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# Human Rights and Freedom of Expression: Trials in the Kurdistan Region of Iraq



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# I. Executive summary

This report, *Human Rights and freedom of expression: trials in the Kurdistan Region of Iraq*, was prepared by the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI), pursuant to its mandate under Security Council Resolution 2576 (2021), and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

The report examines criminal justice proceedings in four emblematic cases in the Erbil Criminal Court, concerning individuals known for their public criticism of authorities. It sets out an evidence-based analysis of the administration of justice in Kurdistan and provides an assessment of risks individuals may face, including coming into conflict with the law, for exercising legitimate rights to freedom of expression.

During its monitoring of the four cases documented in this report, OHCHR/UNAMI observed a consistent lack of respect for the legal conditions and procedural safeguards necessary to guarantee fair judicial proceedings before an independent and impartial tribunal. OHCHR/UNAMI does not purport to make any findings on the guilt or innocence of the individuals concerned.

In breach of the principle of legality, the criminal law provisions applied in these cases were formulated in broad and imprecise terms, leading to inconsistent interpretation of these provisions by the courts and a lack of clarity relating to the specific charges. In addition, the prosecution failed to clearly identify which specific underlying alleged acts formed the basis of the criminal charges, nor did it provide concrete evidence to substantiate those charges.

Other practices in relation to evidence observed across these trials also fell short of international human rights norms and standards, including rights of the accused to call and examine, or have examined, the witnesses against them. Judicial reasoning for decisions was not evident in any of the observed cases.

Although at least eight of the accused submitted in court that their confessions had been extracted under torture, the trial judge dismissed these submissions without further examination. Safeguards in place to prevent torture, including medical exams, access to defence lawyers, video-recording of interrogation, and processes for reporting torture and other ill-treatment, were not respected. Systematic barriers prevented defence lawyers from preparing an effective defence. At least two of the individuals were held in prolonged solitary confinement, and all were denied regular access to their families.

Additionally, various actions by the authorities - which could be perceived as attempts to unduly influence the outcome of the judicial proceedings - were observed.

In order for the authorities to address the concerns identified by OHCHR/UNAMI, the report provides recommendations on measures to prevent further violations of the right to a fair trial and provide redress for victims of violations.

OHCHR/UNAMI welcomes the long-standing partnership with the Kurdistan regional authorities on the protection and promotion of human rights, noting concrete steps toward the protection of the right to freedom of expression in recent months.

The response of the Kurdistan Regional Government is annexed to this report.

## II. Mandate

The report and its recommendations were prepared pursuant to United Nations Security Council resolutions, including Security Council Resolution 2576 (2021) 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 Human Rights Office, 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

The findings presented in this report have been documented and corroborated in line with OHCHR’s standard human rights methodology. OHCHR/UNAMI observed all trial hearings in the four cases examined in this report and conducted private detention interviews with all individuals concerned.<sup>1</sup> In addition, UNAMI human rights officers met with judges, defence lawyers, prosecutors, detention authorities and other relevant interlocutors, such as civil society activists and families of detainees. They also gathered and analyzed legislation and information from official documents and reports.

Despite submitting written requests to the High Judicial Council in the Kurdistan Region of Iraq (KRI), OHCHR/UNAMI did not have access to indictments or written judgments, except for two decisions of the second Penal Board of the Kurdistan Region Court of Cassation which were made publicly available.<sup>2</sup>

Throughout the trial observation process, UNAMI human rights officers complied with the core principles of impartiality, objectivity, non-intervention/non-interference, accuracy, informed observation, and confidentiality as part of overall efforts to work constructively with Iraqi and Kurdistan Region authorities.

OHCHR/UNAMI does not purport to make any findings on the guilt or innocence of the individuals through the present report. It should be noted that information on the exact nature of the charges and the alleged criminal conduct was not always evident during the trial monitoring.<sup>3</sup>

OHCHR/UNAMI also followed seven additional cases brought against activists and critics in Dohuk. While OHCHR/UNAMI was unable to attend all the relevant hearings<sup>4</sup> in these additional cases, it received comprehensive information on the conduct of the proceedings through the accused, their defence lawyers and families, as well as from officials of the Kurdistan Regional Government, members of the judiciary, and through public reporting by the media. References to these cases are specifically indicated.

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<sup>1</sup> Asayish have facilitated OHCHR/UNAMI access to detention facilities under their authority, including private and confidential interviews with detainees, since January 2021. The Asayish is a security force and is one of the organs of the Security Council of the Kurdistan Region. It operates under the authority of the President of the Kurdistan Region, which has jurisdiction over economic crimes, political crimes, and terrorism.

<sup>2</sup> See summary of case 2 below. The judgments (No. 468, dated 28 April 2021 and No. 52, dated 20 June 2021) are on file with UNAMI Human Rights Office.

<sup>3</sup> The prosecuting authorities did not provide OHCHR/UNAMI with the charge sheets or documents outlining the alleged offences despite numerous requests. In addition, access to the case files to determine the charges was not provided.

<sup>4</sup> OHCHR/UNAMI attended only two of the five hearings due to late notification by the courts of the dates of hearing. The courts did not always communicate hearing dates to the defendants’ relatives, and OHCHR/UNAMI only became aware of the trials after they had already taken place.

## IV. Legal framework<sup>5</sup>

### *Right to a fair trial*

Iraq is a party to most major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).<sup>6</sup> The Covenant, which is particularly relevant for purposes of this report, contains a series of rights and guarantees that serve to ensure fair trials, which State parties must respect and guarantee regardless of their specific legal traditions.<sup>7</sup>

The Constitution of Iraq guarantees the independence of the judiciary and the right to be treated with justice in judicial and administrative proceedings. The Constitution also stipulates that the proceedings of a trial are public unless the court decides to make it secret.<sup>8</sup> In addition, the Iraqi Criminal Procedure Code and other relevant domestic laws contain procedural safeguards aimed at ensuring fair proceedings and protection against arbitrary application of the law, such as the right to a lawyer in all phases of investigation and trial.<sup>9</sup>

### *Fundamental freedoms*

ICCPR also protects rights relating to a number of fundamental freedoms, including of peaceful assembly, expression, association. Any restrictions of these freedoms must pursue a legitimate purpose, be provided by law, public health or national security, and conform to the strict tests of necessity and proportionality assessed in the circumstances of each case.<sup>10</sup> The ICCPR also protects rights to political participation.

