Rozhbeani is arbitrary or not, we would like to appeal to your Excellency's Government to take the necessary measures to ensure the protection of his right not to be deprived arbitrarily of his liberty, his right not to be tortured, and his right to a fair trial before an independent, impartial and competent tribunal; and his rights to freedom of opinion and expression. These rights are enshrined in articles 5, 6, 9, 10 and 11 and 19 of the Universal Declaration of Human Rights; articles 7, 9, 10(1) and 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both of which were ratified by Iraq in 1971.

We also draw your attention to article 14(2) of the Convention on the Rights of Persons with Disabilities (CRPD), acceded to by Iraq on 20 March 2013, which obliges State Parties to ensure that if persons with disabilities are deprived of their liberty through any process, they are provided with reasonable accommodation taking into account their specific needs:

- Article 5 of the UDHR and article 7 of the ICCPR set an absolute and non-derogable prohibition of torture. Article 2 and 16 of the CAT further codify the same international prohibition of torture. Article 12 of that Convention provides that whenever there are reasonable grounds to believe that an act of torture has occurred, there is a positive responsibility on the part of the State to undertake an independent and impartial investigation into the allegation(s). Article 14 (1) states that “[e]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible”.
- Articles 9 and 14 of the ICCPR and principle 10 and 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide that anyone who is arrested has a right to be promptly informed of the charges against him or her, the right to be heard promptly by a judicial authority, the right to challenge the legality and legitimacy of their detention and the right to a fair trial by an independent, impartial and competent tribunal.
- The right to fair trial includes the right of persons under arrest and detention to have access to a lawyer of their choice without delay and in full confidentiality, as enshrined in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37); the principles 17 and 18 of the Body of Principles and Rule 61 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (as adopted on 17 December 2015 as the “Mandela Rules”). States parties to the ICCPR and the CAT have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity, and that the duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health (CCPR/C/GC/36 para. 25).
- Article 19 of the ICCPR guarantees the right to freedom of opinion and expression.
- Last, the allegations seem to also contradict article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Iraq on 25 January 1971, which establishes the right to physical and mental health. In particular, the Mandela Rules establish States’ responsibility to provide health care for prisoners and to protect the physical and mental health of prisoners (Rules 24 to 27).

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

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 the observations of your Excellency's Government 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 explain the factual and legal grounds for the arrest and detention of Mr. Rozhbeani and how they are compatible with Iraq's international human rights obligations. In particular, please provide the details of the charges against Mr. Rozhbeani, and the related evidence upon which they are based, and the grounds for his continued detention.
3. Please provide information on the measures taken to ensure that Mr. Rozhbeani was and is being protected against any abuse of power while in detention, including torture or any other form of cruel, inhuman or degrading treatment.
4. Please provide the details, and where available the results, of any investigation ordered in connection with the allegations that Mr. Rozhbeani has been tortured during his detention. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Iraq's international human rights obligations under CAT.
5. Please provide information about the judicial proceedings undertaken against Mr. Rozhbeani. When was he brought before a judge to determine the legality of his continued detention ? Has he been allowed early and regular access to a lawyer of his choice and in conditions of time and confidentiality that have enabled him to properly prepare his defence?
6. Please provide information of the measures taken to ensure the physical and mental integrity of Mr. Rozhbeani, including access to needed medicines and life-saving medical treatment with his full consent.
7. Please provide information about whether Mr. Rozhbeani has been provided reasonable accommodation in detention for his disability, as required under international human rights law, in particular articles 2, 5 and 14(2) of the CRPD.

8. Please provide information about measures taken to ensure that members of the Kurdistan Free Society Movement can generally operate in a conducive environment and exercise their rights to freedom of assembly and of association.

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.

While awaiting a reply, we urge that all necessary measures be taken to halt the alleged violations and prevent their recurrence and, in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible for the alleged violations.

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 be grateful if your Excellency could transmit a copy of this letter to the Kurdistan Regional Government for their consideration and contribution in answering the above-mentioned allegations.

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Nils Melzer

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