

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

Ref.: AL IRQ 2/2023
(Please use this reference in your reply)

29 March 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/3, 43/4, 43/16, 44/8 and 43/20.

We would like to bring to the attention of your Excellency's Government information we have received concerning the harassment and threats, as well as prosecution based on criminal defamation laws against Mr. **Sarmad Al Tae**, a writer and journalist, Mr. **Saadoun Damad**, a presenter for Al-Iraqiya TV channel and host of talk show "Al-Mouhayed", Mr. **Mohamed Jabber**, presenter for Zagros TV channel and host of talk show "Biwodoh", and Mr. **Ahmed Yahya Issa Rubaye**, assistant professor at the Department of Chemistry at Basra university and anti-corruption defender.

Mr. Rubaye was the subject of a previous communication by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2019 (AL IRQ 2/2019). We thank your Excellency's Government for its response, yet we remain concerned that no information on the allegations of torture and ill-treatment was provided and no investigation initiated.

According to the information received:

*Cases of Mr. **Sarmad Al Tae** and Mr. **Saadoun Damad***

On 1 June 2022, Mr. Sarmad Al Tae appeared in the live-broadcasted political talk show "Al-Mouhayed" on the Al-Iraqiya TV channel, hosted by Mr. Saadoun Damad and aired on a weekly basis. During the broadcast, Mr. Al Tae made statements criticizing the High Judicial Council, and specifically claiming that the Head of the High Judicial Council was a politically biased actor. Subsequently, the broadcast was cut short and taken off air.

On 2 June 2022, Chief Justice Mr. Faeq Zaidan directed a letter to the Head of the Iraqi Media Network claiming the network inappropriately allowed a "radical" host (Mr. Damad) to invite offensive guests on his show. The letter was posted on the website of the High Judicial Council.

On 2 June 2022, the Karkh Investigative Court in Baghdad issued an arrest warrant (following article 226 of the Iraqi Penal Code, insulting public figures and officials) for Mr. Al Taei over his comments made on television. Mr. Al Taei who lives in the city of Erbil told news reporters, on 7 June, that he remained free for the time being. The warrant of arrest against Mr. Al Taei is still pending.

On 4 August, due to pressure from the Iraqi Media Network, a meeting was held between Mr. Al Taei and the Head of the High Judicial Council Mr. Faeq Zaidan, where Mr. Al Taei was forced to apologize, which he did. This did not result in any withdrawal of charges.

In the days and weeks after the TV show, the host of the show, Mr. Daman, received threats, including from a religious figure linked to armed groups. As a result, Mr. Daman was forced into hiding for several weeks. There is currently no arrest warrant pending against him, however there is a case against him based on article 226 of the Iraqi Penal Code at the Karkh Investigative Court in Baghdad. For the time being, Mr. Daman was able to resume his work as a TV host again.

Case of Mohammed Jabbar

On 11 November 2021, during a talk show called “Biwodoh”, which is aired on Zagros TV channel, one of the guests voiced criticism about the role of the judiciary and its Chief Justice, the Head of the High Judicial Council, Mr. Faeq Zaidan. Subsequently, the host of the talk show, Mr. Jabbar, appeared on television and publicly apologized to the judiciary for the statements made by one of his guests.

On 15 November 2021, an arrest warrant was issued by the Karkh Investigation Court in Baghdad against Mr. Jabbar, lodged by the Legal Office of the High Judicial Council based on article 226 of the Iraqi Penal Code (insulting public figures and officials).

On 15 November 2021, the Iraqi Communications and media Commission suspended the further airing of the TV show “Biwodoh”, stating that it violated the CMC’s media broadcasting rules. According to the latest information received, the case against Mr. Jabbar is still open and an arrest warrant is pending against him.

Case of Ahmed Yahya Issa Rubaye

On 18 May 2022, Ahmed Yahya Issa Rubaye, who was the subject of a previous communication in 2019 (AL IRQ 2/2019), was arrested on defamation charges which have been pending at Al Makaal Misdemeanor Court of Basra since 2018. The charges are based on article 433 of the Iraqi Penal Code (defamation and insult) in connection with an internal report submitted to the President of Basra University, revealing corruption at the Department of Chemistry of Basra University. Mr. Rubaye was detained at the Abo Skhair police station in Basra.

On 30 May 2022, the Al-Makaal Misdemeanor Court in Basra received one more defamation case, filed by the governor of Basra against Mr. Rubaye in relation to his posts on the internet about corruption practices in Basra. Reportedly there are more than 12 defamation cases against Mr. Rubaye, mainly referring to his critique and postings on corruption practices in Basra.

On 9 June, Al-Makaal Misdemeanor Court sentenced Mr. Rubaye to four months imprisonment, under article 433 of the Iraqi Penal Code (defamation and insult). On 7 July, Basra Appellate Court overturned this case on appeal and acquitted Mr. Rubaye of these charges due to insufficient evidence. Nevertheless, Mr. Rubaye remains in detention because of other pending charges against him.

On 19 June 2022, a senior police officer at the Ahmed Abo-Skheer police station pointed a pistol in the direction of Mr. Rubaye, allegedly as an act of intimidation. An investigation was launched and, Mr. Rubaye was transferred from the Abo-Shkeer police station to the detention center of Basra Police Command, where he continues to be detained.

On 28 July 2022, the Al-Makaal Misdemeanor Court sentenced Mr. Rubaye again to four months imprisonment, based on a complaint filed by a female colleague of Mr. Rubaye under article 433 of the Iraqi Penal Code (defamation and insult).

As conveyed in the letter sent by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2019, Mr. Rubaye has been previously arrested by intelligence services, on 12 March 2018, in relation to his report on corruption. During his detention at the Police Headquarters in Basra, he was allegedly subjected to various forms of torture and other ill-treatment. In this connection, Mr. Rubaye filed a legal complaint to the Human Rights Office in the Government office and another to the Ministry of Interior, substantiated with medical reports documenting his injuries. As far as information is available, no investigation has yet been initiated to hold those responsible accountable. We further regret that the Government could not provide information on Mr. Rubaye's arrest and detention nor on the torture complaints submitted.

While we do not wish to prejudge the accuracy of these allegations, the reported threats and intimidation against the four individuals, as well as the judicial proceedings against them based on criminal defamation, raise several serious human rights concerns. We are alarmed by the apparent abuse of criminal defamation proceedings to silence criticism of public figures and statements about alleged corruption. We wish to remind Your Excellency's Government that defamation laws are restricting the right to freedom of expression and, as such, the laws and their implementation are subject to the narrow requirements of article 19(3) ICCPR, including the requirements of legality, necessity and proportionality. We wish to reiterate that defamation laws should never serve to stifle freedom of expression and that they should never be used to prevent criticism of public figures. At several instances, the Special Rapporteur for freedom of opinion and expression has called for a global ban on criminal defamation and seditious libel laws criminalizing the criticism of State institutions and officials. The Human Rights Committee in General Comment 34 has called for the decriminalization of defamation, stating that criminal

laws should only be used for the most serious cases and that imprisonment is never an appropriate penalty. We further wish to remind Your Excellency's Government that the right to education, under article 13 of the International Covenant on Economic, Social and Cultural Rights, includes the right to academic freedom, which includes, in particular, the liberty of individuals to express freely their opinions about the institution or system in which they work.

The efforts to silence critical voices on national television in Iraq, as well as the accumulation of legal proceedings and alleged repeated instances of maltreatment against Mr. Rubaye are alarming. We are concerned about the broader significance and negative implications that the targeting of the critics and the TV hosts has for the overall freedom of expression and freedom of the media in Iraq, inter alia through the 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.

We would like to reiterate our concerns regarding the apparent lack of investigation into allegations of torture and ill-treatment made by Mr. Rubaye since 2019. In this respect, we would like to 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 a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

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 explain how Iraq's criminal defamation laws, including article 226 of the Criminal Code, and their application comply with international human rights standards, including the right to freedom of expression and academic freedom. Please elaborate on any steps to prevent the abuse of criminal defamation laws to unduly restrict freedom of expression, and possible steps of your Excellency's Government towards decriminalizing defamation.
3. Please provide information on the legal and factual grounds for the arrest, detention and charges against the different individuals and explain how this complies with your obligations under the international human rights law.
4. Please explain what measures have been taken to ensure that journalists and media workers in Iraq can exercise their legitimate rights to

freedom of expression and engage in journalistic work freely without fear of reprisals, judicial prosecution or criminalization of any kind.

5. Please provide the details and, where available, the results of any investigation, which may have been carried out in relation to the allegations of torture and ill-treatment made by Mr. Rubaye since 2019. If no inquiries have taken place, or if they have been inconclusive, please explain why.

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.

Farida Shaheed
Special Rapporteur on the right to education

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with above alleged facts and concerns, we would like to refer to articles 9, 14, 19 and 22 of the International Covenant for Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 25 January 1971, which guarantees the right to not be subjected to arbitrary arrest or detention, the right to a fair trial and the right to freedom of opinion and expression and freedom of association.

In particular, article 9 of the ICCPR provides that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As per the jurisprudence of the Working Group on Arbitrary Detention and general comment no. 35,¹ any detention due to the peaceful exercise of rights, including the rights to freedom of expression and freedom of association, is arbitrary.

We would like to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in comment no. 27 (CCPR/C/GC/27), restrictive measures must "be appropriate to achieve their protective function" and "be the least intrusive instrument amongst those which might achieve the desired result" (paragraph 14), while "the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law" (paragraph 15).

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR 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(3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, and to be tried without undue delay.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the general comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

¹ CCPR/C/GC/35, para. 17.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. In her report A/HRC/50/29, the Special Rapporteur for the right to freedom of opinion and expression expressed her concern about the criminalization of journalists including through laws that prohibit the criticism of state institutions or officials, negatively impacting media freedom and damaging democratic discourse and public participation.

As defamation laws restrict the right to freedom of expression and they subject to the narrow requirements of article 19(3). Under the article 19(3) requirement of legality, it is insufficient that restrictions on freedom of expression are formally enacted as domestic laws or regulations. Restrictions must also be sufficiently clear, accessible and predictable. The article 19(3) requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions “target a specific objective and do not unduly intrude upon the rights of targeted persons.” The ensuing interference with third parties’ rights must also be limited and “justified in light of the interest supported by the intrusion.” The restrictions must be “the least intrusive instrument among those which might achieve the desired result.” The Human Rights Committee has underscored that defamation laws must “not serve, in practice, to stifle freedom of expression”, and that States should consider decriminalizing defamation. The Committee underlined the importance of crafting defamation laws with care, in order to ensure full compliance with article 19(3). This includes avoiding excessive punitive measures as well as including valid defences, including the public interest in the subject matter and the defence of truth. The Committee also stressed that the application of the criminal law should only be countenanced in the most serious of cases and that imprisonment is never an appropriate penalty.

In two reports to the Human Rights Council the Special Rapporteur on freedom of opinion and expression affirmed that “Criminal law should be used only in very exceptional and most egregious circumstances of incitement to violence, hatred or discrimination”, and that “States should repeal criminal defamation and seditious libel laws and laws criminalizing the criticism of State institutions and officials.

We further would like to recall that articles 21 and 22 of the ICCPR guarantee the rights of peaceful assembly and of association, and note that “no restrictions may be placed on the exercise of this 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.”

With regard to the obligation to investigate allegations of torture and ill-treatment we would like to refer to article 12 of the Convention against Torture, as well as article 28 of the General Assembly Resolution (2022), A/C.3/77/L.45, which “Takes note with appreciation, in this respect, of the updated Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) as a valuable tool to address impunity for torture and ill-treatment by setting out international standards for the conduct of effective legal and medico-legal investigations into allegations of torture or ill-treatment.”

We would like to draw your attention to article 13 of the International Covenant on Economic, Social and Cultural Rights, ratified by Iraq on 25 January 1971, recognizing the right of everyone to education. We would like to recall that, as noted by the Committee on Economic, Social and Cultural Rights the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Accordingly, even though the issue is not explicitly mentioned in article 13, staff and students throughout the education sector are entitled to academic freedom. Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction (para 38 and 39). The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds (General Comment 13, paras 38 & 39).

We would also like to stress that, in accordance with article 15 of the ICESCR, States Parties have undertaken to respect the freedom indispensable for scientific research and creative activity, which includes academic freedom.