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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 38/2015 concerning Sheikh Suliaman al-Rashudi, Abdullah al-Hamid, Mohammed al-Qahtani, Abdulkareem Yousef al-Khoder, Mohammed Saleh al-Bajadi, Omar al-Hamid al-Sa'id, Raif Badawi, Fadhel al-Manasif and Waleed Abu al-Khair (Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 15 September 2014 the Working Group transmitted a communication to the Government of Saudi Arabia concerning Sheikh Suliaman al-Rashudi, Abdullah al-Hamid, Mohammed al-Qahtani, Abdulkareem Yousef al-Khoder, Mohammed Saleh al-Bajadi, Omar al-Hamid al-Sa'id, Raif Badawi, Fadhel al-Manasif and Waleed Abu al-Khair. The Government replied to the communication on 29 October 2014. The State is not a party to the International Covenant on Civil and Political Rights.

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

(a) 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);

(b) 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);



(c) 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);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. The present case concerns nine persons, all Saudi Arabian nationals, who have allegedly been deprived of their liberty as an act of reprisal for participating in activities relating to the promotion and protection of human rights in Saudi Arabia.

5. Mr. Al-Rashudi is a former judge and lawyer. He is also a founding member of the Saudi Civil and Political Rights Association (ACPRA), and served as its president in 2012. It is reported that he is well-known for his activism in promoting human rights reform in Saudi Arabia and has been arrested for this several times.

6. On 12 December 2012, Mr. Al-Rashudi was arrested without a warrant by the General Directorate of Investigations of the Ministry of the Interior at a petrol station in Riyadh. This took place two days after he had given a lecture at an informal social gathering on the legality, under sharia law, of holding demonstrations. He was initially taken to the “Prince Nayef Academy”. The main reason given by the authorities to his family for his arrest and detention was to prohibit him from delivering lectures.

7. Mr. Al-Rashudi had previously been detained, on 3 February 2007, for circulating a petition calling for political reform and proposing the establishment of an independent human rights organization in Saudi Arabia. He was reportedly held without charge until August 2010 and released on bail on 23 June 2011. On 22 November 2011, the Specialized Criminal Court found him guilty on several charges, including those of “breaking allegiance to the ruler, disobeying him” and “participating in forming an organization called ‘Tawasso’ in order to spread chaos under the cover of advice and reform”. He was sentenced to 15 years of imprisonment and a 15-year travel ban, but was at liberty pending appeal.

8. Following his arrest in December 2012, Mr. Al-Rashudi learned that the Court of Appeal had upheld the decision of the Specialized Criminal Court and rejected the appeal he had filed in January 2012. He was then detained for two months in solitary confinement in Al-Ha’ir prison in Riyadh. In January 2013, Mr. Al-Rashudi was offered a pardon by the Ministry of the Interior on the condition that he sign a pledge to not repeat his offences or engage in public activism and to thank the King. Mr. Al-Rashudi reportedly refused to sign the pledge and therefore continues to be detained.

9. Mr. Al-Hamid is a human rights defender, a writer and a founding member of ACPRA. He was a professor of contemporary literature at Al-Imam Muhammad ibn Saud Islamic University in Riyadh before being dismissed for his activism. He is a well-known advocate for reform and has been detained several times for his activism.

10. It is reported that the authorities began an investigation into Mr. Al-Hamid's activities in March 2012. His trial started on 11 June 2012 before the Criminal Court in Riyadh, where he faced numerous charges, including those of "breaking allegiance with the ruler", "forming an unlicensed organization", "questioning the integrity of officials" (a charge believed to refer to allegations made by Mr. Al-Hamid that the judiciary accepts confessions made under duress), "seeking to disrupt security and inciting disorder by calling for demonstrations" and "disseminating false information to foreign groups", a charge relating to the expression of opinions on human rights violations in Saudi Arabia to international human rights organizations and the media.

11. On 9 March 2013, the Criminal Court in Riyadh sentenced Mr. Al-Hamid, pursuant to article 6 of the law against cybercrime, to five years in prison. The Court also ordered him to serve the remaining six years of a previous sentence, handed down in May 2005, for which he had already been pardoned. In addition, the Court sentenced him to a travel ban of 11 years and ordered the disbanding of ACPRA, the confiscation of its property and the cessation of its social media accounts. Mr. Al-Hamid was taken to Al-Malaz prison in Riyadh and later moved to the Criminal Department of Al-Ha'ir prison, where he remains detained. He appealed the decision on 28 May 2013; in January 2014, the Court of Appeal confirmed the sentence.

12. Mr. Al-Qahtani is a well-known human rights defender and a co-founder of ACPRA. Before his detention, he publicly raised concerns about the status of human rights in Saudi Arabia, including through interviews with the media.

