

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders

Ref.: AL IRQ 1/2023
(Please use this reference in your reply)

21 March 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders, pursuant to Human Rights Council resolutions 50/17, 44/5, 43/4 and 43/16.

We would like to bring to the attention of your Excellency's Government information we have received concerning the alleged use of **excessive force resulting in the killing and injuring of protesters in the context of December 2022 protests, which sparked in response to the sentencing over alleged social media post of a human rights defender, and the reactivation of arrest warrants against other Tishreen demonstrators.**

In several previous communications¹ to your Excellency's Government by Special Procedures mandate holders, we have raised serious concerns about alleged human rights violations committed in the context of the 'Tishreen Demonstrations', including killings, kidnapping, enforced disappearance, arbitrary arrest and detention, and deliberate targeting of peaceful protesters, human rights defenders, civil society activists and journalists. We thank your Excellency's Government for the replies received to some of the recent communications. We particularly acknowledge your Excellency's Government response to the joint communication sent by the Special Procedures, AL IRQ 5/2021 of 15 November 2021, which raised questions regarding your Excellency's Government progress on ensuring accountability for the above mentioned alleged serious violations committed in the context of the '*Tishreen Demonstrations*'. However, we remain deeply concerned about the continuous human rights violations against peaceful protesters activists and human rights defenders, and the persistent impunity and lack of accountability for these crimes.

According to information received:

On 5 December 2022, dozens of demonstrators started to protest at Firdaus Square in Baghdad, following the sentencing by the Baghdad Criminal Court of a human rights activist associated with the "Tishreen" protest movement over a social media post. The protesters called for the activist's prison sentence to be revoked.

On 7 December 2022, in the late afternoon, hundreds of protesters also gathered in the city center of Nasiriyah, Dhi Qar governorate. They protested against the sentencing of the Tishreen activist as well as against the recent

¹ See IRQ 4/2019, IRQ 5/2019, IRQ 6/2019, IRQ 3/2020, IRQ 5/2020, IRQ 6/2020, IRQ 5/2021, IRQ 1/2022

reactivation of the arrest warrants against other Tishreen protesters for charges related to the demonstrations in 2019/2020. Reportedly, clashes occurred between the protesters and security forces, including anti-riot forces, police and the Iraqi Army. The clashes allegedly involved some participants in the demonstrations throwing Molotov cocktails at the security forces and exchanges of throwing stones or bricks against each other. The security forces allegedly responded by discharging live ammunition firing at the protesters. As a result, two protesters died from gunshots (at least one to the head), and at least 20 protesters were injured, 8 of them by live ammunition and the others by stones or projectiles. The following day, one of the injured protesters died at a local health facility, also reportedly from gunshot wounds. In addition, three members of security forces were reportedly injured, one of whom by a Molotov cocktail.

On 7 December 2022, the Prime Minister of your Excellency's Government reportedly instructed the security forces to investigate the incident mentioned above. The following day, an investigative team set up by your Excellency's Government was dispatched to Nasiriyah to investigate the circumstances of the incident, while the chief of the Dhi Qar police was replaced.

Without prejudging the accuracy of the above allegations, we express serious concern about the alleged use of excessive force during the protests and the violations of the right to life, including of peaceful protesters, activists and human rights defenders in the context of the protests. We are alarmed by the alleged use of unlawful lethal force by security forces, including the use of live ammunition to disperse the protesters. The security forces response seems to have been indiscriminate and excessive to the threat posed by some of the protesters.

We remind your Excellency's Government that firearms with live ammunition should not be used when facilitating assemblies, especially indiscriminately and disproportionately, or to disperse protests; and that law enforcement authorities should take all measures to prevent and minimize any use of force, including taking measures to de-escalate tension and violence in order to facilitate the right to freedom of peaceful assembly.

While we acknowledge the formation of an investigative body and the initiation of investigations by national authorities as well as the subsequent replacement of the chief of the Dhi Qar police, we would like to further remind your Excellency's Government of the obligation to conduct prompt, thorough and impartial investigations into the alleged serious human rights violations with the view of prosecuting those responsible, including commanders, and to provide adequate reparations to the victims.

We reiterate that the access to justice is an integral element of the protection of the rights to freedom of peaceful assembly and of association, which in turn contributes to the establishment of the rule of law. Finally, we are concerned that the use of unlawful and excessive force and the prevailing impunity for the killings of peaceful activists and human rights defenders, create a restrictive environment in Iraq for the exercise of fundamental freedoms, including the right to peaceful assembly and association and the right to freedom of expression. It further creates a chilling effect on individuals, including journalists, media workers and human rights defenders, who wish to express themselves, demonstrate peacefully, and participate in

public and political life in Iraq.

