

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/18 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest on 22 October 2017 and subsequent incommunicado detention of Mr. **Samir Al Daami**. Mr. Al Daami, also known as Samir Abeid, is an Iraqi-Norwegian freelance journalist and political commentator who is frequently interviewed on television. Mr. Al Daami lived in exile in Norway until 2014 when he returned to Baghdad.

According to the information received:

On 22 October 2017, Mr. Al Daami was arrested at his home by members of the Iraqi National Intelligence Service and the 54th Brigade of the Iraqi Army. Since then, he remains detained incommunicado as he has been denied access to his family members and lawyer.

Mr. Al Daami's arrest and subsequent detention follows the publication on his Facebook account of a post in which he wrote that Iraqi Prime Minister Haider al-Abadi used the country's armed forces to retake Kirkuk so that foreign oil companies that helped him become Prime Minister could gain control of the oil fields in Kirkuk.

On 26 October 2017, Mr. Al Daami was brought before the Public Prosecutor of the Central Criminal Court in Baghdad where he was charged with "broadcasting false or biased information, statements or rumors" under article 210 of the Penal Code.

Mr. Al Daami was expected to be released on bail on 30 October 2017. However, according to his relatives, following the intervention of the Prime Minister's Office, his demand for conditional release was rejected.

On 8 November 2017, his case was referred to the second Chamber of the Central Criminal Court where he was charged with "communicating with foreign parties"

under article 164 of the Penal Code. According to Mr. Al Daami's relatives, he is being prosecuted a second time on the grounds of a guest appearance on the Al Jazeera program "Opposite Directions".

On 14 November 2017, Mr. Al Daami appeared before the same Court in the presence of his lawyer. However, the hearing was postponed until 22 November 2017 due to the absence of a representative of the intelligence services. Mr. Al Daami is not permitted to meet with his lawyer outside of the court hearings.

He is currently detained at Baghdad's Al Muthanna Air Base.

We express our concern about the arrest and alleged incommunicado detention of Mr. Al Daami, which appear to be related to the expression of his critical views against the Iraqi Prime Minister. We are equally concerned about the unlawful legal basis upon which Mr. Al Daami is detained, as it criminalizes the legitimate exercise of the right to freedom of expression. Finally, we also express our dismay at the allegations that Mr. Al Daami has been denied access to his family members and lawyer.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of the right of every individual to liberty and security of person, the rights not to be arbitrarily deprived of liberty and to fair proceedings, as well as the right to freedom of opinion and expression, established in articles 9 and 19 of the Universal Declaration of Human Rights (UDHR) and articles 9, 14 and 19 the International Covenant on Civil and Political Rights (ICCPR), ratified by Iraq on 25 January 1971.

We would like to recall that any restriction to freedom of expression must meet the high threshold established under article 19(3) of the ICCPR. That is, be provided by law and be necessary and proportionate to achieve the legitimate aims listed in the provision. As interpreted by the Human Rights Committee in its General Comment 34 (CCPR/C/GC/34), article 19 of the ICCPR requires that authorities guarantee the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, including political discourse, commentary on one's own and on public affairs, discussion of human rights, journalism, among others (paragraph 11). Article 19 of the ICCPR also protects all forms of expression and the means of their dissemination, including all forms of audio-visual as well as electronic and internet-based modes of expression (paragraph 12). Concerning the specific issue of freedom of expression online, the Human Rights Committee also interpreted in General Comment 34 that "any restrictions on the operation of websites, blogs or any other internet-based (...) are only permissible to the extent that they are compatible with paragraph 3" (paragraph 43).

We would also like to emphasize the importance of legal safeguards in the course of criminal proceedings. In particular, we would like to recall that article 14 of the ICCPR establishes the right to communicate with counsel of one's own choosing. We would like to appeal to your Government to take all necessary measures to guarantee Mr. Al

Daami's right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal. We would like to refer to the Basic Principles on the Role of Lawyers which state that "all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer" and that such 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" (principles 7 and 8).

Finally, we would like to draw the attention of your Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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 Mr. Al Daami in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for the arrest and detention of Mr. Al Daami and how these measures are compatible with Iraq's obligations under international human rights law, in particular with articles 9, 14 and 19 of the ICCPR.
3. Please indicate what measures have been taken to ensure that journalists in Iraq are able to express their views and disseminate information without fear of intimidation, harassment or prosecution of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment