



# Freedom of Expression in the Kurdistan Region of Iraq



United Nations Assistance Mission for Iraq  
Office of the United Nations High Commissioner for Human Rights  
May 2021  
Baghdad, Iraq

“Recent years have seen progress towards a democratic Kurdistan Region where freedom of expression and the rule of law are valued. But democratic societies need media, activists and critics to be able to report on public issues without censorship or fear, and citizens also have a right to be informed.”

- UN High Commissioner for Human Rights Michelle Bachelet, 12 May 2021

“Transparency, accountability and openness to questioning is vital for any healthy democracy.”

- Special Representative of the UN Secretary-General for Iraq, Jeanine Hennis-Plasschaert, 12 May 2021

# Contents

- I. Executive summary ..... 4
- II. Mandate ..... 4
- III. Methodology ..... 5
- IV. Legal Framework..... 5
  - i. Applicable International Human Rights Standards ..... 5
  - ii. Domestic legal framework applicable in the Kurdistan Region of Iraq ..... 7
- V. Key human rights concerns ..... 9
  - i. Arbitrary arrest and detention and violations of procedural guarantees ..... 9
  - ii. Targeted legal proceedings against those critical of the Government and related violations..... 10
  - iii. Integrity of the judicial process and related concerns ..... 11
  - iv. Interference with television and radio coverage of demonstrations..... 13
  - v. Threat, intimidation, harassment and physical assault of journalists and activists..... 13
- VI. Conclusion ..... 13
- VII. Key recommendations ..... 14
- VIII. Annex..... 16

## I. Executive summary

The legal framework applicable in the Kurdistan Region of Iraq provides for the protection of human rights, with explicit provisions guaranteeing the right to freedom of expression, and the Kurdistan Regional Government (KRG) periodically issues public statements avowing their commitment to these legal norms. However, the facts observed on the ground currently point to an increasingly repressive pattern of active curtailment of freedom of expression.

Over the last year, journalists, human rights activists and protesters who questioned or criticized actions by the Kurdistan Regional authorities have faced intimidation, threats, and harassment as well as arbitrary arrest and detention. Critics have also faced criminal charges in relation to the legitimate exercise of their freedom of expression, followed by trials in which basic rights and procedural safeguards were not, or not sufficiently, respected.

*Freedom of Expression in the Kurdistan Region of Iraq*, prepared by the Human Rights Office (HRO) of the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), focuses on the actions taken by public authorities in response to dissent and criticism of their handling of the health and socio-economic challenges in the Kurdistan Region. The report covers the period between 1 March 2020 and 30 April 2021.

During interviews conducted by UNAMI HRO in Erbil, Duhok and Sulaymaniyah from March 2020 through April 2021, media workers, human rights defenders and activists in the Kurdistan Region consistently recounted a marked reduction in the enjoyment of the right to freedom of expression in the past year. While recognizing that the Kurdistan Regional authorities are facing uniquely challenging domestic, regional, and international circumstances, the key findings of this report are of serious concern, particularly the behaviour of the security apparatus, the selective application of laws, and the lack of compliance with relevant legal procedures and international human rights standards, including fair trial rights.

Taking note of the continued cooperation with the Kurdistan Regional authorities, the report and its recommendations are part of an ongoing dialogue with the KRG to promote human rights, in particular the rights to freedom of expression and peaceful assembly, and liberty and security of person, and to encourage both accountability for human rights violations and redress for victims, including effective remedies for all victims. UNAMI/OHCHR recognize efforts taken towards implementation of the report's recommendations.

## II. Mandate

The report and its recommendations were prepared pursuant to United Nations Security Council resolutions, including Security Council Resolution 2522 (2020) that mandates UNAMI to 'promote accountability and the protection of human rights, and judicial and legal reform, with full respect for the sovereignty of Iraq, in order to strengthen the rule of law in Iraq [...]'.

Through its HRO, UNAMI undertakes a range of activities, including human rights monitoring and reporting, in support of efforts to strengthen the rule of law and accountability for human rights violations in Iraq.

## III. Methodology

This report is based on 361 confidential interviews (313 men and 48 women) conducted by UNAMI HRO between 1 March 2020 and 30 April 2021 with journalists, protesters, activists, arrested and detained individuals, family members of activists, lawyers, civil society organizations, KRG representatives and security officials, and other relevant sources with direct involvement or knowledge of the issues covered. UNAMI/OHCHR also reviewed reliable open-source information, as well as photographs and videos directly provided by credible and reliable sources. In addition, UNAMI/OHCHR routinely engages with authorities on human rights issues.

The findings presented in this report have been documented and corroborated in line with OHCHR human rights methodology. UNAMI/OHCHR exercised due diligence to assess the credibility and reliability of all sources and crosschecked the information gathered to verify its validity.

