

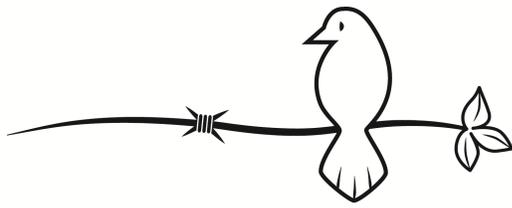
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CPT Iraqi Kurdistan's Report on Sherwan Sherwani Trial on July 20th 2023

On July 20th, 2023, CPT-IK observed the court trial of Sherwan Sherwani. CPT-IK has attended the court trials of all 24 Badinan prisoners since early 2021. Sherwan Sherwani was one of a group of journalists and activists arrested by Duhok security forces in late 2020 in connection with protests against government corruption. In February 2021, he and four others were put on trial for "endangering the national security of the Kurdistan Region." They were found guilty and sentenced to six years in jail. Sherwani is a civil rights activist and independent journalist. His work has included exposing corruption, secret government prisons and advocating for human rights. Sherwani has been routinely targeted for his journalism and activism work. Before his imprisonment, Sherwani faced abductions and threats intended to silence his journalism.

On July 20th, 2023, Sherwan Sherwani was tried and convicted in Erbil Criminal Court for falsifying and forging documents. The document in question surrounded a request made on August 28th, 2022, by Badinan Prisoners Sherwan Sherwani, Guhdar Zebari, Hariwan Issa, Eyaz Karam, and Shvan Saeed to retract a previously submitted document asking for conditional release. Sherwani was convicted of forging the signatures of fellow Badinan prisoners and the fingerprint of Guhdar Zebari, who was in solitary confinement at the time. Zebari and the others had all agreed to allow each other to sign on each other's behalf. Sherwani was convicted under Iraqi Penal Code Articles 295 and 298. Falsification under the aforementioned codes is "*the alteration as to substance or meaning as stipulated by the Code with intent to deceive of a deed, certificate or other document thereby causing harm to the public welfare or to others.*"

Additionally, Article 295 is administered for the falsification of ordinary documents. "*Any person who falsifies an ordinary document which establishes a debt or disposes of property or discharges a person from a debt or settles a debt or any ordinary document which can be used to establish rights of ownership is punishable by a term of imprisonment not exceeding seven years or by detention.*" Article 298 states that *any person who makes use of a falsified document knowing it to be so is, according to the circumstances, punishable by the penalty prescribed for the offence of falsification.*



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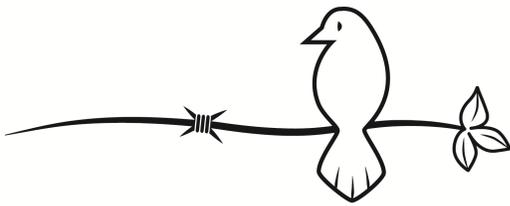
Observations and Violations

CPT-IK is concerned with the significant security presence inside the courtroom during the trial. CPT-IK estimated 12-15 heavily armed policemen were in active attendance, with Mr Sherwani inside a cage. Dozens of other armed guards were outside the courtroom as well. The militarized nature of the courtroom could be designed to intimidate the defendant (and other attendees) due to the high profile of Sherwan and the political nature of his imprisonment. This practice can infringe upon a defendant's legal representation and create an intimidating environment that works against the legal principles of impartiality.

The right to a fair trial is a recognized human right. CPT-IK is concerned with the court's potentially unjust procedure of not providing the case's legal documents to the defence in advance, putting the defendants at a disadvantage as the court is skewed in favor of the prosecution. This practice could infringe upon impartiality and a fair trial. It is revealing that the judge asked Shvan Saeed, *"You have been released now; do you have wisdom now?"* Furthermore, there is no ability to cross-examine or question the validity and independence of the investigation department's evidence.