13. On 18 June 2012, Mr. Al-Qahtani was brought before the Criminal Court in Riyadh on 11 activism-related charges. On 9 March 2013, he was found guilty of a number of offences, including those of "breaking allegiance to and disobeying the ruler", "questioning the integrity of officials", "seeking to disrupt security and inciting disorder by calling for demonstrations", "disseminating false information to foreign groups" and "forming an unlicensed organization". Mr. Al-Qahtani was sentenced to 10 years in prison followed by a travel ban of equal duration.

14. At the end of the court session, he was detained in Al-Malaz prison. Later, he was moved to the criminal section in Al-Ha'ir prison, which is where he is at present. On 3 March 2014, Mr. Al-Qahtani was placed in solitary confinement. On 5 March 2014, the prison officials refused to allow his legal representatives to visit him. He appealed the decision on 28 May 2013 and, in early 2014, the Court of Appeal confirmed the sentence.

15. Mr. Al-Khoder is a founding member of ACPRA and a former professor of comparative jurisprudence at the Faculty of Islamic Jurisprudence at Qassim University. Mr. Al-Khoder has been banned from travelling outside the country since 2010. In October 2011, he was dismissed from his professorial position, reportedly because of his human rights activism.

16. In January 2013, Mr. Al-Khoder was tried before the Criminal Court in Buraydah. He was charged with a number of offences, including those of "disobeying the ruler", "inciting disorder by calling for demonstrations", "harming the image of the State by disseminating false information to foreign groups" and "taking part in founding an unlicensed organization". On 24 April 2013, Mr. Al-Khoder was detained at his fourth trial hearing when he refused to enter the courtroom after the judge allegedly blocked a group of approximately 10 women from entering the court to observe his trial. No reasons were given for the detention order against Mr. Al-Khoder and the judge reportedly refused to meet with him or his lawyer.

17. On 24 June 2013, Mr. Al-Khoder was found guilty of the above charges and sentenced to eight years in prison and a 10-year travel ban. On 6 January 2014, the Court of

Appeal ordered a retrial before the Criminal Court in Buraydah. The new trial started on 7 May 2014. Mr. Al-Khoder remains detained in Buraydah.

18. Mr. Al-Bajadi is a businessman as well as a human rights activist and a founding member of ACPRA. He has been detained before, allegedly in connection with his human rights activities. On 21 March 2011, Mr. Al-Bajadi was arrested in Buraydah by uniformed agents and masked men in civilian clothes believed to belong to the General Directorate of Investigations of the Ministry of the Interior. According to the source, he was taken to his house and later to his office, where the General Directorate agents confiscated books, documents and computers and also filmed the inside of his house and office. His arrest occurred the day after he protested outside the Ministry of the Interior in Riyadh. He is being held in Al-Ha'ir prison.

19. Mr. Al-Bajadi's trial began in August 2011. It is alleged that his trial was secret as neither the charges nor the sentence were made public. Furthermore, his defence lawyers were denied access to him and informed that their right to represent him had not been recognized by the court. Mr. Al-Bajadi's lawyers and family were neither informed about the hearings nor allowed to attend them.

20. On 10 April 2012, the Specialized Criminal Court in Riyadh sentenced Mr. Al-Bajadi's to four years of imprisonment followed by a five-year travel ban. The Court found Mr. Al-Bajadi guilty of participating in the establishment of an unlicensed organization, harming the image of the State through the media, calling on the families of political detainees to protest and hold sit-ins, contesting the independence of the judiciary and having banned books in his possession.

21. Mr. Al-Bajadi and his legal representative were unaware that the Court of Appeal had rejected the sentence handed down by the Specialized Criminal Court and sent the case back to the same Court for retrial. Mr. Al-Bajadi's second trial started on 15 August 2013. According to the source, Mr. Al-Bajadi was not informed of this retrial until prison security guards asked him to go to court to receive a copy of his first sentence. He refused to do so in protest at the unfairness of his trial and the secrecy surrounding it. Later, he learned that when he was called to court it was to attend the first hearing in his retrial. Four court sessions have since taken place without either Mr. Al-Bajadi or his legal team present. His retrial is ongoing.

22. Mr. Al-Sa'id is a member of ACPRA. On 28 April 2013, he was summoned for an interrogation by the Bureau of Investigation and Prosecution. His legal representative was prevented from attending the interrogation. It has been reported that, in protest, Mr. Al-Sa'id refused to answer any questions and that the investigator ordered his arrest. Mr. Al-Sa'id's lawyers were prevented from visiting him in prison when he was remanded in custody. He is detained in Al-Qassim prison in Buraydah.

23. Mr. Al-Said's trial began on 10 June 2013 before a criminal court in Buraydah. On 12 December 2013, he was convicted for a number of offences, including those of "disobeying the ruler", "membership in an unlicensed organization", "inciting disorder by calling for demonstrations" and "harming the image of the State by disseminating false information". He was sentenced to four years in prison, 300 lashes and a four-year travel ban following his sentence.

