

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

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

21 April 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 43/4.

I would like to bring to the attention of your Excellency's Government information I have received concerning the detention and charges brought against Mr. Al-Rousan in relation to the exercise of his right to freedom of expression in the context of his political commentaries and journalistic activities in Jordan.

Adnan Al-Rousan is a Jordanian political writer and journalist based in Amman, who frequently writes critical commentary about the Government of Jordan on his Facebook page.

According to the information received:

On 10 August 2022, Mr. Al-Rousan published a Facebook post, criticizing King Abdullah II bin Al-Hussein, blaming the King for poor living conditions and accusing the King of failing to "*give justice to the oppressed*". On 14 August 2022 he issued a second Facebook post, criticizing King Abdullah II bin Al-Hussein, inter alia saying "*Jordan isn't your property, it's for us Jordanians.*"

In the morning of 15 August 2022 at 9.30 a.m., Mr. Al-Rousan was arrested at his home in Amman, Jordan. The arrest was reportedly conducted by around a dozen of unidentified men, mostly in civilian attire and at least one in uniform. The authorities also issued a search warrant approved by the Public Prosecutor, and a search of his house was conducted. During his arrest, Al-Rousan was not informed about the reasons of his arrest and/or the charges brought against him. After his arrest he was held in custody at Marka Prison in Amman.

In the morning of 15 August 2022 at 10.22 a.m., Mr. Al-Rousan was interrogated about the Facebook posts he had published criticizing King Abdullah II bin Al-Hussein. Al-Rousan answered the questions without the presence of a lawyer. He admitted that he had written a number of posts on social media, but that he was not guilty of any crime.

In connection with article 15 of the Cybercrime law, Al-Rousan was charged with five offenses from the penal code:

- 1) Article 150 of the Penal Code which provides that any written or oral expression which aims at or results in stirring sectarian or racial prejudice or the incitement to conflict between different sects or

national elements shall be punished with imprisonment for no less than six months and no more than three years as well as a fine not exceeding JD500.

- 2) Article 132(1) of the Penal Code which provides that any citizen who knowingly spread, outside the country, false or exaggerated news which might weaken the state's standing or its prestige, shall be punished with imprisonment for no less than 6 months and a fine of no less than JD50.
- 3) Article 191 of the Penal Code which provides that defamation directed at Parliament or one of its members, an official body, the courts, the army, public administrations, or any public official can be punished with imprisonment of between 3 months and two years.
- 4) Article 196 of the Penal Code which provides that the abasement of a public official while carrying out his duties or as a result of actions taken by the official while carrying out his duties is subject to imprisonment of up to one year or a fine.

He was also charged for defamation under article 11 of the Cybercrime Law but this charge has subsequently been withdrawn.

On 21 August 2022 the Court in Amman held a hearing in the case, where Al-Rousan pled not guilty. On 15 September 2022 al-Rousan was released from prison to further await his trial. On 26 October 2022, another Court hearing took place where the Court found Mr. Al-Rousan guilty of a misdemeanour of defaming an official body based on article 191 and article 196 Penal code and article 15 of the Cybercrime law and was sentenced to 3 months imprisonment. In appeal substituted the 3 month prison sentence for a 1 month prison sentence on the basis of a change in the evaluation of the acts attributed to al-Rousan.

Al-Rousan appealed the decision and the request for appeal is currently pending with the Chief Public Prosecutor who decides on the admissibility of the appeal before it can be presented at the Court of Cassation. The details regarding the hearings and proceedings will be determined thereafter.

While I do not wish to prejudice the accuracy of these allegations, the reported arrest, detention and charges brought against Mr. al-Rousan, as well as the raid of his home in Amman raises several human rights concerns. I express my concern about the possible violation of fair trial standards during the arrest and detention of Mr. al Rousan, including his right to access a lawyer and the right to be informed about the charges brought against him and the reasons for his arrest.

I am alarmed by the apparent abuse of criminal defamation proceedings to silence criticism of public figures and statements about alleged corruption. I 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. I 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, I have 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.

I am particularly concerned about the broader significance and negative implications that the targeting of Mr. al-Rousan has for the overall freedom of expression and freedom of the media in Jordan, 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 Jordan.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 legal and factual grounds for the arrest, detention and charges against Mr. al-Rousan, and explain how it complies with your obligations under the international human rights law.
3. Please also inform us of their access to legal representation and his family while in detention.
4. Please explain what measures have been taken to ensure that journalists and media workers in Jordan can exercise their legitimate rights to freedom of expression and engage in journalistic work freely, including in relation to political and Government affairs, without fear of reprisals, judicial prosecution or criminalization of any kind.

I 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, I 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 my highest consideration.

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I 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, I 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 28 May 1975, 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, any detention due to the peaceful exercise of rights, including the rights to freedom of expression and freedom of association, is arbitrary.

I 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).

I 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.

I 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.

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.