

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

REFERENCE: UA G/SO 218/2 G/SO 214 (107-9) G/SO 214 (3-3-16)  
IRQ 6/2012

29 November 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 15/18, 16/5, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged arrest, detention and violation of due process of Mr. **Ahmed Al Shami**.

Mr. Ahmed Al Shami, of Libyan nationality, teaches Political Sciences at the University of Tripoli and is the Director of the World Organization for Human Rights, a human rights organization based in Tripoli. Mr. Al Shami is also mandated by the Libyan Ministry of Foreign Affairs and International Cooperation to negotiate and facilitate the return of Libyan detainees from Iraq, and has travelled several times to Iraq in order to facilitate repatriations.

According to the information received:

On 18 October 2012, in the context of his most recent repatriation mission to Iraq, Mr. Ahmed Al Shami reportedly met with representatives of the League of Arab States and accompanied one of the representatives to Baghdad International Airport. While at the airport, Mr. Al Shami was allegedly arrested by Iraqi Security Services agents, who did not produce an arrest warrant or inform him of the reasons for his arrest. It is reported that Mr. Al Shami is being detained in Baghdad Central Prison and that no charges have yet been brought against him.

Sources indicate that Mr. Al Shami is being detained in conditions of solitary confinement and has been denied legal representation. Mr. Al Shami has also been reportedly refused access to contact family members.

According to the information transmitted, on 6 November 2012, Mr. Al Shami appeared before a judge, who reportedly ordered his release on the basis of a lack of supporting evidence for his detention or criminal prosecution. Despite this ruling, Mr Al Shami was allegedly transported back to Baghdad Central Prison, where he reportedly remains in detention.

Grave concern is expressed for the alleged arrest, continued detention and violation of due process of Mr. Al Shami, particularly in light of the reported refusal of providing legal representation to Mr. Al Shami and a reported judicial ruling on 6 November 2012 ordering his release. Serious concern is expressed that these alleged actions do not respect international norms and standards related to guarantees of fair trial and due process, and may be directly motivated by Mr. Al Shami's human rights work, including his assistance to Libyan detainees in Iraq seeking repatriation.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Al Shami is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

In particular, we would like to refer your Excellency's Government to article 14(3)(a) of the International Covenant on Civil and Political Rights, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him". Article 9(2) of the International Covenant on Civil and Political Rights also states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

Furthermore, article 9(3) of the International Covenant on Civil and Political Rights states: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

We would also like to refer your Excellency's Government to article 14(3)(b) of the International Covenant on Civil and Political Rights, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular in principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”; principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”; principle 7, which states: “ Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

Regarding the allegation that Mr. Al Shami remains in detention even though a judge ordered his release, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 4, which states: “There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.”

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration, and in particular to article 12 paras 2 and 3 of the Declaration which provides that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de

jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Ahmed Al Shami and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Please also explain why, in light of the reported ruling of 6 November 2012 releasing him, Mr. Al Shami continues to be in detention.
3. Please explain why Mr. Al Shami has been denied access to legal representation, contrary to international norms and standards related to guarantees of fair trial and due process.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

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Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers