



christian peacemaker teams

## Freedom of Expression Under Threat

**Iraqi Kurdistan court rules that speaking to the U.S. Consulate and international organizations about human right is an act of espionage**



*Report on the February 15-16, 2021 trial of the Badinan journalists and civil rights activists:  
Sherwan Sherwani, Shivan Saeed, Eyaz Karam, Hariwan Essa and Guhdar Zebari*

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## Summary

On 16 February, 2021 The Criminal Court of the First Instance in Erbil found five freelance journalists and civil rights activists guilty of “espionage” and “conspiracy to commit acts that destabilize national security and stability” under Article 1 of Iraqi Kurdistan’s Parliamentary Law No. 21 of 2003. Journalists Sherwan Sherwani, Eyaz Karam and Guhdar Zebari and activists Shivan Saeed and Hariwan Essa, were each sentenced to six-year prison terms.

Members of Christian Peacemaker Teams (CPT), an international human rights organization, observed the trial that took place on February 15 and 16, 2021.

CPT has serious concerns about the lack of fairness and due process in the court’s ruling. No direct or reasonable evidence was presented to support the charges. The court’s claim, that speaking to representatives of the United States Consulate General, United Nations and International Organizations about the situation of human rights consists of a crime of espionage, threatens the ability of human rights defenders to work effectively in the country.

This report reviews the evidence the prosecution presented at the trial, based on which the judge sentenced Sherwan Sherwani, Guhdar Zebari, Shivan Saeed, Eyaz Karam and Hariwan Essa to six years in prison.

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Sherwan Sherwani is an internationally known and respected journalist and human rights defender. In the past, foreign government representatives and organizations have invited Sherwan to speak on the issue of human rights in Iraqi Kurdistan. He has been outspoken in denouncing government corruption and partaken in many peaceful protests on issues such as cross-border bombings, unpaid wages and journalistic freedom.

Guhdar Zebari, Shivan Saeed, Eyaz Karam and Hariwan Essa have all taken part in activities exposing corruption in political parties, spoken about violations of human rights, and participated in peaceful protests. The five have become collectively known in the media as the “Badinan journalists and civil rights activists”, who are sometimes referred to as “the Badinan prisoners.”

## Court Proceedings

The courtroom was surrounded by several dozen heavily armed security personnel who restricted entry. The only people allowed to enter the courtroom were the prosecutor, two lawyers for the Kurdistan Region's Security Council who ran the investigation and presented evidence against the accused, the defence lawyers,<sup>1</sup> Kurdistan Parliament Members,<sup>2</sup> representatives of United Assistance Mission for Iraq (UNAMI), CPT and another organization, and a single journalist. Family members were denied entry and were only able to see the prisoners from a distance on the second day, as they were escorted from the courtroom to the security vehicle.

The prosecution accused Sherwan Sherwani of being the leader of the group which engaged in espionage and conspiracy to conduct assassinations and violent attacks against government officials, security forces commanders and international organizations.

The main evidence used for the charge of espionage is outlined below:

**Sherwan Sherwani** was accused of:

- Being in contact and sharing information with the United Nations Assistance Mission for Iraq, Committee to Protect Journalists, American Bar Association and Christian Peacemaker Teams.
- Taking various photos used in his journalism work, which were on his phone or received from or shared with others, were presented by the prosecution as evidence of spying. Among them were photos of a secret prison run by the security forces and an airport in Syria.

**Guhdar Zebari** was accused of:

- Visiting the U.S. Consulate General in Erbil in November 2019, together with four other people. The meeting was organized by Ayhan Saeed<sup>3</sup>, the brother of Shivan Saeed. Ayhan told CPT that the group spoke about human rights violations and the 42-day long detention of Sherwan earlier that year.
- Asking Hareem Raffat, one of the defence lawyers, to send him the name of the judge that issued the arrest warrant for Sherwan in 2020.

**Shivan Saeed** was accused of:

- Asking Guhdar Zebari to share Sherwan's CV with him while planning to speak to members of Iraqi Parliament and international human rights organizations about Sherwan's arrest.

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<sup>1</sup> Guhdar Zebari's lawyer was prevented from entering the courtroom on the first day

<sup>2</sup> Three Members of Parliament observed the first day of the trial and additional two observed on the second day

<sup>3</sup> The court has now put out a warrant for Ayhan Saeed's arrest in relation to this case

- Forwarding to Sherwan a message and a photo of a known Security Council commander.

**Eyaz Karam** was accused of:

- Receiving \$200 USD from a relative who lives abroad and phone credit from several friends. Eyaz was unemployed at the time and this is a common way for friends to financially support each other, particularly on religious feast days such as Eid.
- In early 2019, after Turkish airstrikes killed six civilians in Sheladze, large scale protests broke out against the Turkish military operations and presence of a Turkish base in the area. During the protests Eyaz received a phone message saying that security forces were on the move towards Sheladze, and he responded “Thank you.”

**Hariwan Essa** was accused of:

- Sending \$4 USD phone credit to Eyaz Karam.
- Sharing information with Sherwan Sherwani about an illegal oil field in Semel, where he comes from.

