

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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.

REFERENCE:
AL IRQ 8/2020

27 November 2020

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; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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 43/4, 42/22, 45/3, 41/12, 43/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged enforced disappearance and arbitrary detention of journalist and human rights defender, **Mr. Sherwan Amin Nao Sherwani**.

Mr Sherwan Amin Nao Sherwani is a journalist who published reports on the Kurdistan Regional Government's human rights violations related to the handling of demonstrations and the authorities' alleged failure to pay the salaries of public service employees and to deliver public services. He was arrested on a number of occasions for offenses that were said to be related to his work. On one occasion he spent more than 40 days in detention in Duhok.

According to the information received:

On 7 October 2020, at 16:30, a joint force of more than fifteen armed men, some in civilian clothes and others in police uniform, forcibly removed Mr. Sherwani from his home in Sebiran Collective Camp, Erbil. The men, who did not identify themselves, took his computer, phones, memory sticks and documents. Mr. Sherwani was reportedly briefly shown a hand-written document described as an arrest warrant but with no letter head nor any official stamp, and was not informed of the reasons for his arrest. As is reportedly the practice in the Kurdistan Region in such cases, the Asayish deactivated Mr. Sherwani's social media (Facebook) account shortly after his arrest.

On 8 October, UNAMI Human Rights Office approached Asayish and the police in Erbil to enquire as to the whereabouts of Mr Sherwani. Both Asayish and the police denied having arrested him. On 9 October, lawyers who had volunteered to represent him were not able to locate him.

On 11 October, the Coordinator for International Advocacy in the Kurdistan Regional Government and spokesperson for the government on issues related to human rights issued a statement on the case, stating that Mr. Sherwani had been arrested in a lawfully executed process on charges related to ‘national security’, as stipulated in the Iraqi Penal Code. The statement further alleged that Mr. Sherwani had confessed receiving funds from sources outside Iraq to fuel public disturbance, defame certain social and political figures, push for vandalism in peaceful protests, and to threaten judges. Mr. Sherwani however denies all these allegations.

On 15 October, Mr. Sherwani’s lawyer visited the Asayish Detention Centre in Duhok, but could not meet his client. He was told that Mr. Sherwani was not in the custody, despite information he had received from the Investigation Judge of the Duhok Court the previous day. It is reported that Mr. Sherwani could finally meet his lawyer, in the presence of two Asayish officers, on 26 October, at Asayish Gshti Erbil where he is currently detained.

Pursuant to the hand-written document presented to Mr. Sherwani, his arrest may be related to Law Number 21 in 2003 of Kurdistan Region of Iraq on Suspending Article Number. 156 of the Iraqi Penal Code Number 111 of 1969 which suspends the operation of Article 156 from the Iraqi Penal Code and provides that “Article (156) of the amended Iraqi Penal Code No. (111) of 1969, will be suspended and replaced in the Kurdistan Region of Iraq per the following: Whoever deliberately commits an act with the intent to prejudice the security, stability and sovereignty of the institutions of the Kurdistan Region - Iraq, in any manner whatsoever and that would lead to that, shall be punished by life or temporary imprisonment”. However, in the absence of any confirmation on the charges against Mr. Sherwani, concerns have been brought to our attention that the authorities may be holding him for his work as a journalist.

It is reported that Mr. Sherwani is being kept in isolation. He was reportedly the subject of physical and verbal abuse from Asayish officers who had requested the password to his laptop, which he was coerced to provide. It is further reported that Mr. Sherwani was asked to sign an Arabic copy of a statement he made in Kurdish before the investigative judge, although he is not fluent in Arabic and was not given enough time, nor was he provided any assistance to go through the translated document. According to the information we received, Mr. Sherwani’s health has seriously deteriorated since his arrest. It is also reported that he has not had access to his family since his arrest. The reasons the authorities have provided for not allowing his family access are the COVID-19 measures that have been imposed to address the spread of the virus.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the alleged enforced disappearance and arbitrary detention of Mr. Sherwani, which appear connected to his journalistic work. If found to be connected to the exercise of his professional activity, the detention of Mr. Sherwani would be inconsistent with international human rights law and standards related to freedom of opinion and expression, in particular ICCPR Article 19 and Human Rights Council Resolution 12/16, which called on States to “refrain from imposing restrictions

which are not consistent with ICCPR Article 19 (3), including on discussion of government policies and political debate; reporting on human rights, engaging in 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 express further concerns that, according to the information we received, many other journalists face intimidation, harassment and arrest for exercising their right to freedom of expression.

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

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the factual and legal grounds for the arrest and detention of Mr Sherwani, and explain how these measures are compatible with articles 9 and 19 of the International Covenant on Civil and Political Rights. In absence of such a legal basis, please provide information about the date of his release.
3. Why was the fate and whereabouts of Mr. Sherwani unknown between 7 October and 26 October? Has there been any investigation into the alleged enforced disappearance of Mr. Sherwani? If so, what are the results? Has any remedy been provided to Mr. Sherwani and his relatives?
4. Please provide information about whether any charges have been brought against Mr Sherwani. Please provide information about his conditions of detention, including his access to lawyer, access to information about the case against him, and access to visits by his family.
5. Please indicate what measures have been taken to ensure the safety of journalists in the Kurdistan Region and to guarantee that they can pursue their work free from threats and intimidation.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). 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.

We would like to inform your Excellency's Government that after having transmitted a joint communication 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 letters in no way prejudge any opinion the Working Group may render. The Government is required to respond separately to the joint communication and the regular procedure.

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

Irene Khan

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

Elina Steinerte

Vice-Chair of the Working Group on Arbitrary Detention

Tae-Ung Baik

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Clement Nyaletsossi Voule

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Nils Melzer

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

Annex

Reference to international human rights law

The above mentioned allegations appear to be in contravention of articles 7, 9 and 19 of the International Covenant on Civil and Political Rights which was ratified by Iraq on 25 January 1971 that guarantee the rights of every individual not to be subjected to torture and ill-treatment, to liberty and security and to freedom of opinion and expression, respectively.

We wish to recall that, according to article 9 (1) and (2) of the Covenant, “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. Therefore, for deprivation of liberty to be considered lawful and not arbitrary, established legal procedures and guarantees must be respected.

We further recall that article 9(3) of the ICCPR requires anyone arrested or charged with a criminal offence to be brought promptly before a judicial authority. As the Human Rights Committee explains in its general comment No. 35 (para. 33): “[W]hile the exact meaning of “promptly” may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.” We also wish to bring the attention of your Excellency’s Government to article 9(4) of the ICCPR whereby anyone deprived of liberty has the right to take proceedings before a court so that it may decide without delay on the lawfulness of his or her detention (see also the UN 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)). In this respect, we further highlight that holding persons incommunicado violates their rights under article 9(3) and article 9(4) of the ICCPR, respectively.

We also wish to remind your Excellency’s Government that persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of this right upon apprehension. In this respect, we wish to emphasize that no interrogations should take place without a lawyer (see also A/HRC/45/16, paras. 50-55).

Article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), ratified by Iraq on 23 November 2010, stipulates that no one shall be held in secret detention while article 18 requires that states must guarantee access to information regarding persons deprived of liberty to anyone with a legitimate interest such as relatives, their representatives or counsel. Article 10 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance establishes that any person deprived of liberty shall be held in an officially recognised place of detention (article 10.1) and that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of

detention (article 10.3). Article 6 of the ICCPED provides that state shall take all necessary measures to hold criminally responsible any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance (article 1.2) and appropriate measures must be taken to investigate acts of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice (article 3). We further recall that enforced disappearances violate numerous substantive and procedural provisions of the ICCPR and constitute a particularly aggravated form of arbitrary detention (see CCPR/C/GC/35, para. 17).

Furthermore, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 7 of the International Covenant on Civil and Political Rights, provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

With regards to the allegations of solitary confinement, we would like to recall the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly of 5 August 2011 (A/66/268), in which solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, is defined as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. It is observed that while solitary confinement for short periods of time may be justified under certain circumstances only, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days under conditions of total or almost total isolation) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering.

Article 19 of the ICCPR 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". Any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

In its General Comment No. 34, the Human Rights Committee highlighted that "Paragraph 2 [of Article 19 of the ICCPR] requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing,

discussion of human rights, journalism” (para. 12). “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.” (para. 13) “The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.” (paras 30 and 42). In this respect, we wish to remind your Excellency’s Government that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR is arbitrary, including the right to freedom of opinion and expression (article 19).

Furthermore, we make reference to resolution 45/18 of the Human Rights Council from September 2020, which called upon States “to conduct impartial, prompt, thorough, independent and effective investigations into human rights violations and abuses against journalists and media workers, including effective investigations into whether those violations or abuses were connected with the journalistic work of the victim”.

Finally, we would 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.