## IV. Legal Framework

### i. Applicable International Human Rights Standards

#### *Freedom of expression*

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone shall have the right to freedom of expression. This includes the freedom to seek, receive and impart information and ideas of all kinds.

The Human Rights Committee of the ICCPR has stipulated that a free, uncensored, and unhindered press or other media, and the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives, is essential to ensure freedom of opinion and expression. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.<sup>1</sup>

The United Nations Human Rights Council has condemned measures which prevent or disrupt an individual's ability to seek, receive or impart information online as being in violation of international human rights law.<sup>2</sup> It has called upon all States to refrain from and to cease such measures, and to ensure that all domestic laws, policies and practices are consistent with their international human rights obligations with regard to freedom of opinion and expression online.<sup>3</sup> The Human Rights Council has also called on States to pay particular attention to the safety of journalists and media workers observing, monitoring and recording peaceful protests,<sup>4</sup> taking into account their specific role, exposure and vulnerability.<sup>5</sup>

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<sup>1</sup> Human Rights Council resolution 44/12 (A/HRC/RES/44/12). See also Human Rights Committee, General comment No. 34 (2011) on freedoms of opinion and expression (CCPR/C/GC/34), para. 20.

<sup>2</sup> Human Rights Council resolution 38/7 (A/HRC/RES/38/7), para 13.

<sup>3</sup> Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (CCPR/C/GC/37), paras. 10, 13, and 34.

<sup>4</sup> <https://www.ohchr.org/Documents/Publications/MonitoringChapter22.pdf> and <https://undocs.org/en/A/HRC/44/52>.

<sup>5</sup> Human Rights Council resolution 25/28 (A/HRC/RES/25/38), para. 8.

General Comment 37 of the Human Rights Committee affirms the important role of journalists, human rights defenders and others in monitoring or reporting on assemblies and their entitlement to protection under the Covenant. They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged. Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor.<sup>6</sup>

#### *Arbitrary arrest and detention*

Article 9 of the ICCPR<sup>7</sup> provides that everyone has a right to liberty and security of person and that no one shall be subjected to arbitrary arrest and detention. It further provides that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his/her detention and order the detainee's release if the detention is not lawful.<sup>8</sup>

Arrest and detention may be authorized under procedures established by domestic law yet still be arbitrary as a matter of international law. The notion of "arbitrariness" does not simply equate with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality.

Arrest or detention as punishment for the legitimate exercise of other rights guaranteed under the ICCPR, including the right to freedom of expression and to freedom of assembly, is arbitrary.<sup>9</sup>

#### *The right to a fair trial*

Article 14 of the ICCPR provides that all persons are equal before the courts and that, in the determination of any criminal charge against him, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal.<sup>10</sup> Article 14 further sets out the minimum guarantees to be afforded to anyone charged with a criminal offence, which include: the right to have adequate time and facilities for the preparation of a defence; the right to examine or have examined the witnesses against him; and the right not to be compelled to testify against himself or confess guilt.

#### *Freedom of movement*

Article 12 of the ICCPR provides that everyone lawfully within the territory of a state shall have the right to liberty of movement. Article 12 (3) provides for exceptional circumstances in which the right to liberty of movement may be restricted, where necessary to protect national security, public order, public health or morals and the rights and freedoms of others.

To be permissible under international human rights law, such restrictions must be provided by law, be necessary in a democratic society for the protection of these purposes and be consistent with all other rights recognized in the Covenant, including the right to freedom of expression under Article 19.

In this context, the Human Rights Committee has stated that it is normally incompatible with Article 19 to restrict the

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<sup>6</sup> Human Rights Committee, General comment No. 34 (2011) on freedoms of opinion and expression (CCPR/C/GC/34), para. 30.

<sup>7</sup> Ratified by Iraq on 25 January 1971.

<sup>8</sup> ICCPR, Article 9 (4).

<sup>9</sup> Human Rights Committee, General comment No. 35 (2014) on liberty and security of person (CCPR/C/GC/35), para. 17.