The Iraqi Constitution equally protects the rights to freedom of expression, assembly and peaceful demonstration, the rights to freedom of association and communication, including electronic communication.<sup>11</sup>

### *Provisions of the Iraqi Penal Code (Law No 111/1969)<sup>12</sup>*

Article 56 of the Penal Code stipulates: “(1) Any member of a criminal conspiracy, even though he did not attempt to commit the planned offence, is punishable by a term of imprisonment not exceeding 7 years if the planned offence is a felony or by a period of detention not exceeding 2 years or a fine not exceeding 150 dinars if the offence is a misdemeanour. This is as long as the law does not stipulate a specific penalty for conspiracy”.

Article 156 of the Penal Code, as amended by Law No 21 (2003)<sup>13</sup> of the KRI, provides that: “Anyone who, in any manner, deliberately commits an act with the intent to prejudice the security, stability and sovereignty of the

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<sup>5</sup> For further details on the international and Iraqi legal framework, see relevant analysis in OHCHR/UNAMI reports: *Freedom of Expression in the Kurdistan Region of Iraq* (May 2021); *Human Rights in the Administration of Justice in Iraq: trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL* (January 2020); *Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment* (August 2021) available at <https://www.ohchr.org/EN/Countries/MENARegion/Pages/UNAMIHRReports.aspx>.

<sup>6</sup> Iraq ratified the International Covenant on Civil and Political Rights (ICCPR) on 25 January 1971.

<sup>7</sup> See in particular ICCPR, Articles 14 and 26. Human Rights Committee, General Comment No. 32 (2007) on Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), para. 4.

<sup>8</sup> Constitution of Iraq (2005), Article 19.

<sup>9</sup> Iraqi Criminal Procedure Code, Articles 123 and 144.

<sup>10</sup> See in particular ICCPR, Articles 19, 21, and 25.

<sup>11</sup> Constitution of Iraq (2005), Articles 38-40 and 42.

<sup>12</sup> According to Amendment Law No. 6 of 2008, all fines in the Iraqi Penal Code were adapted. For misdemeanor crimes, they range from two thousand and one dinars, not exceeding one million dinars.

<sup>13</sup> Article 117 of the Constitution of Iraq recognizes “the region of Kurdistan, along with its existing authorities, as a federal region”. Article 121(1) further states that “[t]he regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government”. It is on this basis that the Kurdistan Regional Parliament amended Article 156 of the Iraqi Penal Code to adapt it to the context applicable in the KRI.

*institutions of the Kurdistan Region – Iraq, and which produces the intended effect, shall be liable to imprisonment for life or for a fixed term”.*

Article 222 of the Penal Code states:

*(1) If the intent of the gathering is to commit a felony or misdemeanour or to prevent the implementation of laws, regulations or decisions or to influence the affairs of the public authorities or to deprive another of his freedom of action with the use of force or menaces, then any person who calls for such a gathering or organizes it or who participates in it while being aware of its objective or any person who remains at it after having become aware of the objective is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.*

*(2) If any of the participants in a gathering uses force or threats, or overtly carries a weapon or tools which if used may result in fatalities, the person who called for that gathering or organized it and any person who participated in it while being aware of its intended objective are punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.*

*(3) If any of the participants in the gathering commits an offence while pursuing the intended objective, every person who is present at the gathering at the time the offence is committed is punishable by the penalty prescribed by law if they were aware of the objective of the gathering. Any person who calls for the gathering or organizes it is punishable by the penalty prescribed by law for that offence even though he is not present at the gathering at the time the offence is committed. [...]*

## V. Context

In May 2021, UNAMI, jointly with OHCHR, issued a report entitled: *Freedom of Expression in the Kurdistan Region of Iraq*. That report, which covered the period between 1 March 2020 and 30 April 2021, focused 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 KRI.

While the May 2021 report recognized the uniquely challenging domestic, regional, and international circumstances faced by the Kurdistan Regional authorities, it highlighted serious concerns, particularly the selective application of laws and the lack of compliance with relevant legal procedures and international human rights standards, including fair trials and due process guarantees. Among the concerns highlighted were targeted criminal proceedings against individuals who have either reported on anti-government protests or been critical of the Kurdistan Regional authorities, where basic rights and procedural safeguards were not, or not sufficiently, respected.

Against this backdrop, since February 2021, OHCHR/UNAMI has closely monitored the trials of individuals, known for their public criticism of authorities, in four emblematic cases before the Erbil Criminal Court. While criminal proceedings against other such critics have also continued, based inter alia on legal provisions criminalizing ‘defamation’ or ‘spreading of misinformation’,<sup>14</sup> these individuals were accused of endangering public peace and stability.

The present report aims to provide further analysis on human rights concerns in relation to these emblematic cases. It is part of ongoing, constructive engagement between the Kurdistan Regional Government and OHCHR/UNAMI on issues of administration of justice and freedom of expression.

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<sup>14</sup> See, for example, the additional cases mentioned against three of the individuals below.

## Summary of the cases and proceedings before the Erbil Criminal Court<sup>15</sup>

### Case 1 concerning two accused<sup>16</sup>

*Status:* Both individuals were sentenced to one year of imprisonment on 19 October 2021 under Article 222 of the Penal Code. In addition, the court placed both defendants under police surveillance for five years after completion of their custodial sentences, in accordance with article 109 of the Penal Code.

*Hearings:* 15 February; 29 July; 15 September; 12 October; and 19 October 2021. During the first hearing, the trial court decided to return the case file to the investigative court for further investigation due to 'lack of evidence'.

*Charges:* Initially under Article 156 of the Penal Code, as applicable in the KRI; then changed to Article 222 of the Penal Code in the last trial hearing.

*Alleged criminal conduct:* Intending to acquire weapons destroying the stability of the KRI; planning armed attacks against the Kurdistan Regional Government and the Governor of Dohuk; conspiring with parties outside the KRI.

*Pre-trial detention:* The two individuals were arrested in May and August 2020 respectively. While one of them was released following his conviction as he had spent already more than a year in pre-trial detention, the other remains in detention as he is also serving a separate sentence following conviction in other criminal proceedings (see below).

*Additional proceedings:* Between June - October 2021, in separate trials before the Dohuk Misdemeanor Court, one of the two accused was sentenced to a total of two years of imprisonment and a fine of 250,000 Iraqi dinar for five different charges in relation to the misuse of telecommunication devices, defamation and failure to comply with an order by a public official.<sup>17</sup> On 15 November 2021, the Dohuk Appeal Court suspended a conviction that resulted in six months of imprisonment in another case against the same individual in relation to the misuse of telecommunication devices.

### Case 2 concerning five accused<sup>18</sup>

*Status:* All five individuals were sentenced to six years of imprisonment on 16 February 2021 under Article 156 of the Penal Code, as applicable in the KRI. The second Penal Board of the Kurdistan Region Court of Cassation upheld the judgment on 28 April and 20 June 2021 respectively.

*Hearings:* 15 and 16 February 2021.

*Charges:* Article 156 of the Penal Code, as applicable in the KRI.

*Alleged criminal conduct:* Gathering information and passing it to foreign actors outside Iraq in exchange for money; supplying the Kurdish Workers Party (PKK) with sensitive information; placing the lives of senior Kurdistan Regional authorities and foreign officials at risk by gathering information about them; and collecting arms with the intention of supplying them to an unidentified armed group.

*Pre-trial detention:* The five individuals were arrested between early September and mid-October 2020 and held in pre-trial detention until their conviction.

*Additional proceedings:* Both individuals face additional criminal proceedings against them for charges related to defamation and failure to comply with an order by a public official and the Weapons Act respectively. As of December 2021, these cases have not yet proceeded to court.<sup>19</sup>

### Case 3 concerning four accused

*Status:* On 8 November 2021, all four individuals were sentenced under Article 156 of the Penal Code, as applicable in the KRI, to the following terms of imprisonment: three and a half years; two and a half years and one year and two months (two accused respectively).

<sup>15</sup> The alleged criminal conduct set out in the case summaries is the verbatim wording (translated) used by the Kurdistan Regional authorities.

<sup>16</sup> Names withheld in all cases for protection concerns.

<sup>17</sup> Law to Prevent the Misuse of Telecommunications Equipment in the Kurdistan Region (Law No.6 of 2008), Article 2; Penal Code, Article 240.

<sup>18</sup> See also OHCHR/UNAMI, *Freedom of Expression in the Kurdistan Region of Iraq* (May 2021), pages 11-12.

<sup>19</sup> Penal Code, Articles 433 and 240; Weapons Act (Law No 51 of 2017), Article 21. See also the judgment of the second Penal Board of the Kurdistan Region Court of Cassation (No. 52) of 20 June 2021.

*Hearings:* 12 July; 6 September; 4 October; 20 October; and 8 November 2021.

*Charges:* Article 156 of the Penal Code, as applicable in the KRI.

*Alleged criminal conduct:* Conspiring to create an armed group to attack the KRI; inciting people to stand against and defaming the Kurdistan Regional Government; collecting information about Turkish military operation and passing it on to the PKK, as well as planning to raise a complaint about the Turkish airstrikes.

*Pre-trial detention:* The accused were arrested in late August/early September 2020 and remained in pre-trial detention until their conviction. The two individuals who received a sentence of one year and two months of imprisonment were released following the trial on 8 November 2021 due to time already spent in pre-trial detention.

#### **Case 4 concerning five accused**

*Status:* One accused was found not guilty and acquitted, while the other four accused were sentenced to one year of imprisonment on 21 October 2021 under Article 56 of the Penal Code. In addition, the court placed the four convicted defendants under police surveillance for five years after serving their custodial sentences in accordance with Article 109 of the Penal Code and confiscation of the mobile phones of the four convicted under Article 308 of the Criminal Procedure Code.

*Hearings:* 5 July; 13 July; 8 September; 6 October; and 21 October 2021.

*Charges:* Initially under Article 156 of the Penal Code, as applicable in the KRI; then changed to Article 56 of the Penal Code in the last trial hearing.

*Alleged criminal conduct:* Acting collectively to destabilize the KRI; intending to assassinate the Governor of Dohuk; intending to establish a network outside Iraq to support them in destabilizing the KRI; planning to work with consulates in the KRI, especially the US, to seek funding for their plans and to source weapons to use in carrying out their plans; forming a group called 'Movement for the Future'.

*Pre-trial detention:* All of them were in pre-trial detention for more than a year from early September 2020 until their release following the trial on 21 October 2021 (due to the acquittal of one individual and time already spent in pre-trial detention by the other accused).

In addition to the cases described above, OHCHR/UNAMI notes that in June 2021, another individual was sentenced to seven years of imprisonment at the Dohuk Criminal Court under Article 156 of the Penal Code, as applicable in the KRI. OHCHR/UNAMI was unable to monitor the trial hearing - the defendant was not represented by a lawyer and the court did not inform any other relevant party, including the defendant's family, of the trial dates. This case could therefore not be included in the present analysis. However, reports received by OHCHR/UNAMI on this trial raise similar concerns to those outlined in this report in relation to the other trials.

## **VI. Key findings and human rights concerns**

The overarching right to a fair trial consists of a number of guarantees that serve inter alia to safeguard the rule of law through procedural means. However, the right to a fair trial is greater than the sum of these individual rights and is not limited solely to proceedings in open court.

The full enjoyment of fair trial rights crucially depends on the proper conduct of the criminal justice proceedings during the investigation and pre-trial phase and is therefore linked to the enjoyment of other rights,<sup>20</sup> such as the right to be free from arbitrary detention, the right not to be subjected to torture and other ill-treatment, and the right to freedom of expression.

<sup>20</sup> See Human Rights Committee, General Comment No. 32 (2007), (CCPR/C/GC/32), paras. 58-61, 63-65.

OHCHR/UNAMI's key findings on the implementation of a non-exhaustive list of fair trial rights are set out below.

### **1) Due substantiation of cases**

#### *Criminal law provisions applied*

In the cases described above, Article 156 of the Penal Code, as applicable in the KRI, initially appeared to form the basis for the prosecution against all individuals. In two of the four cases considered in this report, the charges were changed in the final trial hearing to different criminal offences under the Penal Code (Articles 56 and 222 – see case summaries in previous section).

All the criminal law provisions under which the individuals were charged contain broad and imprecise terms, lacking clear definition of the offences. The principle of legality, enshrined in Article 15 of the ICCPR, requires that any law be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.<sup>21</sup> The broad and imprecise definitions contained in these provisions significantly enlarges the scope of the proscribed conduct and makes it susceptible to subjective and arbitrary interpretation.

As a separate concern, OHCHR/UNAMI also notes that Article 222 of the Penal Code, which was used by the KRI authorities to charge some of the defendants and which inter alia criminalizes gatherings with the intent to “influence the affairs of the public authorities” was previously suspended by the Coalition Provisional Authority (CPA) order 19<sup>22</sup> of 9 July 2003 (Freedom of Assembly) as it “*unreasonably restrict[s] the right to freedom of expression and the right of peaceful assembly.*” However, as the CPA order suspending Article 222 was not officially validated in the KRI, the provision remains applicable there (in contrast with the rest of Federal Iraq).

#### *Alleged conduct and evidentiary standards*

OHCHR/UNAMI observed that the prosecution did not, at any stage of the proceedings, sufficiently describe the underlying acts carried out by the individuals which constituted the alleged crimes. While the prosecution (led by an Asayish representative in all cases<sup>23</sup>) presented generalized accusations during the trial hearings, the prosecution mostly failed to identify or substantiate any specific acts by each of the accused to support the charges. This was further compounded by the last-minute changes made to the charges in two cases, depriving the accused of any meaningful opportunity to adapt their defence in response. In case 4 (see previous section for details), the conviction of the accused was, according to the judgment pronounced in court, solely based on the application of a provision relating to conspiracy to commit a crime (Article 56 of the Penal Code). No underlying criminal act was identified.

OHCHR/UNAMI also observed several practices in relation to evidence presented during the hearings which contravened international human rights standards, including violations of the rights of the accused to call witnesses and experts to testify in their favour, and to examine, or have examined, the witnesses against him or her.<sup>24</sup>

The main types of evidence presented during the public hearings in all four cases were: i) secret informants; ii) texts, photos or videos published on social media; iii) and statements by the accused and prosecution witnesses made during the investigation and before the court. Almost all of the prosecution witnesses who were called to testify had also been

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<sup>21</sup> See Human Rights Committee, General Comment No. 34 (2011) on Article 19: freedom of opinion and expression (CCPR/C/GC/34), para. 25.

<sup>22</sup> See Order 19, Freedom of Expression, Coalition Provisional Authority (CPA), available online: [https://govinfo.library.unt.edu/cpa-iraq/regulations/20030710\\_CPAORD\\_19\\_Freedom\\_of\\_Assembly\\_.pdf](https://govinfo.library.unt.edu/cpa-iraq/regulations/20030710_CPAORD_19_Freedom_of_Assembly_.pdf)

<sup>23</sup> Defence lawyers in these cases challenged the fact that Asayish representatives were leading the prosecution during the trials citing Article 2 of the Public Prosecutor Law 159 of 1979 (as amended to 14 March 2010 and applicable in the KRI) which provides that it is the duty of the prosecutor to lodge suits in criminal courts. However, the Courts allowed the practice and the general prosecutor did not object.

<sup>24</sup> ICCPR, Article 14(3)(e).

accused in the other cases examined in this report, and most denied making the statements attributed to them by the prosecution.

With regards to evidence derived from secret informants, in none of the hearings observed by OHCHR/UNAMI were any of the secret informants present in court for cross-examination of their statements, nor were other measures applied to mitigate the disadvantaged position of the defence.<sup>25</sup>

According to the Human Rights Committee, tribunals which imposes severe restrictions or denial of the right to summon and examine or have examined witnesses, including prohibitions on cross-examining certain categories of witnesses, do not satisfy basic standards of fair trial and, in particular, the requirement that the tribunal must be independent and impartial. Article 14 (3e) of the ICCPR “*guarantees the right of accused persons to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. As an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.*”<sup>26</sup>

In addition, OHCHR/UNAMI observed that the courts did not examine information that raised concerns of admissibility or proper weight to be attributed in relation to evidence before them and which may have been potentially exculpatory. For instance, the majority of the accused or prosecution witnesses challenged the statements read from the case file which were attributed to them, either denying any knowledge of having made the statement during the investigation or alleging that it did not accurately reflect what had been said.

Moreover, several allegedly incriminating statements made by the accused and introduced as evidence by the prosecution, as well as some of the social media content presented during the various hearings, referred to lawful activities protected under international human rights law, such as participation in, or organization of peaceful protest.

In case 2, all of the five accused submitted in court that Asayish had extracted their confessions under coercion. Notwithstanding the obligation of the State to diligently pursue allegations of torture, the trial judge dismissed the defence submissions without further examination. The Court of Cassation – which confirmed that the conviction was based on evidence contained in the confession – dismissed the claims of torture because “they did not obtain medical reports showing the effects of torture on their bodies and that they did not file complaints against those who abused them”.<sup>27</sup> Moreover, OHCHR/UNAMI did not observe that the court addressed similar complaints in relation to forced confessions made by several accused in cases 1 and 3.

OHCHR/UNAMI further notes that the detention safeguards in place were not fully respected: no medical examinations of the detainees were carried out at any stage of the investigation or trial proceedings (other than COVID-19 tests); the presence of defence lawyers was routinely prohibited during interrogations (despite constitutional guarantees of the right to defence during all phases of investigation and the trial)<sup>28</sup>; the interrogations were not video-recorded; and no means for reporting torture was made available to the detainees, other than the trial.<sup>29</sup>

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<sup>25</sup> The practice of anonymous witnesses in principle deprives accused of the right to contest the arguments and evidence adduced by the prosecution, placing them in a seriously disadvantaged position. The United Nations Human Rights Committee has clarified that any restrictions on rights set out in the ICCPR, including the right to a fair trial, must be demonstrably necessary and proportionate and not applied or invoked in a manner that would impair the essence of a right protected under the Covenant. See also Human Rights Committee, General Comment No. 32 (2007), (CCPR/C/GC/32), paras. 23 and 39.

<sup>26</sup> Human Rights Committee General Comment No. 32, paras. 23 and 39.

<sup>27</sup> See judgment No. 468 of 28 April 2021, on file with UNAMI.

<sup>28</sup> Constitution of Iraq, Article 19 (4).

<sup>29</sup> See OHCHR/UNAMI report on detention for further details. Unless specifically indicated, the findings apply equally to the KRI. UNAMI/OHCHR notes that these safeguards not only ensure fair proceedings and adequate conditions of detention but also serve to remove many of the opportunities for torture or ill-treatment to occur and to deter false allegations by detainees.

OHCHR/UNAMI notes that the presumption of innocence until proven guilty according to the law<sup>30</sup> requires that the burden of sufficiently proving that the accused committed a specific crime falls on the prosecutorial authorities.

International law further requires that States parties conduct prompt, effective, thorough, impartial, and independent investigations where there are reasonable grounds to believe that torture or ill-treatment has occurred.<sup>31</sup> The burden of proving that a confession was made voluntarily also lies with the prosecutorial authorities.<sup>32</sup>

#### *Reasoning of decisions*

In all four cases covered in this report, OHCHR/UNAMI observed that the judgments pronounced in court did not provide any reasoning for the decision, nor did they explain the essential findings, or refer to the evidence relied upon in reaching the decision.<sup>33</sup> In cases 1 and 4, the verdicts pronounced in court did not include the additional non-custodial sanctions imposed, namely police surveillance for five years after completion of their sentences, in accordance with Article 109 of the Penal Code and in case 4, confiscation of the mobile phones of the four convicted under Article 308 of the Criminal Procedure Code.<sup>34</sup>

Clear and convincing reasoning of any decision, in particular a judgment of conviction, is a key element for fair trials, not only to determine the grounds for potential review and appeal, but to ensure that the convicted person, victims and the broader public, understand the basis for the decision. The provision of such reasoning also reinforces public perceptions of the independence and impartiality of the judiciary, increases trust in the judicial system and enhances the accountability and transparency of public institutions.

## **2) Compliance with legal conditions and procedural safeguards**

#### *Access to lawyers and an effective legal defence*

In all four cases, OHCHR/UNAMI observed that private defence lawyers acting for the accused were not formally appointed until the beginning of the first trial hearing. This reflects the fact that lawyers were denied access to the accused before the trial (see below) and is consistent with reports that no lawyers were present during the interrogation or investigative hearings.

The lawyers of the accused raised consistent concerns, including in court, that they were denied access to their clients in detention.<sup>35</sup> They also reported severe restrictions in obtaining timely and sufficient access to case files, which did not allow for a meaningful or timely preparation of the case for the defence. OHCHR/UNAMI emphasizes that the rights to access to a lawyer and an effective defence are among the most critical to guarantee fair and impartial justice. This is recognized also by the Iraqi Constitution, which guarantees the right to a defence in all phases of the investigation and the trial.<sup>36</sup>

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<sup>30</sup> ICCPR, Article 14(2); Human Rights Committee, General Comment No. 32 (2007), CCPR/C/GC/32, para. 30. Constitution of Iraq, Article 19 (5).

<sup>31</sup> Convention against Torture, Articles 12 and 16. Article 14(3)(g) of the ICCPR also sets out that in criminal charges, everyone is entitled not to be compelled to testify against him or herself or to be compelled to confess guilt.

<sup>32</sup> See Committee against Torture, Concluding Observations on the initial report of Iraq, 2015 (CAT/C/IRQ/CO/1), para. 22.

<sup>33</sup> ICCPR, Article 14 (1); Iraqi Criminal Procedure Code, Articles 223 and 224 require that the court makes the content of a ruling, both the verdict and penalty, clear to the accused. The ruling should, among other things, contain the reasons for the decision.

<sup>34</sup> It was observed that in case 4 the prosecution's case relied heavily on content allegedly extracted from the defendants' mobile devices.

<sup>35</sup> For example, in case 4, the defence lawyer complained to the trial judge in the first hearing that he attempted to visit the Asayish detention facility 38 times to meet his client but was not allowed to do so.

<sup>36</sup> Constitution of Iraq, Article 19(4); ICCPR, Article 14(3)(d). 'Adequate facilities' for a defence includes access to documents and other evidence, including materials that the prosecution plans to offer in court against the accused or that are exculpatory.

### *Communication with the outside world*

Information received by OHCHR/UNAMI indicates that at least 13 of the individuals were held in solitary confinement<sup>37</sup> during the initial days of investigation, and, in the case of at least two individuals, for extended periods of up to two months.

Under international human rights law, solitary confinement is permissible only in exceptional cases and for a strictly limited time. The use of indefinite or prolonged solitary confinement is prohibited and may amount to torture or other ill-treatment.<sup>38</sup>

Families have further reported severe restrictions of access to their relatives in detention, including being allowed only occasional, short phone calls or, in some cases visits, not exceeding a few minutes and in presence of Asayish authorities.<sup>39</sup> Most did not know the whereabouts of their arrested family member during the initial periods of detention. OHCHR/UNAMI further noted that the Erbil Criminal Court restricted access to the trials by the accused's family members.

According to international standards, detainees have the right to promptly notify a close relative or other person of their own choosing, of the fact and location of their detention or any changes thereof. They should also be allowed to be in contact with their families at regular intervals.<sup>40</sup>

While certain restrictions on visits and/or communication, in particular for the purpose of and as necessary for protecting an ongoing criminal investigation, are not necessarily in violation of relevant domestic and international standards, they need to be based on an individual assessment of the risk and cannot be applied indiscriminately or disproportionately. OHCHR/UNAMI notes that the denial of the rights to visit and communication, combined with the lack of access to lawyers during the interrogation phase, may create conditions amounting to *incommunicado* detention.<sup>41</sup>

### *Procedural delays and pre-trial detention*

The proceedings against the accused in cases 1, 3 and 4 were characterized by repeated postponements of trial hearings. The reasons provided for the postponement mainly included: late notification of hearings provided to the substitute judge; insufficient time for the prosecutor and/or judges to read the case file, including after replacement of judges; return of case file to the investigative court for further investigation; and absence of the chief judge.

