

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; 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

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(Please use this reference in your reply)

2 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; 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, 42/22, 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 arrest and detention of human rights defender and activist Mr **Ammar Al-Helfi**.

Mr Ammar Al-Helfi is a human rights defender, activist and protester who has been taking part in demonstrations since the start of demonstrations in Basra in July 2018 to protest widespread power outages in Baghdad and the country's southern provinces. In many of his Facebook posts he was critical of corruption in Basra, including oil revenues, education, as well as poor health conditions. Moreover, he called for the resignation of the director of the Health Directorate in Basra (posted on 18 December 2021). In a second Facebook post (posted on 18 December 2021), he blamed the governor of Basra for the poor conditions of one of the girls' school in Basra. In a later Facebook post, which he apparently posted while he was taken into custody, he wrote "My brothers: they arrested me and are taking me to the intelligence. Please stand by me."

According to the information received:

On 19 December 2021, Mr. Ammar Al-Helfi was reportedly arrested by intelligence agents in Basra, for allegedly having incited demonstrations. Basra Police command confirmed the arrest of the activist and added that he was arrested under the Anti-Terrorism Law, nr. 13 (2005) and he was consequently put into the custody of the Intelligence Directorate in Basra. Information received indicates that this charge was withdrawn and replaced with another charge under Article 342 ("Arson") of the Iraqi Penal Code No.111 of 1969.

He was arrested while receiving his national identity card in Basra center by two people in civilian clothes, claiming to be from the intelligence services and without an arrest warrant.

On 19 December 2021, the father of Mr. Al-Helfi and his friends went to the Basra Police Command and asked about his whereabouts, but did not get any clarification on his arrest. In the evening of the same day, the lawyer of Mr. Al-Helfi visited the police headquarters and tried to verify the charges against

him and to visit his client, but was not allowed to enter and was informed that Mr. Al-Helfi's case file is with the investigative officer while that officer was on leave that day. The family and friends of Mr. Al-Helfi also went to the Basra Intelligence Department and were informed that he was not in the building.

On 28 December, Mr. Ammar Al-Hefi was transferred from the detention center of the Intelligence Directorate in Basra to the detention center of the Anti-Crime Directorate, due to security concerns, as Mr. Ammar Al Hefi has reportedly been threatened within detention by other inmates.

On 30 December, Mr. Al-Helfi was brought before the investigative judge in Basra where a new charge ("Theft" – article 444 of the Iraqi Penal Code, nr.111 (1969)) was added to his previous charges. As a result, the investigative judge extended his pre-trial detention to 7 January 2022 to complete the investigation. On 31 December, information was received that Mr. Ammar Al-Hefi has been admitted to the hospital for treatment, due to his deteriorating health condition in detention.

Eventually, Mr. Al Hefi was released on bail on 10 January 2022 and is currently awaiting trial. A date for a hearing has not been specified yet.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we wish to express concerns about the alleged arbitrary nature of the arrest of Mr. Al-Helfi, which appears to be in relation to his exercising of his right to freedom of expression online to criticise local government and its policies. As is well established, the arbitrary arrest of a person for exercising their right to freedom of expression is incompatible with international human rights law and standards. We express further serious concerns given that the Basra police command has an established history of torture. Finally, we remain concerned about the physical and psychological integrity of Mr. Al-Helfi.

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

We are issuing this appeal in order to safeguard the rights of Mr. Al-Helfi from irreparable harm and without prejudicing any eventual legal determination.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for the arrest and detention of Mr. Ammar Al-Helfi as well as for the charges against him, and how these are in compliance with the obligations of your Excellency's Government under international human rights law.

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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 25 January 1971.

We wish to draw the attention of your Excellency's Government to article 9 of the ICCPR, whereby everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention, and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

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 opinion and 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 opinion and 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 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a) and (c), which provide for the rights to meet or assemble peacefully, and to form, join and participate in non-governmental organizations, associations or groups;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.