



Téléfax: (41) (0) 917 90 06  
Télégrammes: UNATIONS, GENEVE  
Télex: 41 29 62  
Téléphone: (41) (0) 22 917 92 89  
Internet [www.ohchr.org](http://www.ohchr.org)  
E-mail: [wgad@ohchr.org](mailto:wgad@ohchr.org)



Palais des Nations  
CH-1211 GENEVE 10

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Le 11 novembre 2009

Cher Maître Mesli,

Pendant la 55<sup>ème</sup> session du Groupe de travail sur la détention arbitraire, le Groupe a adopté plusieurs Avis concernant des cas individuels de détention soumis à son attention. Le Groupe de travail a décidé, conformément à ses méthodes de travail, de transmettre ses Avis aux sources des communications, trois semaines après sa transmission au Gouvernement correspondant.

J'attache à la présente une copie de l'Avis numéro 13/2009 (Yemen) concernant la détention de les Frères Al Abbab. Cet Avis sera publié dans le prochain rapport du Groupe de travail au Conseil des Droits de l'Homme.

Veuillez agréer, Maître Mesli, l'assurance de ma considération la plus distinguée.

A handwritten signature in black ink, appearing to read 'Miguel de la Lama'.

Miguel de la Lama  
Secrétaire

Groupe de travail sur la détention arbitraire

Maître Rachid Mesli  
Directeur juridique  
Alkarama for Human Rights  
2bis Chemin des Vignes  
1209 Genève

(Fax N°. 022 734 10 34)

**OPINION No. 13/2009 (YEMEN)**

**Communication addressed to the Government on 28 May 2009.**

**Concerning: Amir Abdallah Thabet Mohsen Al Abbab, Mohamed Abdallah Thabet Mohsen Al Abbab and Movad Thabet Mohsen Al Abbab.**

**The State is a Party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by Commission's resolution 1997/50. The Human Rights Council assumed the Working Group's mandate by its decision 2006/102 and extended it for a further three-year period by resolution 6/4 of 28 September 2007. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90 day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

II. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

III. When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case, in the light of the allegations made, notwithstanding

that the Government has failed to offer its version of facts and explanations on the circumstances of the case.

5. The case was reported to the Working Group on Arbitrary Detention as summarised below:

6. Mr. **Amir Abdallah Thabet Mohsen Al Abbab**, born in 1978, employee at a gas station; Mr. **Mohamed Abdallah Thabet Mohsen Al Abbab**, born in 1984, student; and Mr. **Mouad Thabet Mohsen Al Abbab**, born in 1985, student, all of whom are brothers and Yemeni nationals, usually residing at Al-Sabiin Region, Al-Qadissya Neighbourhood, Sana'a, were arrested without a warrant on 19 July 2007, at 2.00 a.m., by three agents of the Yemeni Political Security Services (*Al Amn Asiyassi*).

7. According to the source, they have not been presented with a reason for their arrests and have been detained to date without any legal procedure.

8. It would appear that the three Al Abbab brothers were arrested in place of their oldest brother, Mr Adel Thabet Mohsen Al Abbab, an Arabic teacher, who is sought, according to the Political Security Services, for alleged membership of *Al Qaeda*. When the agents did not find Adel Al Abbab they proceeded to arrest his three brothers and their father, who suffers from high blood pressure and diabetes. The father was released two days later.

9. The three brothers have been detained at the Political Security Services' prison in Sana'a since their arrest. During the first two months of their detention, they were held *incommunicado*; however, currently, they are in contact with their family, and their father is able to visit them once a week. They have not been formally charged, brought before a judge or faced any other type of legal process. Their father has petitioned the Head of the Political Security Services, Mr. Ghalib Al Kamsh, but to no avail.

10. Although the Constitution of the Republic of Yemen's article 47 (c) provides that any person temporarily apprehended on suspicion of committing a crime shall be presented before a court within a maximum of 24 hours from the time of his detention, and although article 73 of the Code of Criminal Procedure (Law N° 31 of 1994) stipulates that all person arrested must immediately be informed of the reasons for the arrest; that they have the right to know about the arrest warrant, and that they may also contact all persons who should, in their opinion, be informed and to request the assistance of a lawyer, no legal reason has been provided by the authorities to justify the arrests and detention of the three Al Abbab brothers.

11. The source further reports that Yemeni domestic law establishes that individuals must be promptly informed of charges being held against them. Article 269 of the Criminal Procedure Code stipulates that all accusations against a person, who for this reason has been placed in detention before being brought before a judge, must be examined in all urgency by a tribunal which must rapidly make a decision. To date, and despite their requests, the three Al

Abbab brothers have not been able to obtain the assistance of a lawyer. They are currently being detained outside of any legal context and in manifest violation of Yemeni domestic law.

12. Having examined the information received and in the absence of a reply from the Government, the Working Group considers that the three Al Abbab brothers are arbitrarily detained, in contravention of article 9 of the Universal Declaration of Human Rights, which establishes that "no one shall be subjected to arbitrary arrest, detention or exile"; and of article 9, paragraph 1, of the International Covenant on Civil and Political Rights, according to which "everyone has the right to liberty and security of person"; and "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".

13. The detention of the above-mentioned three brothers is also in violation of article 14, paragraph 3, literals (a) and (c), of the International Covenant on Civil and Political Rights, which requires that everyone shall be entitled "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him" and "to be tried without undue delay".

14. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Amir Abdallah Thabet Mohsen Al Abbab, Mohamed Abdallah Thabet Mohsen Al Abbab and Movad Thabet Mohsen Al Abbab is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. It falls under categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

15. The Working Group requests the Government to take the necessary steps to remedy the situation, which, under the specific circumstances of this case, are the immediate release of, and the adequate reparation to the three Al Abbaba brothers.

16. The Working Group would emphasise that the duty to immediately release Amir Abdallah Thabet Mohsen Al Abbab, Mohamed Abdallah Thabet Mohsen Al Abbab and Movad Thabet Mohsen Al Abbab would not allow further detention, even in the eventual case that further actions taken against the three brothers may satisfy the international human rights obligations of the Republic of Yemen.

17. Furthermore, the Working Group points out that the obligation to provide adequate compensation under articles 9 (5) of the International Covenant on Civil and Political Rights is based on the consideration that the three brothers have been the victims of arbitrary detention and that subsequent proceedings or findings concerning them cannot limit the State's responsibility.

Adopted on 3 September 2009.

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