The evidence used for the charge of conspiracy to commit violent acts is outlined below:

- A written testimony by Sherwan’s friend who claimed Sherwan disclosed to him plans to organize violent actions. The witness did not appear at the trial, and the judge refused the defence lawyers’ request to cross-examine the witness.
- The participation of the five individuals in one online chat group. Transcripts of the chat conversations were read at the trial. The conversations contained critique of the government and political parties, but nothing that indicated the five individuals instigated violence, or planned and organized sabotage or assassinations.
- Photos that were shared in the group. The prosecution claimed the people in the photos were assassination targets of Sherwan’s group.
- Eyaz Karam’s and Shivan Saeed’s participation in other online chat groups that criticized the Kurdistan Regional Government and political parties. Neither of them had written anything to suggest they were planning violent acts. One of the groups had removed Shivan for his lack of communication in the chatroom.
- The prosecution played a phone call recording, in which they alleged Guhdar Zebari asked civil activist Maki Amedi<sup>4</sup> to hack and deactivate Sherwan Sherwani’s Facebook account after he was

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<sup>4</sup> The court in Erbil has issued an arrest warrant for Maki Amedi, who lives outside of Iraqi Kurdistan

arrested in 2020. Guhdar denied making this phone call. The judge agreed to the request of the defence lawyers to have the recording inspected by experts, but the inspection was not done.

The only weapons or explosives the investigation found in the possession of the Badinan journalists and activists was a hunting gun the security forces confiscated during the arrest of Guhdar Zebari. At the time of the arrest Guhdar was visiting his sister, whose husband he said owns the gun. When the defence lawyers brought the judge's attention to this lack of evidence for planning of attacks, the lawyer for the Security Council responded that the judge should pressure Sherwan to disclose the location of his armed collaborators so they can be arrested as well.

During the trial confessions the five activists had made during the process of investigation were submitted. All five defendants said the confessions were made under duress and were not accurate. Sherwan told the court that he was tortured during the investigation and told that if he did not sign a confession his wife would be raped. Experts on Kurdistan law have said that when someone claims they were tortured during the investigation, by law the trial should be suspended and the investigation re-done.<sup>5</sup>

### Further Concerns

The court's ruling has caused public outcry and criticism from members of the Iraqi and Kurdistan Parliaments, judiciary, and international governmental entities and non-governmental organizations. The judge and prosecutor's failure to follow due process during the trial and the lack of substantial evidence has led to allegations of interference by political parties.

Prior to the trial, Iraqi Kurdistan's Prime Minister Masrour Barzani stated, "*Those who are in prison are not journalists or activists. They dressed like journalists and activists to commit acts of terrorism such as kidnaping and assassinating foreigners and blowing up buildings.*"<sup>6</sup> These accusations have led some to conclude that the Kurdistan government has unduly influenced the court proceedings.

A further 21 activists (some evidence suggests closer to 70) who have criticised the government and/or participated in peaceful demonstrations in Badinan have been in security forces jails since August 2020, with no court date set. Two of them, Badal Barwari and Omed Barushki, were originally accused of the same crimes and membership in the group allegedly led by Sherwan Sherwani but for lack of evidence

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<sup>5</sup> Articles 126 and 127 of Iraqi Criminal Procedure Law no. 23 (1971)

<sup>6</sup> <https://www.youtube.com/watch?v=G2toGuwMS-Q>

the court deferred their case for further investigation. Following the arrests of Sherwan, Guhdar, Eyaz, Shivan and Hariwan, many journalists and civil rights activists, who respected their work or knew them, communicated online asking questions and sharing information about them. They might now be at risk of being incriminated as “collaborators.” An example of this can be the arrest warrant for Shivan Saeed’s brother Ayhan, or a public mention of an online conversation about Sherwan between Ayhan and Niyaz Abdullah, who is a respected freelance journalist known for her work on civil rights.

Christian Peacemaker Teams is concerned that the court ruling will not only severely punish individuals for denouncing corruption and human rights violations but may also in significant ways restrict the work of independent journalists and human rights defenders in the region. The court’s decision to sentence Iraqi citizens on charges of espionage for speaking to consular representatives and international organizations about human rights violations creates a dangerous precedent that undermines fundamental freedoms and imposes dire threats on the activities of Iraqi Kurdistan’s civil society.

### **Recommendations**

Christian Peacemaker Teams urges:

- The Appellate Court of the Erbil Region to annul the verdict and order the immediate release of Sherwan Sherwani, Guhdar Zebari, Shivan Saeed, Eyaz Karam and Hariwan Essa, based on the lack of evidence and unfair trial as outlined in this report.
- The Kurdistan Security Council to allow family members, Members of Parliament and human rights organizations to visit or make phone calls with the prisoners regularly.
- The Kurdistan Regional Government to ensure the work of journalists and civil society, even when critical of the political parties, is protected from political retaliation.
- The Consul Generals present in Iraqi Kurdistan and representatives of international organizations to press for the release of the Badinan journalists and activists and to denounce threats against those who speak out about human rights abuses.