

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders

Ref.: AL IRQ 4/2022
(Please use this reference in your reply)

31 October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/8 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Mohammad Jumaa** an Iraqi human rights lawyer who is, most notably, providing legal assistance to women victims of domestic violence. Since August 2022, he has been subject to disciplinary proceedings after speaking out on women's rights issues.

According to the information received:

On 7 August 2022, Mohammad Jumaa posted the following tweet in Arabic, in relation to one of his clients:

A Syrian girl married an Iraqi and he brought her to Iraq. He violently abused her and the bruises covered her body. She ran towards the airport to return to her family in Syria.

They told her, you can only travel with the consent of your Iraqi husband!! Because the instructions of the Ministry of Interior prevent the travel of foreigners without the consent of her Iraqi husband! Our laws treat women as slaves?!

The Syrian lady is a human being

On 17 August 2022, Mr. Jumaa reported on Twitter an exchange he witnessed in court between a judge and a female defendant:

Venue: Criminal Court

Subject: The trial of a woman accused of prostitution

The accused speaks without permission

Judge: Shut up, whore!

The accused: Why, would I become a whore without you?

On 21 August 2022, the Iraqi Judicial Council reportedly sent to the Iraqi Bar Association copies of the tweets posted by Mr. Jumaa on 7 and 17 August 2022. The Council allegedly requested the Bar Association to review the tweets and take the necessary disciplinary actions.

Subsequently, on 28 August 2022, Mr. Jumaa was reportedly referred to the Iraqi Bar Association's Professional Conduct Committee. During the first hearing that was held on 7 October 2022, he was presented with the complaint filed by the Iraqi Bar Association and the Iraqi Judicial Council. He confirmed

that he posted these tweets, but their content was not discussed further during the hearing.

The information suggests that the referral was based on an alleged violation of article 108 of the Iraqi Bar Act which states that “[e]very lawyer who violates one of the duties of the lawyer, or behaves in a manner that degrades its status, or performs an act that harms the dignity of lawyers, or violates a provision of this law, shall be subject to a disciplinary trial.”

According to article 109 (c) of the Iraqi Bar Act, the disciplinary penalties that a lawyer might be sentenced to include:

Lifting his/her name from the lawyers’ rolls, which entails dismissal of the lawyer from the membership of the Bar and depriving him/her of practicing law as of the date of the notification of the final judgment issued against him/her.

The Professional Conduct Committee of the Iraqi Bar will reportedly consider the case again on 10 November 2022.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at the information received that indicated Mr. Jumaa was called by the Professional Conduct Committee of the Iraqi Bar Association for tweets related to women’s rights as well as his work; and may face disciplinary penalties. If confirmed, the events described above would amount to a serious breach of several international and regional standards relating to the free and independent exercise of the legal profession and to the right to freedom of expression.

According to these standards, States must put in place all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.

In particular, States must ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.

Like all other citizens, lawyers are entitled to freedom of expression, belief, association and assembly.

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 detailed information on the composition and functioning of the Iraqi Bar Association and explain to what extent they can be regarded as independent disciplinary bodies established by the legal profession.
3. Please provide detailed information on the legislative and other measures adopted by Iraq to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16 (a) of the Basic Principles on the Role of Lawyers) to prevent that they are subject to, or are threatened with, prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions (Principle 18) and to ensure their right to their freedom of expression, belief, association and assembly (Principle 23).

We would appreciate receiving a response within 60 days. Past 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.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Iraq on 25 January 1971, and to the Basic Principles on the Role of Lawyers.

Article 14 (1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set of certain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. She should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990).

Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

Principle 23 stipulates that lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a

lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Furthermore, we bring to your attention 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 also refer to Article 6 (b and c): *‘Everyone has the right, individually and in association with others: (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.’*