

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL IRQ 5/2024
(Please use this reference in your reply)

21 October 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 52/9, 51/8, 54/14 and 53/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning concerning the **arrest, detention and prosecution on espionage charges of the journalist Mr. Sulaiman Ahmad by the authorities of the Kurdish region of Iraq.**

Mr. Sulaiman Ahmad, also known as Sleman Mohammed Ahmed, is a journalist of Syrian nationality. Since 2018, he has worked for the local news agency "Rojnews" as a journalist and editor of its Arabic section. His journalistic work has included reporting on issues related to fundamental rights and freedoms, including the freedom of the press in the Kurdistan Region of Iraq (K-RI). Notably, Mr. Ahmad covered the cases of the "Badinan Prisoners", a group of journalists and activists from the Badinani ethnic group who were arrested in the wake of 2020 anti-Government protests.

In this context, we wish to recall the communication [AL IRQ 1/2017](#), in which Special Procedures mandate holders expressed their concerns about the killing of a journalist who also worked for the agency "Rojnews" in the Duhok Governorate, Kurdistan region. In this regard, I thank your Excellency's Government for the response provided on [26 January 2018](#).

We kindly request your Excellency's Government to share a copy of this communication to the relevant authorities of the Kurdistan Regional Government.

According to the information received:

On 25 October 2023, Mr. Ahmad was reportedly arrested by Iraqi Kurdish security forces ("Assayish") in the Semalka-Faysh Khabur Border Crossing between the Kurdistan region of Iraq and the Kurdish-led Autonomous Administration of Syria, when he was returning from a visit to his family in Syria. He was subsequently taken to an unknown location.

The Directorate of Security in Dohuk Governorate ("Asayish"), stated on their Facebook page on 30 October 2023 that Mr. Ahmad's arrest was not related to his journalistic work but had taken place because of his alleged "secret and illegal" work for the Kurdistan Workers' Party (PKK). The security forces'

Facebook statement also alleged that Mr. Ahmad had confessed to his actions during the investigation and would thus be brought to court, prosecuted and dealt with according to the law.

For several days, Mr. Ahmad's relatives and legal representatives remained unaware of his fate and whereabouts. A lawyer hired by RojNews inquired about Mr. Ahmad in Duhok prison several times, believing he could be held in detention there, but the prison authorities have denied him access and said Mr. Ahmad was not detained there. Several other persons associated with Mr. Ahmad also inquired about his fate and whereabouts, receiving no response from the Kurdish authorities.

During the time in which Mr. Ahmad's fate and whereabouts were concealed by the authorities, Mr. Ahmad was a victim of enforced disappearance.

In May 2024, the Kurdistan Regional Government authorities confirmed that Mr. Ahmad was arrested on 25 October 2023 pursuant to the order of the Duhok Investigation Judge, on the basis of article 1 of Law No. 21 of 2003 (governing matters of national security), which states that "anyone who deliberately and in any way engages in an act intended to harm the security, stability and sovereignty of the institutions of the Kurdistan Region of Iraq and causes such harm, is punishable by imprisonment for life or provisional imprisonment".

The authorities informed that Mr. Ahmad had been charged with espionage as a result of his alleged involvement in "secret and illegal activities" on behalf of the Kurdistan Workers' Party (PKK), noting that he was being held in the detention facility of the Directorate of Security in Dohuk. The regional authorities further stated that after the completion of the investigative and legal procedures by the Duhok Investigation Court, his case had been transferred to the Duhok Criminal Court for his trial. His trial, initially set to take place on 30 June 2024, was postponed to 29 July 2024.

On 29 July 2024, Mr. Ahmad was sentenced to 3 years in prison on charges of espionage, under article 1 of Law No. 21 of 2003 governing matters of national security.

In August 2024, Mr. Ahmad's lawyers filed an appeal to the Court of Cassation, which is reportedly still pending.

Mr. Ahmad's case is reportedly a part of a wider pattern, as several journalists have already been similarly targeted by Iraqi Kurdish security forces ("Assayish") for their journalistic work in the past, being charged with espionage under the same provision of this law, including three persons whose detention the Working Group on Arbitrary Detention deemed arbitrary.

Without wishing to prejudice the accuracy of the above-mentioned allegations, we express our concern about the arrest, detention, prosecution and sentence to prison on espionage charges of Mr. Sulaiman Ahmad. We are also concerned that these may be connected to or in retribution for his work as a journalist as well as about the chilling effect that his detention and prosecution might entail for other journalists of the region. Further, we are worried about the allegations indicating that Mr. Ahmad

was a victim of enforced disappearance.

Should they be confirmed, the allegations could amount to violations of several human rights rules and standards contained in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 25 January 1971. In particular, we refer to the rights to life, to liberty and security of person, which includes the right not to be subject to arbitrary arrest or detention, the prohibition of torture, the right to be recognized before the law and the right to freedom of opinion and freedom of expression, enshrined in articles 6, 7, 9, 16 and 19 of ICCPR.

We also refer to articles 1, 12, 17, 18 and 24 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which Iraq ratified in 2010.

In this regard, we urge the relevant authorities to adopt the necessary measures to prevent any irreparable damage to the life and personal integrity of Mr. Ahmad and to review his case, according to international human rights standards regarding freedom of expression as well as due process and fair trial, and to ensure his release if the charges that motivated his sentence are found unsubstantiated. Further, we kindly ask the authorities to conduct an impartial and exhaustive investigation into the allegations of enforced disappearance between Mr. Ahmad's detention and May 2024.