The judge questioned the prosecution and witnesses about the impact on the Erbil Adult Prison and the other Badinan prisoners Sherwan Sherwani signed for. The prosecution argued that there was a negative impact on the prisoners and the reputation of the Erbil Adult Prison. Guhdar Zebari, Hariwan Issa, and Shvan Saeed all testified in court that there was no negative impact, and stated that they all had given each other explicit permission to sign and fingerprint on behalf of each other. Saeed said when called as a witness, *"One year ago, five of us made an agreement that they would all sign on behalf of one another, if it was ever needed. We had consent."*

As stated in court, this agreement was created to make collective action easier. Sherwan and witnesses claim that the Erbil Adult Prison had created many obstacles for them to file complaints and requests formally. Also, the prisoners were sometimes placed in solitary confinement and therefore did not have access to participate in the submission of collective requests.



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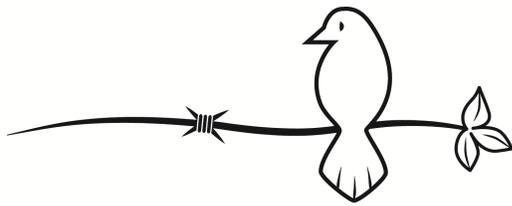
All witnesses testified that there was no negative impact on themselves as they permitted each other to sign. Since the submitted document was a memo and processed internally, no evidence would suggest possible harm to the prison's reputation, quoting Sherwani, "*It is not an official document. It is not a security issue*". There was no intent of misrepresentation presented in the court nor clear evidence of misrepresentation or any harm caused.

In the court, the representation of Erbil Adult Prison stated that collective requests could not be officially processed; only individual requests could. However, the prisoner's inadmissible document was used in court as evidence of a document that was officially processed. Sherwan Sherwani stated that there were times they were asked by prison officials and guards to fingerprint blank pages - a commonly documented practice by Kurdish security forces on detainees for purposes of intimidation or attaining a signature or fingerprint to use on a 'false document'. It is important to note that Sherwani testified in court that he did not produce the fingerprint in the space for Guhdar Zebari.

The judge based the sentencing on a different law article because the document in question was not considered official. This raises more questions on the document's viability as evidence if no harm is caused. Ultimately, there was no evidence to suggest any damage to the prison's reputation or the individuals Sherwani had signed for. The result was the judge issuing a 2.5-year sentence for breaking Article 295 and a 1.5-year sentence for violating Article 298. Regarding this, CPT-IK is concerned with unjust sentencing.

CPT-IK is highly concerned that the court is being used to unjustly punish journalists and activists, as was the case for all Badinan Prisoners.

CPT-IK is highly concerned about allegations of torture during interrogations discussed during the trial by Sherwan about his initial trial with the same judge.



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Analysis

There is likely political interference by the KRG in the judicial system. CPT-IK is highly concerned that this political interference has the potential to significantly undermine the values of justice, fairness and independence in the Kurdish legal system. As evidenced by other Badinan prisoner cases, the judiciary is being used to overly punish activists and journalists who speak out on topics deemed sensitive to the KRG and Kurdish ruling political parties, such as corruption, nepotism, and human rights injustices.

On the evening of July 20th, the same day of the Sherwani's trial, journalist Omed Barushky was kidnapped from his home by the Asayish without any warrant or court order. Barushky had attended Sherwani's trial and was publically critical of the government during a press conference outside the courthouse. He was released upon orders of Masrour Barzani. This is a clear example of political involvement in the legal system.

Iraqi Kurdistan is increasingly an unsafe place for journalists and activists. At least nine journalists have left Iraqi Kurdistan in the past six months due to active threats on themselves and their families. Journalists and activists face constant fear for their lives for their work. Many journalists and activists have stated and shown physical evidence of gruesome torture committed on them while in prison or detention. Torture such as removing nails, hanging gas canisters on genitals, and verbal and physical assault have been used on prisoners. Torture is used to try to retract false confessions, sign documents without knowing what those documents are, and prevent the prisoners from speaking out about any ill-treatment. After release, journalists and activists continue to face threats to themselves and family members if they speak on any issues related to their imprisonment or issues deemed sensitive by the government.