<sup>10</sup> ICCPR, Article 14 (1).

freedom of movement of journalists and human rights defenders, including to locations within the State where there are allegations of human rights violations and abuses.<sup>11</sup>

#### *The right of peaceful assembly*

Article 21 of the ICCPR provides that: ‘The right of peaceful assembly shall be recognized’. The right protects the non-violent gathering of a number of people in a publicly accessible place with a common expressive purpose. The recognition of the right of peaceful assembly imposes a corresponding obligation on States to treat the exercise of the right and its repercussions with a certain level of accommodation. This requires refraining from unwarranted interference and, where needed, facilitating and enabling such assemblies.<sup>12</sup>

Peaceful assembly does not constitute an absolute right and may in certain cases be limited. Restrictions may however only be imposed when prescribed by the law and ‘necessary in a democratic society in the interest 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’.<sup>13</sup>

Those participating in demonstrations are protected by the right to peaceful assembly,<sup>14</sup> which requires States to allow such assemblies to take place with no unwarranted interference and, whenever it is needed, to facilitate the exercise of the right and to protect the participants.<sup>15</sup>

## **ii. Domestic legal framework applicable in the Kurdistan Region of Iraq**

#### *The Iraqi Constitution*

The Iraqi Constitution protects the rights to freedom of expression, assembly and peaceful demonstration, the rights to freedom of association and communication, including electronic communication, and the right to a fair trial.<sup>16</sup>

#### *Press Law in the Kurdistan Region (Law No 35 of 2007)*

In addition to the constitutional guarantees of freedom of expression, the ‘Press Law in the Kurdistan Region’ (Law No 35 of 2007) prohibits press censorship, guarantees freedom of expression and of publication to every citizen<sup>17</sup> and explicitly provides that “opinions given, or information disseminated by a journalist may not be used as a justification to cause injury to his person or violate his rights”.<sup>18</sup>

Notwithstanding these guarantees, the Press Law does impose some restrictions on the freedom of expression of professional journalists, including making it a criminal offence (punishable by fines of up to 5 million Iraqi Dinar), for print media to publish materials which “sow malice and foster hatred, discord and disagreement amongst the components

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<sup>11</sup> Ibid., para. 45.

<sup>12</sup> Human Rights Committee, General Comment No. 37 on Article 21: right of peaceful assembly.

<sup>13</sup> ICCPR, Article 22 (2).

<sup>14</sup> ICCPR, Article 21.

<sup>15</sup> Human Rights Committee, General Comment No.37 para 8.

<sup>16</sup> Constitution of Iraq (2005), Articles 19, 38-40 and 42.

<sup>17</sup> Press Law in the Kurdistan Region (Law No. 35 of 2007), article 2(1).

<sup>18</sup> Ibid., article 7(2).

of society”<sup>19</sup> or which constitutes “libel, slander or defamation”.<sup>20</sup>

The Press Law further prohibits journalists from publishing ‘false’ information and allows concerned persons to request that this information be corrected, providing for the imposition of fines on editors who do not issue such corrections. However, the Press law also provides that no crime exists where a journalist publishes information about the work of a public official or representative if what he has published “does not go beyond the affairs of the profession” and is supported by proof.<sup>21</sup>

#### *The Iraqi Penal Code (Law No 111/1969)*

The Penal Code prohibits ‘defamation’<sup>22</sup> and provides that anyone found guilty of the offence is punishable “by detention plus a fine, or one of those penalties”.<sup>23</sup> It is an aggravating circumstance under the law if the defamation is published in a newspaper, publication or other press medium.<sup>24</sup> No offence is committed under the Penal Code if the published material is directed at a public official or is “connected with the office or employment of the aggrieved person”, if the person accused of defamation “establishes the truth of all imputations made”.<sup>25</sup>

#### *Law to Prevent the Misuse of Telecommunications Equipment in the Kurdistan Region (Law No.6 of 2008)*

Article 2 of the Law to Prevent the Misuse of Telecommunications Equipment imposes up to 5 years imprisonment for ‘misusing’ a cell phone or any other communication equipment, email, or internet by disseminating threats, slander, insult, or misinformation, disclosing private conversations, or sharing images contrary to public morals, or taking other action that might violate integrity or honour or incite a crime or an immoral act. None of the acts which constitute a crime under Article 2 are defined in further detail.

#### *Procedural safeguards from arbitrary arrest*

The Iraqi Criminal Procedure Code provides that arrests are permitted only if carried out in accordance with a warrant or in other cases stipulated in the law, which includes commission of an offence in front of witnesses.<sup>26</sup> This safeguard against arbitrary arrest is reinforced by the aforementioned ‘Press Law in the Kurdistan Region’ which explicitly provides that a journalist shall not be investigated for reasons related to the practice of his profession except in accordance with a judicial decision. Under the Iraqi Criminal Procedure Code, an arrested person must be taken immediately to the nearest police station or be handed over directly to the judicial authorities.<sup>27</sup> In any event, an arrested person must be brought before an investigative judge for questioning within 24 hours.<sup>28</sup> Before questioning begins, the judge must inform the arrested person of the offence of which s/he is accused and must also inform him/her of the right to be represented by a lawyer.<sup>29</sup>

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<sup>19</sup> Ibid., article 9(1).

<sup>20</sup> Ibid., article 9(5).

<sup>21</sup> Ibid. article 8(4).

<sup>22</sup> Penal Code (Law No. 111/1969), article 433 (1): “Defamation is the imputation to another in public of a particular matter which, if true, would expose such person to punishment or cause him to be scorned by society”.

<sup>23</sup> Ibid., article 433.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid, article 433(2).

<sup>26</sup> Criminal Procedure Code (No 23 of 1971), articles 92, 102 and 103.

<sup>27</sup> Ibid., article 106.

<sup>28</sup> Ibid., article 123(a).

<sup>29</sup> Ibid., article 123(b).



## V. Key human rights concerns

Between March 2020 and April 2021, UNAMI/OHCHR received consistent and credible allegations of unlawful restrictions of the rights of those raising critical voices against Kurdistan Regional authorities or its policies. Journalists, activists, and others were subject to arbitrary arrests and violations of procedural guarantees, the use of threats and/or other forms of pressure and intimidation.

UNAMI/OHCHR also recorded repeated instances of actions by the authorities which appeared intended to prevent the coverage of protests against the KRG's failure to pay public servants salaries, corruption by Government officials, the levels of unemployment in the Kurdistan Region and the KRG's response to the COVID-19 pandemic, by hampering the free movement of journalists travelling to cover demonstrations and suppressing the dissemination of information, while invoking the 'justification' of national security. Most of these incidents were documented between March and August 2020. Additional human rights violations, such as the seemingly arbitrary arrest of protesters and unnecessary and/or disproportionate use of force by security forces, were also documented.

### **i. Arbitrary arrest and detention and violations of procedural guarantees**

UNAMI/OHCHR documented a pattern of arrests of journalists, human rights defenders and other civil society activists after publishing posts on social media sites, writing news articles, including in advance of planned demonstrations, attending or reporting about demonstrations, and otherwise legitimately exercising their right to freedom of expression in a manner perceived by the Government to be against Kurdish 'interests'.

UNAMI/OHCHR documented 33 cases, all male, where journalists, activists or human rights defenders were arrested without being provided information on the reasons for the arrest, were denied access to their lawyers, did not receive information on the charges, and whose families were not informed of their whereabouts in a timely manner. Many of those arrested were held in detention for lengthy periods of time - in some cases for several months - and others were held for periods of up to ten days without being brought before a judge, in violation of the Criminal Procedure Code,<sup>30</sup> only to be released without charge.

One typical example is the case of a reporter who was arrested without a warrant on 19 August while covering a truck drivers' protest at a border crossing point in Duhok. The reporter was held for 10 days by the Kurdistan Regional security forces in their detention facility without being brought before an investigating judge and was not able to communicate with his lawyer or his family during the entire period of his detention. He was eventually released without charge on 30 August.

In another representative case, in August 2020 a radio journalist working for a local radio station was arrested by Kurdistan Regional security forces without being provided information on the reasons of arrest, after she interviewed members of the public on their perceptions of the security forces, including Asayish.<sup>31</sup> The journalist was taken to a separate location where she was warned by the security forces who had arrested her (without reference to any specific legal provision) that

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<sup>30</sup> See supra: Applicable human rights standards in the Kurdistan Region of Iraq - Article 123, Iraqi Criminal Procedure Code.

<sup>31</sup>The Asayish is a security force and is one of the organs of the Security Council of Kurdistan Region. It operates under the authority of the President of the Kurdistan Region, which has jurisdiction over economic crimes and political crimes, including espionage and acts of sabotage and terrorism.

she needed authorization to carry out such interviews. She was released on the same day without charge.

Although the majority of those arrested were eventually released, the process of arrest and interrogation by agents of the state contributes to a climate of intimidation. Moreover, the failure of the authorities to uphold basic procedural safeguards of those detained – including denial of access to legal representation and the lack of judicial oversight – increases the risk of ill-treatment and may in some cases amount to incommunicado detention.

## **ii. Targeted legal proceedings against those critical of the Government and related violations**

Since March 2020, UNAMI/OHCHR has documented several cases of targeted criminal proceedings initiated against journalists from various media outlets, as well as activists posting on social media, who have either reported on anti-Government protests or been critical of the Kurdistan Regional authorities.

These criminal proceedings were primarily brought under either Article 433 of the Penal Code Law, which prohibits ‘defamation’, or under Article 2 of the Law to Prevent the Misuse of Telecommunications Equipment, which inter alia, prohibits the spread of ‘misinformation’. Both these offences are defined in broad and imprecise terms. Anyone convicted under these provisions could face a custodial sentence and/or a fine.

The use of these legal provisions therefore allows individual journalists and activists to be targeted and pressured by the threat of being subjected to potentially severe punishment under the criminal law. This contrasts with the Press Law (covering similar actions committed by professional journalists) which does not impose individual criminal liability instead making the editors-in-chief of officially registered print journals liable for substantial fines (but not imprisonment).

The legal provisions criminalising both defamation and the spread of misinformation have been used to bring charges against individuals for acts ranging from posting critical comments about Asayish in a social media chat group, to publishing an online article accusing a high-ranking member of Government of failing to support the interests of the Kurdistan Region, to allegedly inciting the population to break the COVID-19 curfew.

In at least five documented cases, journalists and human rights defenders have been charged, released on bail, then immediately re-arrested on different charges, leading to concerns that the legal system is being ‘instrumentalized’ in order to disrupt the activities of these individuals and subject them to pressure which may lead to self-censorship, in addition to concerns of arbitrary detention.

On 24 March 2020, a journalist was arrested by the Kurdistan Regional security forces after he wrote Facebook posts criticizing the KRG’s response to COVID-19 pandemic and accusing the regional government of using the curfew and its subsequent extensions as justifications for not distributing salaries of public employees. After being held for almost two weeks, in a Kurdistan Regional security force detention facility, the journalist was released on bail and then re-arrested two days later, on charges of defamation under Article 433 of the Penal Code following a separate complaint filed by a senior official.

In another example, on 15 May 2020, a human rights defender who had called for a one-hour protest in Duhok, to express discontent over the delay in payment of public sector salaries, was arrested by the Kurdistan Regional security forces in his own home. He was held for over two weeks before being released without charge on 31 May. On 18 August, he was re-arrested, and on 9 September charged under the Law to Prevent the Misuse of Telecommunication Equipment. On 4 October, the Duhok Court of Cassation issued a decision for his release and ordered all charges to be dropped against him.

However, he was immediately re-arrested, and remained in detention at the time of writing.

Increased use of the legal and security apparatus to target media organizations critical of the Kurdistan Regional authorities was also observed. Within this context, the raids on and closures of the Sulaymaniyah office of broadcast media outlet on 7 December, and of other offices belonging to the same media outlet in Duhok and Erbil on 19 and 20 August 2020 respectively, raise serious concern. The actions against the various offices of this media outlet were all carried out by Asayish, believed to be acting on the instructions of the Kurdistan Regional authorities. The closures of the media outlet's offices in Erbil and Duhok, both made without court order, were based on allegations that the outlet was inciting people to violate the Ministry of Health's guidelines regarding prevention measures related to the COVID-19 pandemic.

The closure on 7 December followed an early morning raid during a period when the media outlet was covering demonstrations occurring in parts of Sulaymaniyah. These demonstrations involved civil service employees as well as members of the general public, who were protesting the late payment of, and cuts to, salaries for public employees, and calling for an end to corruption, the provision of basic services and the creation of jobs. During the demonstrations, protesters targeted the party offices of the main Kurdistan political parties in various locations in Sulaymaniyah. The ensuing violence resulted in the deaths of at least eight civilians (including two children) and injury to at least eighty-five (all men including three boys), together with one member of the Peshmerga forces killed and at least twenty-five members of the security forces injured.

On 7 December, the Ministry of Culture issued a statement informing that an administrative order signed by the Director General of Printing and Publishing provided the legal basis for this closure, on the grounds that the media outlet had failed to comply with instructions organizing the audio-visual media sector. Its failure to comply with these instructions was described as irresponsible behaviour and resulted in the decision to suspend its broadcasting license for one week, with this sanction subsequently extended for another week. On 19 December, the media outlet resumed normal operations at its Sulaymaniyah premises, while its Erbil and Duhok offices reopened on 23 December. Broadcasting equipment damaged or removed from the premises by security forces during the raid on 7 December has not been replaced or returned.

On 13 December, the Director General of Media Printing and Publishing wrote to three other media outlets threatening legal proceedings if they broadcast violent images of the demonstrations and warning them against inciting their audiences to commit violent acts.

On 25 December, the chief executive officer of the media outlet raided on 7 December was arrested by Kurdistan Regional security forces, upon his arrival into the Kurdistan Region at Erbil International Airport. Authorities reportedly verbally informed him of a case against his company but did not provide details. He was detained for three hours and then released without formal charge.

### **iii. Integrity of the judicial process and related concerns**

Although the Kurdistan Regional authorities appear to have primarily relied on the laws prohibiting defamation and the spreading of misinformation to curtail freedom of expression, on 16 February, five men known to be critical of the Kurdistan Regional authorities were prosecuted, convicted and sentenced to six years imprisonment in the Erbil Criminal Court under provisions of the Iraqi Penal Code which prohibit "acts prejudicial to the security stability and sovereignty of

the Kurdistan Region of Iraq”.<sup>32</sup> The five defendants were specifically alleged to have gathered information and passed it to foreign actors outside Iraq in exchange for money; supplied the Kurdish Workers Party (PKK) with sensitive information; placed the lives of senior Kurdistan Regional authorities and foreign officials at risk by gathering information about them; and collected arms with the intention of supplying them to an unidentified armed group. UNAMI/OHCHR observed the two-day trial and has serious concerns that basic fair trial standards were not respected during the hearing. The defence counsel of the defendants informed the court that they were denied access to case files and were not given adequate time to prepare for the trial.

All five defendants alleged in court that Asayish extracted their confessions under torture, but the trial judge dismissed these allegations without further examination. The defence also was given no opportunity to access and review key evidence against the defendants provided by secret informers or to challenge that evidence through cross examination or by presenting rebuttal evidence.

Immediately following the conclusion of the trial, the Appeals Court in Erbil issued an arrest warrant against the brother of one of the five defendants after he publicly criticized the outcome of the trial during a press conference.

Subsequently, on 4 March, a TV Channel broadcast a video purportedly showing the five defendants confessing to the offences with which they were charged and convicted. The video included commentary by an unidentified Asayish official stating that the defendants were linked to the PKK and had received training in the use of weapons. This video was not disclosed to the defence during the trial and could therefore not be challenged by the defendants.

In separate but related proceedings, on 28 February, the Asayish Directorate in Erbil filed charges of defamation against one of the five convicted men based on the statement, made during trial as part of his defence, that he was tortured by Asayish.

On 28 April 2021, the Appeals Court upheld both the convictions and sentences for all five men. The court found that the evidence led during the trial, including from secret witnesses, was enough to prove the charges against the defendants. The court also found that the defendants’ confessions were made voluntarily and without coercion. Allegations made by the defendants that they had been tortured were dismissed.

Whilst UNAMI/OHCHR does not purport to make any findings on the guilt or innocence of these five defendants, the unaddressed allegations of torture, the defendants reportedly being compelled to confess guilt, the lack of defence access to the case file and of disclosure of evidence to the defence, denial of the defence counsel’s right to examine incriminating testimonial evidence and the public broadcast of alleged “confessions”, all raise serious concerns about the fairness of the trials. Furthermore, by initiating legal proceedings against those who have questioned the trial proceedings and outcome, including the defamation proceeding brought against one of the defendants in respect of statements made in court as part of his defence, the authorities appear to be using the legal system to prevent those who are denied their fair trial rights from seeking an effective remedy, in order to intimidate and silence their opponents, and to stifle criticism. Such charges or the threat of such charges have a chilling effect on all alleged victims of torture and constitute a setback in the fight against impunity.

UNAMI/OHCHR is gravely concerned by attempts to undermine the presumption of innocence, which is fundamental to the protection of human rights, and to unduly influence the outcome of the judicial process, including the outcome of any

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<sup>32</sup> Iraqi Penal Code (Law No. 111 of 1969) article 156 as amended by Law No.21 (2003) of the Kurdistan Region of Iraq.

subsequent appeal proceedings.

#### **iv Interference with television and radio coverage of demonstrations**

UNAMI/OHCHR has documented at least three incidents where journalists covering protests were arrested at demonstration sites, despite being identifiable as representatives of the media. On 16 May, eight male journalists from various media outlets were arrested by Kurdistan Regional security forces while covering demonstrations in Duhok against late payment of government salaries. On 28 June, a journalist covering a protest of street hawkers was arrested Kurdistan Regional security forces in Duhok.

UNAMI/OHCHR documented at least eight incidents where security forces prevented television journalists from accessing demonstration sites in order to report on events, thereby violating their rights to both freedom of movement and freedom of expression. In addition, journalists reported that whenever they were arrested by security forces, their work equipment or memory sticks were confiscated. In some cases, even if the memory stick or equipment was returned, journalists reported that the content had been deleted or corrupted.

UNAMI/OHCHR also recorded one incident of a three-hour Government-ordered internet shut-down in advance of a planned demonstration in Erbil on 12 August.

#### **v. Threat, intimidation, harassment and physical assault of journalists and activists**

Several journalists and activists interviewed by UNAMI/OHCHR reported having received threats, including death threats, usually from anonymous sources by phone or social media, which they linked to their coverage of demonstrations or criticism of the public authorities.<sup>33</sup> In at least three cases, security forces at demonstration sites also allegedly beat, harassed and intimidated journalists attempting to cover the protests. For example, on 2 June, two journalists were reportedly beaten, including by electric baton, following their live broadcast from a demonstration site in Sulaymaniyah city. Their injuries were so severe that they required medical treatment.

## VI. Conclusion

UNAMI/OHCHR has documented numerous examples of the use of a range of means to target, harass, threaten and intimidate those exercising their legitimate right to criticize the actions of public authorities, including through the selective application of laws and the denial of fair trial rights and procedural guarantees.

While international human rights law allows for certain restrictions on the right to freedom of expression, including to protect the reputation of others, public health or national security, such restrictions must be prescribed by law and must be necessary and proportionate, and applied in a non-discriminatory manner to achieve a legitimate end. In none of the

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<sup>33</sup> UNAMI received several allegations that Asayish appropriated photographs from the mobile devices and laptops of journalists and activists and republished the images on social media alongside sexually provocative text. The intention was allegedly to defame individuals, particularly female journalists and activists.

documented cases did the restrictions imposed meet those conditions.

The pattern of repression documented in this report has serious implications for the rights to liberty, security of person, expression, peaceful assembly, and participation, and may also threaten the broader democratic right of citizens in the Kurdistan Region of Iraq to hold public authorities to account in the public sphere. A democratic society requires a free press and other media able to report on public issues without censorship or restraint. Citizens also have a corresponding right to receive media output.<sup>34</sup> Ultimately, the patterns highlighted in the report reflect a trend which risks reversing the positive progress made in recent years towards a democratic Kurdistan Region where freedom of expression and the rule of law are valued.

Silencing public criticism by severely limiting the right to freedom of expression is not the way forward. This is particularly the case for a Government confronted with numerous socio-economic challenges, tackling complex emergencies, and facing ‘political rivals’ seeking to exploit any wave of protest. Transparency, accountability, and openness to constructive questioning all provide the opportunity for authorities to explain their actions and are key to building public trust and sustaining a healthy democracy.

## VII. Key recommendations

Peaceful assemblies and public protests are likely to continue in the Kurdistan Region and the authorities have an obligation to enable the peaceful exercise of the corresponding human rights. Acknowledging progress made in 2021, including enhanced cooperation and coordination, UNAMI/OHCHR recommends that the Kurdistan Regional authorities:

- Take immediate steps to end the practice of harassment, intimidation and reprisals against journalists, human rights defenders and activists.
- Ensure that criminal law is not used as a tool to limit freedom of expression, including by refraining from arresting and/or detaining individuals lawfully expressing dissent and/or discontent.
- Take steps to decriminalize defamation and, pending such legislative changes, ensure that the criminal law is only applied in the most serious defamation cases.
- Refrain from arbitrarily detaining of journalists, human rights defenders and activists and release those who remain in arbitrary detention, and end what seems to be the instrumentalization of the justice system to repress freedom of expression
- Ensure that any person charged with a criminal offence is afforded all fair trial rights and procedural guarantees as required under relevant international human rights and national standards.
- Undertake prompt, effective, thorough, impartial, and transparent investigations of all allegations of torture and hold those responsible accountable.
- Affirm that all statements or testimony made in court during criminal proceedings, and in particular statements

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<sup>34</sup> Human Rights Committee, General comment No. 34 (2011) on freedoms of opinion and expression (CCPR/C/GC/34), para. 20.

made by the defendant, their legal representative or witnesses alleging torture, are subject to absolute legal privilege and cannot form the basis of a defamation claim under criminal or civil law.

- Uphold the right to effective remedy for assaults and threats against journalists through prompt, effective, thorough, independent, impartial, and transparent investigations of complaints, and ensure that those responsible are brought to justice. Victims and their families have the right to justice, truth, and reparations.
- Taking immediate steps to promote the free operation of media organizations, including by publicly promoting their critical role in society, ensure journalists and others seeking to exercise their rights to freedom of expression are properly protected.
- Amend existing laws to provide clear definitions of prohibited speech and ensure that all restrictions on freedom of expression set out in domestic legislation are consistent with relevant international human rights standards.
- Investigate incidents of excessive and/or unnecessary and disproportionate use of force against protesters, and take measures, including ensuring accountability, conducting post-action review and training to prevent such incidents in the future.

## VIII. Annex

### **Kurdistan Regional Government**

### **Presidency of the Council of Ministers**

Office of the Coordinator for International Advocacy (OCIA)



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**Commentary on United Nations Assistance Mission for Iraq (UNAMI) and United Nations Office of the High Commissioner for Human Rights (OHCHR) Report on the Status of Freedom of Expression and Speech in the Kurdistan Region**

May 2021



The present response report contains findings of the *KRG Office of the Coordinator for International Advocacy* after careful follow-up with the relevant governmental entities on the issues raised in UNAMI/OHCHR report.