In addition, at the time of sentencing, the seven accused in cases 1, 3 and 4 had already spent more than a year in pre-trial detention, leading to the immediate release of most of them following trial due to the time already served in custody before sentencing.

During their extended period of pre-trial detention, the accused were held in conditions that did not meet the minimum international standards for the treatment of persons in detention regarding standards of accommodation.<sup>42</sup>

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<sup>37</sup> Understood to be physical and social isolation of a detainee for 22 or more hours a day.

<sup>38</sup> See United Nations Standard Minimum Rules for the Treatment of prisoners, A/RES/70/175, adopted on 17 December 2015 (Mandela Rules), rules 43 – 45.

<sup>39</sup> OHCHR/UNAMI notes that since the outbreak of the COVID-19 pandemic in early 2020, family visits in places of detention have largely been suspended as a precautionary measure. These were replaced with phone calls.

<sup>40</sup> See Mandela Rules, rule 58; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), principles 15-16. See OHCHR/UNAMI report on detention for further references.

<sup>41</sup> *Incommunicado* detention occurs when a person deprived of liberty is denied contact with the outside world. Depending on its duration and other facts, *incommunicado* detention may violate various rights under the ICCPR, including Articles 6, 7, 10 and 14. See General Comment 35, CCPR/C/GC/35, paras. 35 and 35 in this regard. According to the Body of Principles, it violates international law if it “exceeds a matter of days”. It may also be considered as enforced disappearance when the family is not notified about the detention location and remains unaware about the whereabouts of the person deprived of liberty. Prolonged *incommunicado* detention has been also regarded as a form of torture and ill-treatment in certain cases. See OHCHR/UNAMI report on detention for further details and references.

<sup>42</sup> See Mandela Rules, rules 12 and 13.

OHCHR/UNAMI notes in this context that Asayish acknowledged severe overcrowding as a result of a fire in the Kasnazan prison in Erbil,<sup>43</sup> which has led to a deterioration of the conditions of detention in facilities under their authority during the period of pre-trial detention of the individuals.<sup>44</sup>

Any deprivation of liberty constitutes a significant limitation on an individual's rights and freedoms. According to the United Nations Human Rights Committee "*the right of the accused to be tried without undue delay [...], is not only designed to avoid keeping persons too long in a state of uncertainty about their fate, and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice*".<sup>45</sup>

### 3) Integrity of the judicial process

In addition to the concerns in relation to the criminal proceedings which included changes of the responsible trial judges,<sup>46</sup> OHCHR/UNAMI has documented several statements by Kurdistan Regional authorities that may amount to undue influence in the judicial process, including over the outcome of any subsequent appeal proceedings. Such statements bear the risk of undermining the presumption of innocence, which is fundamental to the protection of human rights.

#### *Letter by the Public Prosecution issuing a warning for lawyers*

On 14 June 2021 the Presidency of the Public Prosecution issued a letter to the Kurdish Bar Association with the subject "Warning".<sup>47</sup> In this letter the Public Prosecution, citing Article 1 of the Public Prosecution Law No. 159 of 1979, instructed the Bar Association to take action against lawyers who hold press conferences after a court delivers a verdict. The letter asserted that press conferences by lawyers informing the public on their views on specific trials or verdicts are viewed as harmful as they disclose "names of judges and prosecutors" and "confidential information" about the cases. The letter went on to state that such press conferences may influence the interrogations and may "incite people against the courts". The Bar Association has subsequently issued mandatory instructions to lawyers to keep information on trials confidential.<sup>48</sup>

#### *Legal actions against those who have questioned the outcome or conduct of the trial or authorities*

Immediately following the conclusion of the trial in case 2, the Appeals Court in Erbil issued an arrest warrant against the brother of one of the five accused after he publicly criticized the outcome of the trial during a press conference.<sup>49</sup>

On 28 February, the Asayish Directorate in Erbil filed charges of defamation against one of the five convicted men of case 2 based on the statement, made during trial as part of his defence, that he was tortured by Asayish.<sup>50</sup> In the public hearing of case 1 on 29 July 2021, the general prosecutor also insisted that Asayish could complain against the accused for defaming them.

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<sup>43</sup> The fire occurred in December 2020. Detainees have been moved temporarily while the facility is under reconstruction.

<sup>44</sup> In a desperate attempt to draw attention to their situation and ensure protection of their rights, a group of detainees, including the 16 individuals, engaged in hunger strike from 20 September 2021 which has since ended. OHCHR/UNAMI notes in this regard the announcement by the Ministry of Labour and Social Affairs in the KRI to resume family visits.

<sup>45</sup> ICCPR, Article 14(3)(c); Human Rights Committee, General Comment No. 32 (2007), CCPR/C/GC/32, para. 35.

<sup>46</sup> Cases 3 and 4 were postponed on 4 and 6 October respectively as the initially assigned judges were transferred and replaced by new judges who had to familiarize themselves with the case files.

<sup>47</sup> Ref 208-14/06/2021. The letter is on file with the UNAMI Human Rights Office.

<sup>48</sup> Ref/ 1725 – 16/06/2021. The letter is on file with the UNAMI Human Rights Office.

<sup>49</sup> See OHCHR/UNAMI, *Freedom of Expression in the Kurdistan Region of Iraq* (May 2021), page 12

<sup>50</sup> Ibid.

Following the trial and judgment in case 2, on 4 March 2021, a TV Channel broadcasted a video purportedly showing the five accused confessing to the offences with which they were charged and convicted. The video included commentary by an unidentified Asayish official stating that the accused 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 accused.<sup>51</sup>

## VII. Conclusion

The OHCHR/UNAMI findings highlight a number of human rights concerns in relation to the trials against these individuals, placing the accused at a serious disadvantage, and casting considerable doubt on the overall fairness and legality of the proceedings. All were charged with serious crimes, based on broad and imprecise provisions without sufficient reasoning with regards to the judgments of the court and after failing to identify or sufficiently substantiate the underlying individual conduct.

