

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL IRQ 3/2021

12 August 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 44/5, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **killing, kidnapping, alleged arbitrary arrest and detention, and threatening of human rights defenders, civil society activists, lawyers and journalists in the context of popular demonstrations in Iraq.**

Several communications relating to the targeting of human rights defenders, civil society activists and journalists by State security forces and unidentified armed elements in the context of the multifaceted demonstrations concerning, among other issues, unemployment, corruption, the lack of provision of public services and the restriction of public freedoms, that have taken place in Iraq since October 2019. These concerns have been communicated to your Excellency's Government by Special Procedures mandate holders since October 2019¹, with the most recent such communication sent on 23 March 2021². We thank your Excellency's Government for the replies received to the majority of these communications, however, we regret that to-date, no response has been received to three communications, including the one sent most recently, in particular in light of the allegations details below.

According to the information received:

Concerning the assassination of human rights defenders

On 15 April 2021, Mr. **Hassan Ashour**, an independent civil society activist, engaged in the popular demonstrations taking place in Iraq since 2019, was shot in front of his house in Dhi Qar province by unidentified individuals. He died immediately after being transferred to the hospital. Prior to his killing, Mr. Ashour had reportedly been threatened by unidentified armed elements in connection to his denouncement of attacks, including assassinations and assaults, of peaceful protesters in the country.

On 8 May 2021, Mr. **Ihab Jawad Al-Wazni**, a civil society activist and head of the Karbala Coordination for the Civil Movement, a group involved in the

1 See IRQ 4/2019, IRQ 5/2019, IRQ 6/2019, IRQ 3/2020, IRQ 5/2020, IRQ 6/2020.

2 IRQ 2/2021

organisation of protests in Karbala, was shot and killed in front of his house in the city by unidentified men riding a motorbike. Eighteen months previously, on 8 December 2019, Mr. **Fahim Al-Tai**, a colleague of Mr. Al-Wazni's at the Karbala Coordination for Civil Movement, was also shot and killed in Karbala, when he was attacked by two masked men riding motorcycles and carrying silenced weapons. As with Mr. Al-Wazni, Mr. Al-Tai had announced threats he had received from unidentified armed elements prior to his killing.

As of the finalizing of this communication, while investigations had reportedly been carried out in at least one of the cases, leading to an arrest of one individual who was later released, no prosecutions for these killings had been achieved.

Concerning the abduction and alleged arbitrary arrest, detention and charging of human rights defenders

On 1 April 2021, Mr. **Haider Khashan**, a civil society activist who had been peacefully participating in demonstrations denouncing corruption in the Al-Muthanna Governorate and calling for the resignation of the Governor, was abducted by unknown gunmen in Samawa City. He was released a few hours after his kidnapping and immediately reported the incident to the police. During his abduction, Mr. Khashan's kidnappers threatened to kill him if he continued to participate in demonstrations.

On 6 April 2021, Mr. **Hussain Dakhel**, a civil society activist, was arrested by police in Karbala after holding up a poster referring to the courage of peaceful demonstrators in the Dhi Qar Governorate. He was released the following day, after demonstrations in the Dhi Qar Governorate against his arrest.

On 25 April 2021, Mr. **Hassan Maharj Al-Toufan**, a human rights lawyer active in the use of social media to highlight alleged corruption within the Babylon Governorate, was sentenced by the Babylon Governorate Criminal Court to two years in prison on charges of "insulting the states and the courts", under article 226 of the Iraqi Penal Code. On 31 May 2021, this sentence was overturned by the Federal Court of Cassation, and Mr. Al-Toufan released on 2 June 2021.

On 2 May 2021, Mr. **Abbas Al-Rafi'i**, a journalist, poet and civil society activist who has covered demonstrations in Iraq as a reporter, was abducted by unidentified armed elements in Karbala, allegedly in connection with his reporting work. He was released on 6 May 2021.

Without prejudging the accuracy of the allegations, we express grave concern at the killings of Messrs. Ashour, Al-Wazni and Al-Tai, which we fear to be planned attacks aimed at silencing civil society activists engaged in peaceful demonstrations in the country and simultaneously at dissuading participation in demonstrations more broadly. We express further concern that there appears to be immunity for such killings, which may fuel further killings.³

3 See the report on the Special Rapporteur on the situation of human rights defenders, 'Final Warning: Death Threats and Killings of Human Rights Defenders', A/HRC/46/35.

We also express extreme concern at the alleged abductions of Messrs. Khashan and Al-Rafi'I, all of which appear to be linked to their participation in or engagement with demonstrations in the country. We fear the abductions of Messrs. Khashan and Rafi'i are only two of the more recent attempts by unidentified armed groups to threaten civil society activists engaged with the demonstrations in the country since October 2019. Our concerns in this regard are deepened by the apparent failure of the State to successfully investigate any such acts which have been carried out against civil society activists in the country and to bring perpetrators to justice since the demonstrations began, as recently reported by UNAMI⁴.

In addition, we express concern of the arrest of Mr. Dakhel and the now-overturned sentencing of Mr. Al-Toufan, all of which appear to be criminalizing peaceful assembly – both offline and online – and at its ends, to reduce civic participation in the country as the Iraqi may fear reprisals by engaging in such assemblies and exercising their rights to freedom of opinion and 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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the steps taken, and where available the results, of any investigation carried out into the killing of Mr. Hassan Ashour, Mr. Ihab Jawad Al-Wazni and Mr. Fahim Al-Tai, including the steps taken to identify the direct and indirect perpetrators responsible and the measures taken to prevent future killings. If no such investigation has been carried out, or where such an investigation has proved inconclusive, please explain why and how this is compatible with Iraq's international human rights obligations.
3. Please provide information on the steps taken, and where available the results, of any investigation carried out into the alleged abductions of Mr. Haider Khashan and Mr. Al-Rafi'I, including the steps taken to identify the direct and indirect perpetrators responsible and the measures taken to prevent future kidnappings.
4. Please provide information about the factual and legal grounds for the arrest and detention of Mr. Hussain Dakhel.
5. Please provide any additional information on how Iraqi laws, specifically the Criminal Code adheres to international human rights law in regards to ensuring a safe space for civic participation and prevention of criminalization of human rights defenders, social

⁴ See UNAMI, 'Update on Demonstrations in Iraq: Accountability for Human Rights Violations and Abuses by Unidentified Armed Elements', May 2021 at pp. 8-9.

activists, lawyers and journalists.

6. Please kindly indicate what measures have been taken to ensure that human rights defenders in Iraq, including civil society activists, journalists and lawyers, can carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort. If no such steps have been taken, please indicate a manner in which we may be able to engage with your Excellency's Government as to the development and implementation of such measures.

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.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

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

Annex

Reference to international human rights law

The above-mentioned allegations appear to be in contravention of articles 6, 9, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 25 January 1971.

Article 6 (1) of the ICCPR provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. In elaborating on article 6 in its General Comment No. 36, the Human Rights Committee recalled that State parties must ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State (CCPR/C/GC/36, para. 7). In the same General Comment, the Human Rights Committee also stated that the obligation of State parties to respect and ensure the right to life extends to reasonably foreseeable threats, and that State parties may be in violation of article 6 even if such threats do not result in the loss of life (*ibid.*). States parties are thus under a due diligence obligation to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State and must also prevent, investigate, punish and remedy arbitrary deprivation of life by private entities (*ibid.*, para. 21). As also elaborated in the General Comment, the duty to protect the right to life requires State parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence, such as human rights defenders (*ibid.*, para. 23).

Article 9 (1) of the Covenant establishes the right of all persons to liberty and security of person, including freedom from arbitrary arrest or detention. As established by the Human Rights Committee in its General Comment No. 35, the right to security of person protects obliges State parties to take appropriate measures to protect individuals from foreseeable threats to life or bodily integrity proceedings from any governmental or private actors. State parties must respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders and journalists. (CCPR/C/GC/35, para. 9). In the same General Comment, the Committee underlined that arrest or detention as punishment for the legitimate exercise of the rights guaranteed by the Covenant, including freedom of opinion and expression, as well as freedom of association and assembly, is arbitrary (*ibid.*, para. 17).

Article 19 of the ICCPR guarantees the right of all persons to freedom of opinion and expression, encompassing the freedom to seek, receive and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, *inter alia*, political discourse, commentary on one's own and on public affairs, cultural and artistic expression, and discussion of human rights (Paragraph 11). Any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19 (3) of the Covenant, following which any limitations must be determined by law and conform to the strict tests of necessity and proportionality. As underlined by the Human Rights Committee in its General Comment No. 34, it is the States' duty to put in place effective measures to protect against attacks aimed at silencing those

exercising their right to freedom of expression (Paragraph 23). An attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest and torture, can under no circumstance be compatible with article 19 (Paragraph 23). All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims be in receipt of appropriate forms of redress (Id.).

Article 21 of the ICCPR protects the right to peaceful assembly, stating that no restrictions may be placed on the exercise of the right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The right to freedom of association under article 22 of the ICCPR requires States parties to take positive measures to establish an enabling environment for associations. It is crucial that individuals exercising this right are able to operate freely without fear that they may be subjected to, for example, any threats, acts of intimidation or violence. States additionally have a negative obligation not to unduly obstruct the exercise of the exercise of the right. Associations, pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. (A/HRC/20/27, paras. 63 & 64).

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. We would further like to refer to articles 5(a), 9 and 12(2) of the Declaration, which hold that all persons, individually or in association with others, have the right to meet or assemble peacefully for the purpose of promoting and protecting human rights and fundamental freedoms; that everybody has the right to benefit from an effective remedy in the case of the violation of these rights and freedoms; and that everyone has the right, individually or in association with others, to participate in peaceful activities against violations of these rights and freedoms.