### **Introduction**

A free media is important for its own sake and is an essential element in a well-functioning democracy. The Kurdistan Regional Government is proud that Kurdistan has a vibrant media, and Kurdistan has long been recognised as a regional exemplar of freedom of expression and freedom of the media. The KRG recognises that there are always improvements to be made, and is committed to making improvements where they are needed.

### **Local and international cooperation**

The KRG is working with a range of partners to protect and strengthen media freedoms in the Kurdistan Region.

- We have invited the OHCHR and UNAMI to help us to improve legal processes in Kurdistan.
- The KRG has a longstanding agreement with the International Committee of the Red Cross granting ICRC representatives unrestricted access without advance notice to any place of detention in Kurdistan, and has recently offered the same access to UN human rights officials. Under this arrangement UNAMI has made 14 visits to detention facilities and interviewed 60 prisoners.
- We have invited European Union member states to support legal and judicial reforms in Kurdistan.
- Senior government ministers have been holding consultations with local advocacy groups, in particular the Metro Centre for Journalists' Rights and the Kurdistan Journalist Syndicate, to address concerns regarding media freedoms and rights.
- The KRG is working with the UK to train local judges.

### **Improvements in media freedoms**

The Metro Centre, which monitors and campaigns for journalists' rights in Iraq recently reported that allegations of violations against journalists in Kurdistan had fallen by more than half in the past five months when compared to 2020. The authors of the UNAMI/OHCHR report do not mention this finding by Iraq and Kurdistan's own journalist rights experts.

### **Extraordinary challenges**

In the past year the COVID-19 pandemic has presented some extraordinary challenges to the KRG. In response the government has taken steps which restricted individual freedoms, but which it considered essential for the protection of public health. In particular the KRG restricted mass public protests and – only after repeated warnings - took action to prevent some media outlets from calling for the public to ignore COVID prevention measures and to attend unlawful mass protests. Some of the protests referred to in the report became violent: security forces were fired on, security force personnel and civilians were injured, and there was widespread damage to property. Most governments around the world have taken extraordinary restrictive measures to slow the spread of the disease. The KRG believes its actions were

correct in the circumstances, and were consistent with its human rights obligations under international law. As in other countries, the government looks forward to lifting restrictions as the situation allows.

### **Individual cases**

The UNAMI/OHCHR report makes a series of claims about alleged cases of violation of the rights of journalists in Kurdistan. In most instances the report does not provide enough detail for the KRG to identify the specific cases and address the concerns raised. Where specific concerns are raised, we will investigate them. But we have no evidence that anyone has been detained arbitrarily or unlawfully. Apart from brief detentions within the powers granted by law, all detentions are on the basis of judicially issued warrants. And the KRG stands absolutely against torture. We condemn all forms of torture. We have seen no evidence of torture from independent ICRC reporting. And we are expanding access to prisoners to other trusted actors to increase protections against mistreatment.

Where the report does identify specific cases there are some clear gaps in the authors' processes and the presentation of their conclusions. One example is reporting of the 16 February conviction of five men for national security offences by the Criminal Court of Erbil.

The case against the men has no place in a report on media freedom. The men were not convicted for activity related to journalism. They were found guilty of gathering classified and sensitive information and passing it covertly to the PKK. The PKK has been responsible for the assassination of a foreign diplomat and senior security officials in Kurdistan in the last two years. The information the men passed to the PKK directly put at risk the lives of senior Kurdish and foreign officials in Kurdistan.

The report goes on to raise concerns about aspects of the men's trials. The KRG takes these seriously. But the Criminal Court of Erbil is independent of the government and the government cannot and will not interfere with judicial processes. The defendants were represented throughout by their own lawyers and had access to their lawyers while awaiting trial. The trials were observed by representatives of international non-governmental organizations, the Kurdistan Parliament, and the media. And the ICRC and UNAMI had access to the defendants while they were in detention. The Cassation Court of Kurdistan Region has now ruled to uphold the men's convictions and sentences.

The Prime Minister has already written personally and in detail to the UN High Commissioner for Human Rights about this case. The UNAMI/OHCHR report does not mention this or reflect the information provided in that correspondence.

### **Conclusion**

The KRG is engaged with UNAMI and OHCHR on media freedom – both on broader policy and legal change and on individual cases – and remains committed to this relationship. We and UN representatives discussed the UNAMI/OHCHR report in draft, and while we do not feel the report fully captures the situation in Kurdistan we are grateful for the UN's commitment to dialogue. It is important that all parties' understanding of the situation in Kurdistan is based on engagement with journalist rights organisations on the ground, and on rigorous analysis and assessment of the information they receive.

We take the recommendations of the UNAMI/OHCHR report seriously. We will study them carefully and work our international partners to implement them. We will continue to defend and advance media freedoms in the Kurdistan region.