Whilst the comparatively “lower” sentences imposed on the accused in the cases decided in October/November 2021 – following widespread concerns raised about the fairness of the trials following the convictions in case 2 in February<sup>52</sup> – enabled the immediate release of seven individuals due to the length of time they had already spent in pre-trial detention, it did not remedy the violations of fair trial rights identified in this report.

In addition, the initiation of legal proceedings against persons who had questioned the proceedings and outcome, and disregarding complaints made to the authorities, including in court, about violations of procedural safeguards, in effect deters those, who are denied their fair trial rights, from seeking justice and an effective remedy.

The initiation of these proceedings, as well as the similarities in the concerns observed across all four trials, may be indicative of targeted criminal prosecutions intended to stifle criticism of the public authorities. Such proceedings, in combination with the human rights concerns as set out in OHCHR/UNAMI’s May 2021 Report *Freedom of Expression in the Kurdistan Region of Iraq*, send a strong dissuasive message to civil society on the authorities’ response to public criticism.

The right to a fair trial is a key element in ensuring the proper administration of justice, and human rights protection more generally. Trials serve as a mechanism to ensure accountability and provide remedies for victims of crime or injustice. As such, it is crucial for trials to be fair, and to be perceived as fair. 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.

## VIII. Recommendations

OHCHR/UNAMI notes the repeated expressed commitment by the Kurdistan Regional Government to the rule of law, judicial independence and human rights, as stated by the President and Prime Minister of the KRI, and acknowledges progress made in 2021, including enhanced cooperation and coordination.

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

In order to support the full and practical implementation of its commitment, OHCHR/UNAMI recommends that the Kurdistan Regional authorities:

- 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 norms and national standards. In particular, take immediate steps to ensure that:
  - Suspects and accused persons effectively benefit from access to lawyers at all stages of the investigation and trial, including in places of detention.
  - Suspects and accused are notified about the reasons for arrest, the nature and cause of the charges against them, promptly and in detail, at the time of arrest and in a language they understand.
  - Accused have sufficient time, facilities and opportunity to prepare and present their case to the investigative and trial courts under conditions that do not place them at a substantial disadvantage, including appropriate access to case files, ability to adduce and challenge evidence, and to cross-examine witnesses, on the basis of equality of arms.
  - Ensure that all suspects and accused effectively benefit from the presumption of innocence, without discrimination, and that the burden of proving a criminal offence remains throughout upon the prosecutorial authority.
  - All persons deprived of their liberty can contact a person of their choosing to inform such person about their detention and whereabouts and to facilitate family visits.
- Ensure full and practical implementation of detention safeguards including through undertaking prompt, effective, thorough, impartial, and transparent investigations of all allegations of torture and ill-treatment aimed at holding those responsible accountable.
- Make publicly accessible sufficiently reasoned judgments, covering the essential findings, evidence relied upon for commission of, participation in, or contribution to a specific underlying offence and legal reasoning.
- Affirm that all statements or testimony made in court during criminal proceedings, and in particular statements made by suspects, accused, 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 against such a person for having made it.
- Ensure that judicial proceedings can take place without any undue interference, including political.
- Amend existing laws to provide clear definitions of prohibited conduct and ensure that all restrictions on freedom of expression set out in domestic legislation are consistent with relevant international human rights standards.

# Annex: Response by the Kurdistan Regional Government to the UNAMI/OHCHR report<sup>53</sup>

**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:**

### **Human Rights and Freedom of Expression: Trials in the Kurdistan Region of Iraq**

December 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**

Free media and the right to freedom of expression are the very essence of a healthy democratic system. The Kurdistan Regional Government (KRG) embodies these elements in its governance which is characterized by offsetting the executive authority through a rigorous check-and-balance system and by dispersing power to a thriving civil society. KRG is a regional exemplar for essential democratic values, including the right of freedom of expression and media. It is nevertheless committed to influence, shape, and mold improvements where they are needed.

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<sup>53</sup> Official document received in English by UNAMI/OHCHR on 20 December 2021.

## **Local and International Cooperation**

The KRG is working with a number of local and international partners to protect and strengthen media freedoms in the Kurdistan Region:

- We have invited the OHCHR and UNAMI to provide advice in international humanitarian law in addition to legal support.
- UNAMI in collaboration with the KRG Office of the Coordinator for International Advocacy (OCIA) offered a two-day workshop on September 21 and 22 to representatives of relevant governmental bodies, civil societies and journalists on the ‘Right to Freedom of Expression’.
- The KRG has a longstanding agreement with the International Committee of the Red Cross granting ICRC representatives an unrestricted access without advance notice to any place of detention in Kurdistan, and has offered the equal access to UN human rights officials.
- We have invited European Union member states to support legal and judicial improvements 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 provide training courses for judges in the Kurdistan Region on criminal justice.

## **Improvements in Media Freedoms**

In the executive summary of this report, OHCHR/UNAMI underlines that ‘concrete steps’ have been taken throughout the past months towards further protection of the right of freedom of expression. Since January 2021, OHCHR/UNAMI have had unfettered access to the detention facilities and, towards May only, they conducted fourteen visits and interviewed 60 prisoners.

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

## **Individual Cases and Proceedings**

The UNAMI/OHCHR report makes a number of assertions about alleged violations of journalists’ rights in Kurdistan. We will look into particular concerns if they are raised. However, we have no indication that anyone has been held in an arbitrary or without the proper due process of law. All detentions, with the exception of temporary detentions within the scope of the law, are based on judicially issued warrants.

Despite the volatile security conditions in the region, KRG remains a peaceful and prosperous government that coexists with a thriving civil society, bedrock human rights principles, and essential democratic values. Under no circumstances, civilians in the Kurdistan Region have been arrested or detained arbitrarily.

Procedural safeguards were provided for the sixteen individuals throughout the detention period. The right to defense was upheld in the early phases of investigations and familial visits were properly arranged despite the restrictions imposed due to the Covid-19 pandemic. The judicially issued warrants were based on the applicable laws in the Kurdistan Region and Iraq. It is worthy to note that the pressed charges have had nothing to do with journalism and activism. Throughout the investigations, criminal offences surfaced in relation to a number of the individuals.

The case files were invariably passed through a credible and transparent legal process. Furthermore, all the sixteen individuals have been tried in transparent and impartial court hearings, and with the presence of local and international monitors. In the arraignments for all the individuals in question, the offences were stated by the judge in clear and precise terms. On her side, the representative of the Public Prosecutor presented admissible and corroborated evidence to the judge. Plainly, the defendants and their lawyers, throughout all the hearings, have had the opportunity to illustrate their pieces of evidence and to reject the criminal offences by which they were charged.

There are perhaps some legal fallacies that need to be elucidated. Criminal offences had to be changed in relation to a number of the defendants. Two defendants<sup>54</sup>, for example, were initially arrested on the basis of violating Article 1 from Law 21 (2003) as applicable in the Kurdistan Region. Another five individuals<sup>55</sup> were arrested in connection with the aforementioned legal stipulation. All seven individuals were first identified as accomplices and collaborators. However, the first two individuals denied the charges pressed against them, while the rest five individuals accepted the charges and affirmed their implication in a criminal offence to destabilize the Kurdistan Region. The latter in fact confessed the offences both in the investigation and trial phases, according to the relevant judicial authorities. Thus, on the basis of the Iraqi Criminal Procedure Code (1971) as amended, the case files of the defendants who received the verdict on October 19 were separated from the rest five individuals during the investigations, and the legal reasoning employed by the court issued a verdict relying on Article 222 of the Iraqi Penal Code due to its relevance for their offence.

KRG retains legitimate privileges in suspending, amending, enforcing, or revoking domestic laws and legislations as long as these actions are compatible with the constitution. Enforcing Article 222 from the Iraqi Penal Code is parallel to this constitutional privilege. There are about fifteen articles from the Iraqi Penal Code which are pertinent to internal and external security threats and are only suspended in the Kurdistan Region<sup>56</sup>, in addition to revoking or suspending other articles that justify violence against women and undermine their societal role.<sup>57</sup>

Furthermore, as far as the first two defendants are concerned, they were also charged with Article 109 of the Iraqi Penal Code, which places the defendants under surveillance for a specified period of time. The court reasoned that this is a complementary legal punishment for the offence they committed.

The involved violations are legally irrelevant to journalism and the right of freedom of expression. The representative of the Public Prosecutor provided admissible evidence to the court that validated the pressed charges.

The five individuals who were tried on February 15 and 16 were charged with Article 1 from Law 21 (2003) and the ruling of the Erbil Criminal Court was upheld in two appeal stages. Valid pieces of evidence were presented to the court by the representative of the Public Prosecutor that verified their involvement in the criminal offences attributed to them. The authors of the OHCHR/UNAMI report are raising concerns with respect to the secret informants for not being present in the court hearings. But the court is required by law to conceal the names of secret informants in the hearings and to refrain from mentioning the informants' identity in the investigation papers, of course following a request from the informant.<sup>58</sup>

The case against the five individuals had nothing to do with their stated occupations. The men were not convicted for activity related to journalism or activism. They were found guilty of gathering classified and sensitive information and passing it covertly to an outlawed militant group - PKK. As you may recall, the PKK has been responsible for the assassination of a foreign diplomat and senior security

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<sup>54</sup> Their hearings were on the following dates: February 15; July 29; September 15; October 12; and October 19, 2021.

<sup>55</sup> Their hearings were on the following dates: February 15 and 16, 2021.

<sup>56</sup> Articles 156, 157, 189, 190, 195, 198, 219, 223, 224, 225, 227, 228.

<sup>57</sup> Articles 41, 409, 128, 130, 131, 377, and 380, among others.

<sup>58</sup> Article 47 (2) from the Iraqi Criminal Procedure Code (1971).

officials in Kurdistan in the last two years. The information the men passed to the PKK directly put at risk the lives of senior KRG and foreign officials in Kurdistan. In the face of the overwhelming evidence against them, the men have confessed. What they otherwise did for a living is irrelevant.

Furthermore, the Erbil Criminal Court decided to acquit a defendant and convict four others<sup>59</sup> in relation to criminal offences.

The trial of the five men was adjourned in Erbil court in July, 2021. As the results of the investigations unfolded, the court sentenced four men to one year in prison, and one received acquittal. However, since the defendants have been serving their sentence in detention from September 2020, the court decided to release them.

The men were charged under Art 56 from the Iraqi Penal Code, which stipulates various punishments for planning to commit a crime.

Concerning another four cases raised by the OHCHCR/UNAMI<sup>60</sup>, they faced different sentences ranging from one year and a half to three years and a half. They were convicted with Article 1 from Law 21 (2003).

Nevertheless, both verdicts - the ones that sentenced the last nine individuals - are in the appeal process. Therefore, we should wait until the Appellate Court makes its decision to uphold, alter, or reverse the rulings.

The Criminal Court of Erbil is independent of the government. And the Kurdistan Regional Government does not and will not interfere with legal processes. The defendants were represented throughout by their own lawyers. They had access to their lawyers while awaiting trial. The trials were observed by representatives of local and international agencies and institutions. And the ICRC and the UNAMI had access to the defendants while they were in detention.

## **Conclusion**

KRG emphasizes that there is a clear split between the jurisdiction of the court and of the government. KRG respects the independence of the judiciary, committed to a coherent check-and-balance system, and cannot interfere in the judicial process. The KRG continues to work with UNAMI and the OHCHR on media freedom, both in terms of wider policy and legislative changes as well as specific situations. KRG relevant authorities and UN representatives studied the draft UNAMI/OHCHR report, and while we don't think it accurately portrays the situation in Kurdistan, we appreciate the UN's commitment to discussion. It is critical that all parties' knowledge of the situation in Kurdistan is based on contact with on-the-ground journalist rights groups, as well as careful analysis and review of the data they receive. The UNAMI/OHCHR report's recommendations are taken seriously by us. We will examine them thoroughly and work with our foreign partners to put everlasting solutions into action. In the Kurdistan Region, we will continue to safeguard and expand media freedoms.

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<sup>59</sup> Their hearings were on the following dates: July 5; July 13; September 8; October 6; and October 19, 2021.

<sup>60</sup> Their hearings were on the following dates: July 12; September 6; October 4; October 20; and November 8, 2021.