

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: AL IRQ 2/2022  
(Please use this reference in your reply)

31 March 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 43/4 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 investigation against human rights defender Mr. **Ali Akram al-Bayati**.

Mr. Ali Akram al-Bayati is a human rights defender, physician, and had been previously appointed in August 2017 as a Commissioner of the Iraqi High Commission for Human Rights (IHCHR) which is the national human rights institution of Iraq. He is also the founder of TRF, a civil society organization which supports the promotion and protection of minority rights in Iraq.

According to information received:

On 3 February 2022, Mr. al-Bayati received a summons from the Al Resafa Investigative Court of Baghdad informing him that he was being placed under investigation due to a legal complaint filed by the General Secretariat for the Council of Ministers under article 434 of the Iraqi Penal Code in relation to alleged defamation, a charge punishable with imprisonment up to one year.

On 6 February 2022, Mr. Al-Bayati appeared in court. During the hearing, he informed the court that he benefited from legal immunity as a commissioner for the IHCHR. He was informed that he was being investigated for statements that he had made on Al Ahad television channel on 6 December 2020, during his official mandate as a Commissioner of the IHCHR, following a complaint made by the Anti-Corruption Committee, which had been formed in 2020 to investigate claims of corruption. During the television interview, Mr. al-Bayati had spoken about the work of the IHCHR in documenting claims of torture by the families of those detained by the Anti-Corruption Committee. He had explained that the Committee had denied the IHCHR's request to visit detention centres and to interview detainees. The Committee had directed the IHCHR to seek access to the detention centres through a request to the General Secretariat for the Council of Ministers which rather than providing the requested access, instead instigated a legal complaint against Mr. al-Bayati. No other evidence of alleged defamation was presented during the court hearing.

On 7 February 2022, Mr. al-Bayati was released on bail. The date of the next hearing is unknown at present.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we wish to express our deep concerns about the nature of the legal complaint and apparent judicial harassment against Mr. al-Bayati, which appears to be in relation to his exercising of his right to freedom of expression whilst carrying out legitimate human rights activities as a Commissioner of the national human rights institution of Iraq. Such harassment is incompatible with international human rights law and standards. We are further concerned that such apparent judicial harassment will send a message to former and future commissioners of the ICHCR that they may also face harassment following the proper exercise of their functions.

We further draw the attention of your Excellency's Government to article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), which requires the competent authorities to undertake (ex-officio) a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, regardless of whether the victim has submitted a formal complaint, in conjunction with article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. In this regard, the Iraqi Government has a responsibility to immediately investigate the allegations of torture raised by Mr. al-Bayati, and protect him from any acts of reprisal due to his work in the protection of human rights.

In connection with these serious concerns, we would like to refer your Excellency's Government to relevant international human rights instruments and standards, cited in the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandate 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 comments(s) you may have on the above-mentioned allegations
2. Please provide information on the factual and legal basis for the complaint against Mr. al-Bayati and how it is in compliance with the obligations of your Excellency's Government under international human rights law.
3. Please indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in Iraq in a safe and enabling environment without fear of harassment, threats, attacks or acts of intimidation of any kind towards them and their relatives.
4. Please provide detailed information on any investigation, which may have been undertaken, and any results thereof, concerning the allegations of torture reported by Mr. al-Bayati. If no investigation were undertaken, please explain how this is compatible with the International Human Rights obligations of Iraq.

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.

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 may 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.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Irene Khan

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

Nils Melzer

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

## **Annex**

### **Reference to international human rights law**

In connection with the above-alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards:

We would like to refer your Excellency's Government to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 21 January 1971, that guarantees the right to freedom of opinion and expression.

The right to freedom of expression includes the right 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, and discussion of human rights (Paragraph 11). Article 19 requires the States to guarantee the right to freedom of expression (Id.). 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, 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 19 (2) embraces a right of access to information held by public bodies (Paragraph 18 of General Comment No. 34). To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest and make every effort to ensure easy, prompt, effective and practical access to such information (Paragraph 19).

We would also like to remind your Excellency's Government that any restrictions to the right to freedom of expression must meet the criteria established by international human rights standards, such as Article 19 (3) of the ICCPR. Under these standards, restrictions must be provided for by law and conform to the strict tests of necessity and proportionality. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), Article 19 (3) may never be invoked to justify the muzzling of any advocacy of human rights (Paragraph 23).

Furthermore, 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 Recognised Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders). Articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realisation 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.

Likewise, 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 6 (a), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms;

- Article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;

- Article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights; and

- Article 12 (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 their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Both the General Assembly and the Human Rights Council repeatedly urged the States to create and maintain a safe and enabling environment in which human rights defenders can operate free from hindrance, reprisals, and insecurity (e.g., the General Assembly resolutions 74/146 (A/RES/74/146) and 70/161 (A/RES/70/161), and the Human Rights Council resolutions 22/6 (A/HRC/RES/22/6) and 13/13 (A/HRC/RES/13/13)).

They also repeatedly called upon the States to take all measures necessary to ensure the rights and safety of human rights defenders who exercise the rights to freedom of opinion, expression, peaceful assembly, and association (e.g., the General Assembly resolutions 74/146 (A/RES/74/146), 72/247 (A/RES/72/247), 70/161 (A/RES/70/161), 66/164 (A/RES/66/164), and the Human Rights Council resolution 22/6 (A/HRC/RES/22/6)).

They also strongly condemned the violence against and the targeting, criminalisation, intimidation, and torture of human rights defenders and stressed the need to combat impunity by ensuring that those responsible for violations and abuses against human rights defenders, including against their legal representatives, associates and family members, are promptly brought to justice through impartial investigations (e.g., the General Assembly resolutions 72/247 (A/RES/72/247), 70/161 (A/RES/70/161), and the Human Rights Council resolution 31/32 (A/HRC/RES/31/32)).