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 on the concrete steps taken, and the results, of the ongoing investigations conducted so far into the reported use of excessive and lethal force leading to the death and serious injury of protesters of December 2022, including with the view of bringing to account those responsible. Please provide information on investigations and their outcome into officials who were complicit in the death and injuries of protesters, including by ordering the use of lethal force against protesters and the failure to take reasonable measures to prevent such violations, including if committed by non-State actors. Please further indicate how it has been guaranteed that the investigations carried out meet the international norms, including of impartiality and transparency.
3. Please provide information on any reparations allocated / provided to the victims or their families in respect to the harm suffered as a result of the excessive use of force in the context of the mentioned protests in December 2022?
4. Please provide information on what measures, including policy and/or security sector reforms, have been undertaken to ensure non-repetition of and prevent the unlawful or excessive use of force by law enforcement in the context of protests, and to guarantee the effective facilitation of peaceful assemblies? What other measures have been undertaken with a view to prevent the use of force in the context of protests, including any strategies to de-escalate tensions during protests?
5. Please provide information on the steps taken by the authorities to ensure that citizens, including peaceful protestors and human rights defenders, can continue their activism and enjoy their rights to freedom of expression, assembly and association offline and online without fear of threats, attacks, intimidation and reprisals. 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.

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.

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

The above-mentioned allegations appear to be in contravention of articles 6, 7, 9, 14, 19, and 21, read alone and in conjunction with article 2(3), 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 (GC36). Further, States parties are under a due diligence obligation to take reasonable, positive measures, in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State. Hence, States parties are obliged to take adequate preventive measures in order to protect individuals against reasonably foreseen threats of being murdered or killed by criminals and organized crime or militia groups, including armed or terrorist groups (GC 36, para. 21). In this respect, States parties are also obliged to disband irregular armed groups, such as private armies and vigilante groups, that are responsible for deprivations of life and reduce the proliferation of potentially lethal weapons to unauthorized individuals. (GC 36, para. 21).

Also 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 (GC36, para. 23).

Furthermore, we recall that an important element of the protection afforded to the right to life by the ICCPR is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences.² State parties are also obliged to prevent, investigate, punish and remedy arbitrary deprivation of life by private entities. (GC36, para. 21).

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity. Investigations must seek to identify not only direct perpetrators but also all others who were responsible for the death, including, for example, officials in the chain of command who were complicit in the death. The investigation should seek to identify any failure to take reasonable measures which

² CCPR/C/GC/36, para 27.

could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist (para 26). Investigations must always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future (Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).

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, and discussion of human rights (para. 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 (para. 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 (GC 34, para. 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 (GC 34, para. 23). In addition, we would like to refer to the article 38 of the Iraqi Constitution that guarantees "freedom of expression using all means".

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 Human Rights Committee in its General comment No. 37 (2020) on the right of peaceful assembly (article 21), stated that the authorities must show that any restrictions on the right to freedom of peaceful assembly meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21. The onus is on the authorities to justify any restrictions and where this onus is not met, States violate article 21 of the ICCPR. The imposition of any restrictions should aim at facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect. (GC 37, para 36) The prohibition of a specific assembly can be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures (GC 37, para 37). General Comment 37 also stated that blanket restrictions on peaceful assemblies are presumptively disproportionate; and that restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned (GC 38, para 38).

Additionally, General Comment 37 stressed the obligations of States “to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials, including sexual or gender-based violence, in the context of assemblies. Both intentional and negligent action or inaction can amount to a violation of human rights. Individual officials responsible for violations must be held accountable under domestic and, where relevant, international law, and effective remedies must be available to victims.” (GC 37, para. 90).

We would like to also 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.

Further, to your Excellency’s Government obligation to ensure accountability for human rights violations, we would like to remind you of the positive obligations imposed by the ICCPR on States parties “to respect and to ensure” all the rights in the ICCPR (art. 2(1)); to take legal and other measures to achieve this purpose (art. 2(2)); and to pursue accountability, and provide effective remedies for violations of Covenant rights (art. 2(3)), as reiterated by general comment 31 (CCPR/C/21/Rev.1/Add.13, 26 May 2004, and general comment 37, para. 21). General comment 31 further states that with failure of the State to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant, especially for violations recognized as criminal, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently 6) (GC 31, paragraph 18). It further stated that impunity for these violations, may well be an important contributing element in the recurrence of the violations.

Further, we would like to draw your attention to the UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1). Principle 1, regarding the General obligations of States to take affective actions to combat Impunity, states that impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.

Further, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, provide that States have obligations to provide equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.

As set by the Basic Principles, reparations can be in the forms of restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice perpetrators of human rights violations, while considering the situation of vulnerability of certain groups.

Finally, we would like to remind your Excellency's government of the commitments made during the Iraq's Universal Periodic Review of the Human Rights Council thirty-fourth session, held in November 2019, during which you have accepted a number of recommendations regarding ensuring a prompt, independent and effective investigation and bringing accountability for violations, such as the use of excessive use of force against civilians during the October demonstrations. (See 147.167, 176, 181, 190, 201, A/HRC/43/14/Add.1 - Para. II (a)); and also to "Put an immediate halt to intimidation and violence targeting journalists, especially during protests" (147.186, A/HRC/43/14/Add.1 - Para. II (a)).