

Key Findings of UN Working Group on Arbitrary Decision on Reprisals Family Members of Sayed Ahmed Alwadaei

The deprivation of liberty of Sayed Nazar Naama Baqger Ali Yusuf Alwadaei, Mahmood Marzooq Mansoor and Hajar Mansoor Hassan, being in contravention of articles 2, 3, 5, 9, 10 and 25 of the Universal Declaration of Human Rights and of articles 2, 7, 9, 10, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within **categories I, III and V**.

Category I : Deprivation of Liberty Without Invoking any Legal Basis

- 79/80. According to the information provided by the source, **Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were arrested without a warrant and were not promptly informed of either the reasons for their arrest or of the charges against them....The Government has offered no evidence such as a copy of the arrest warrant or interrogation minutes.** The international norms on detention include the right to be presented with an arrest warrant, except for arrests that are made in *flagrante delicto*, which is inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- 81. **The failure at the time of their arrest to inform Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan of the reasons for their arrest and of their rights and to inform them promptly of any charges against them** further violated articles 3 and 9 of the Universal Declaration of Human Rights and articles 9 (2) and 14 (3) (a) of the Covenant, as well as principles 10 and 13 of the Body of Principles. In fact, Sayed Nazar Alwadaei and Mr. Mansoor were detained without charge for six days while Ms. Hassan was detained without charge for three days.
- 82. **The Working Group notes that Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were not brought promptly before a judge or other officer authorized by law to exercise judicial power,** nor were they allowed to challenge the lawfulness of their detention before a court in accordance with article 9 (3) and (4) of the Covenant. 83. In this respect, the Working Group wishes to recall that in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant...
- 84. ...In the present case, **Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were not informed of their right to legal assistance, and they did not have access to a lawyer** when they were interrogated initially by the CID and later, except for Ms. Hassan, by the Public Prosecution, This seriously and adversely impacted their ability to

effectively exercise their right to challenge the legality of their detention, denying them rights under article 9 (4) of the Covenant

- 85. For the reasons above...The Working Group therefore concludes that **their detention is arbitrary** under category I.

Category III: Right to Fair Trial and Due Process

- 90. **Sayed Nizar, Hajer Mansoor and Mahmood Marzooq All three individuals were arrested without a warrant and were not promptly informed of either the reasons for their arrest or of any charges against them** in violation of articles 9 (2) and 14 (3) (a) of the Covenant. **They were also denied the right to notify and communicate with their families, and they did not have access to a lawyer** when they were interrogated initially by the CID and later, except for Ms. Hassan, by the Public Prosecution.
- 91. **The Working Group considers that the lack of judicial oversight as well as access to a lawyer in the early stages of detention lend weight to the source's allegation of the resort by the CID to torture, ill-treatment and threats against family members in order to extract confessions. No fair trial is possible under such an atmosphere of fear.** The Working Group notes that the reliance in trial on confessions that **were obtained through unlawful means** violates not only article 14 (3) (g) of the Covenant but also the Government's international obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular article 15. **The Working Group regrets that the Government has yet to conduct a serious investigation into the credible allegations of torture and ill-treatment raised by the three detainees.**
- 93. In light of the above, the Working Group concludes that **the violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty** of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan an arbitrary character, falling within category III.

Category V: Illegal Discrimination

- 95. Although the Government claims that the three individuals were arrested and tried for individual criminal acts, **it is difficult to believe that their arrest, detention and trial have no connection with Sayed Ahmed Alwadaei.** The Working Group notes that Sayed Ahmed Alwadaei himself had been deprived of his liberty and nationality by the Government for his activities, and that **his wife Duaa Alwadaei had also been detained, tried and convicted for her alleged failure to respond to an airport official in a polite manner.**

- 96. The Working Group is persuaded that Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan were deprived of their liberty, interrogated and prosecuted for their family ties with Sayed Ahmed Alwadaei, and that these were acts of reprisals. This is the only plausible explanation for the subversion of the equal protection of the law they have experienced, as observed above.
- 97. For these reasons, the Working Group considers that the deprivation of liberty of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan constitutes a violation of article 2 of the UDHR and articles 2 (1) and 26 of the Covenant on the grounds of discrimination based on birth or other status aimed at and resulting in ignoring the equality of human beings and that it therefore falls under category V.

Disposition

- 103. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to **release Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan immediately and accord them an enforceable right to compensation and other reparations**, in accordance with international law.
- 104. The Working Group **urges the Government to ensure a full and independent investigation** of the circumstances surrounding the arbitrary deprivation of liberty of Sayed Nazar Alwadaei, Mr. Mansoor and Ms. Hassan and to take appropriate measures against those responsible for the violation of their rights.