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 factual and legal basis for the arrest, detention and sentence to prison of Mr. Sulaiman Ahmad and explain how this is compatible with Iraq's obligations under international law. Please further indicate how the rights enshrined in articles 9 and 14 of the ICCPR have been respected, including the right not to be subjected to arbitrary arrest or detention, to be promptly informed of the reasons for the arrest and of any charges against the person, to be brought promptly before a judge and to a fair trial in accordance with international standards concerning due process, the right to a defence and to an impartial tribunal.
3. Please indicate how the sentence to prison of journalist Mr. Sulaiman Ahmad is compatible with the right to freedom of expression enshrined in article 19 ICCPR and Iraq's international obligations regarding the protection and promotion of a free press. Please indicate the steps taken to ensure that Mr. Ahmad's arrest, detention and sentence is not related in any way or occurs in retribution for his journalistic work.

4. Please provide information on any measures taken by the authorities to effectively remove any undue restrictions to the free communication of the detainee with his family, legal representatives and persons with a legitimate interest, whether in person, in writing or over the phone.
5. Please also provide information about any investigation initiated into the allegations of enforced disappearance of Mr. Ahmad and indicate the measures taken in order to identify, and eventually prosecute, the persons responsible for this enforced disappearance. If no investigation or such measures have been initiated, please explain the reason for it. Please indicate how the reported enforced disappearance is compatible with Iraq's obligations under articles 6, 7, 9, and 16 ICCPR and articles 1, 12, 17, 18 and 24 ICPPED. Please further provide information on the policies, procedures and measures adopted to prevent and investigate enforced disappearances carried out by members of State security forces or any other agent acting on their behalf or with their acquiescence, as well as on the procedures and measures in place to determine the fate and whereabouts of persons subjected to enforced disappearance.
6. Please provide information as to the specific measures put in place by the relevant authorities of the Kurdistan region to ensure that journalists can carry out their legitimate work and exercise their freedom of expression in a safe and enabling environment, without fear of threats, intimidation, harassment, prosecution, criminalisation or deprivation of liberty from State authorities or any other agent acting on their behalf or with their acquiescence in connection to their work. Please indicate how these measures and assurances have been implemented in the case of Mr. Ahmad.

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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations, 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 note that a copy of this letter has been shared with the Government of Syria.

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

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

Ganna Yudkivska
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Gabriella Citroni
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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 right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 25 January 1971. Additionally, I would like to refer your Excellency's Government to articles 6, 7, 9 and 16 of the ICCPR, which provide for the rights to life, not to be subjected to arbitrary arrest or detention, to be promptly informed of the reasons for the arrest and of any charges against him or her, to be brought promptly before a judge, to be recognized before the law as well as the for the *erga omnes* prohibition of enforced disappearances and of torture. These articles shall be read individually and together with article 2.3. of the ICCPR, which provides for the right to an effective remedy for every person whose rights contained in the Covenant have been violated.

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline and protects the freedom of the press as one of its core elements. It includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19 (3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed.

Article 20(2) of the ICCPR prescribes that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Yet, the prohibition has a high threshold as it requires the fulfilment of three components: a) advocacy of hatred; b) advocacy which constitutes incitement and c) incitement likely to result in discrimination, hostility or violence (A/67/357, paragraph 43).

In its [general comment No. 34](#), the Human Rights Committee, interpreting article 19, stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and

artistic expression, teaching, and religious discourse” (paragraph 11). The Committee states that article 19 also covers the right of a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion and a corresponding right of the public to receive media output.

The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23). Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (paragraph 23).

Additionally, according to the Committee “the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression” and any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, “are only permissible to the extent that they are compatible with paragraph 3” (paragraph 42). In this regard, “permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3” (paragraph 43). Further, the Committee underlines that “defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression”.

Further, [Human Rights Council resolution 12/16](#) called on States to refrain from imposing restrictions that are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Regarding the allegations of arbitrary detention, article 9 of the ICCPR states that no one shall be subjected to arbitrary arrest or detention or deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. As interpreted by the Human Rights Committee in its [general comment No. 35](#), the notion of "arbitrariness" should not be equated with "against the law", but should be interpreted more broadly to include considerations of inappropriateness, injustice, unpredictability and due process, as well as considerations of reasonableness, necessity and proportionality (paragraph 12). In addition, the Working Group on Arbitrary Detention has established in its jurisprudence that preventive deprivation of liberty, as a precautionary and non-punitive measure, must also comply with the principles of legality, necessity and proportionality to the extent strictly necessary in a democratic society. It may only proceed in accordance with the limits strictly necessary to ensure that the efficient development of investigations is not impeded and justice is not evaded, and provided that the competent authority substantiates and accredits the existence of the aforementioned requirements. Because of the particularly restrictive nature of pre-trial detention, the imposition of this measure

should be the exception rather than the rule.

In relation to the allegations of enforced disappearance, we emphasize the *jus cogens* prohibition of enforced disappearances and the obligation to investigate such allegations under international law. We also refer to articles 1, 12, 17, 18 and 24 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), ratified by Iraq in 2010, as well as articles 7, 9, 10, 11, 12, 13 and 19 of the Declaration on the Protection of all Persons from Enforced Disappearance (1992). Additionally, we also make reference to the Working Group's study on Enforced disappearance and economic, social and cultural rights, which highlights the chilling effect of the disappearance of journalists and human rights defender and calls on States to "ensur[e] the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defender" (A/HRC/30/38/Add.5, paras 33-37; 49).

Finally, I would like to remind Your Excellency's Government of the duty of States to investigate and punish serious human rights violations, as established by the Human Rights Committee in its [general comment No. 31](#), which asserts that failure to take the necessary measures to ensure the investigation and prosecution of such violations may in itself constitute a breach of human rights treaties (CCPR/C/21/Rev.1/Add.13, paras. 15-18). Impunity for such human rights violations can be an essential element contributing to their repetition.