24. It has been alleged that Mr. Al-Sa'id's first hearing before the court was held in secret. His lawyers were unable to attend the final hearing, on 12 December 2013, as they were not notified of its date despite having repeatedly requested the judge for that information. Mr. Al-Sa'id was only informed of the final date of the trial when prison guards took him to court. It has also been alleged that Mr. Al-Sa'id protested in court that the hearing was being held in secret; that allegation was denied by the judge.

25. Mr. Badawi is a human rights activist and the founder of an online forum for political and social debate entitled "Saudi Arabian Liberals". On 17 June 2012, Mr. Badawi was arrested by the Criminal Investigation Department and transferred to the General Prison in Briman, Jeddah, where he remains to date. He was charged with apostasy by the General Prosecutor, a crime that could carry the death sentence. His trial before the General Court in Jeddah began in July 2012. On 21 January 2013, the General Court sent the case to the Criminal Court in Jeddah, stating that it did not have jurisdiction to examine the case because it did not find that Mr. Badawi had insulted Islam and therefore a charge of apostasy did not apply. However, the General Prosecutor insisted that Mr. Badawi should be tried for apostasy. The case was sent from the Criminal Court to the Court of Appeal and back again.

26. On 29 July 2013, the Criminal Court of Jeddah found Mr. Badawi guilty of violating the national information technology law and insulting religious authorities by creating and managing an online forum. He was also convicted of insulting religious symbols in his tweets and Facebook posts and of criticizing the Commission for the Promotion of Virtue and the Prevention of Vice and officials who argued against including women in the Shura Council. Mr. Badawi was sentenced to seven years in prison and 600 lashes, and the online forum was ordered to cease operating.

27. On 11 December 2013, the Court of Appeal ruled that the case should be reviewed again by the Criminal Court in Jeddah. The Court of Appeal's decision was made following the appeal lodged by Mr. Badawi's lawyer, who argued that the Criminal Court judge who had sentenced his client was a temporary judge and was not impartial, having publicly expressed, prior to his assignment, that Mr. Badawi should be charged with apostasy.

28. On 25 December 2013, another judge in the Criminal Court ruled that he did not have jurisdiction to review the case because the charges related to apostasy. The case was transferred to the Court of Appeal, which was to decide which court was competent to examine the case. The Court of Appeal returned the case to the same judge in the Criminal Court in Jeddah. On 7 May 2014, Mr. Badawi was sentenced to 10 years in prison, 1,000 lashes and a fine of 1 million Saudi riyals in connection with his online forum and accusations that he had insulted Islam. He was also banned from travelling for 10 years following his release and from appearing in the media.

29. Mr. Al-Manasif is a human rights activist and a founding member of Adala Centre for Human Rights. He is well known for his activism in opposing discrimination against Saudi Arabian Shia Muslims and has been previously detained in this connection. On 2 October 2011, Mr. Al-Manasif was arrested at a police checkpoint between the towns of Awwamiya and Safwa, and taken to Safwa police station. Earlier that day, he had tried to negotiate with the police regarding the detention of two elderly men who alleged that they had been held by the police in order to pressure their sons to surrender themselves to the authorities.

30. Following his arrest, Mr. Al-Manasif was transferred to Dhahran police station and detained incommunicado and in solitary confinement until 10 October 2011, when he was transferred again to the prison of the General Directorate of Investigations of the Ministry of the Interior in Dammam, Al-Mabahith. He was held there incommunicado and reported to have been tortured and ill-treated by security forces, including General Directorate agents, during the first days of his arrest to force a confession. He was permitted to telephone his family only twice a month until 11 November 2012, when his family was finally granted visiting rights.

31. Mr. Al-Manasif's trial before the Specialized Criminal Court in Riyadh began on 28 February 2012. It is alleged that the charges against Mr. Al-Manasif stem from his participation in the peaceful protests that took place in 2009 and 2011 in the country's

Eastern Province, at which protesters called for political reform and an end to discrimination against the Saudi Arabian Shia Muslim community. The charges are also allegedly linked to Mr. Al-Manasif's role in reporting and documenting such discrimination and the fact that he is a founding member of a banned human rights association.

32. On 17 April 2014, the Specialized Criminal Court convicted Mr. Al-Manasif of several charges, including those of "breaking allegiance to the ruler", "stirring sedition and sectarian division between citizens by inciting protests and marches", "communicating with foreign media to harm the Kingdom's government, its people and national unity" and "founding a banned association". He was sentenced to 15 years of imprisonment, followed by a travel ban of 15 years, and a fine of 100,000 Saudi riyals. Mr. Al-Manasif has filed an appeal.

33. Mr. Al-Khair is a human rights lawyer and the head of Monitor of Human Rights in Saudi Arabia, an independent human rights organization founded in 2008. He has also worked with ACPRA and supported its causes.

34. Mr. Al-Khair first faced trial in late 2011 after he signed a statement criticizing the authorities' persecution of 16 reformists. On 6 October 2013, Mr. Al-Khair was also brought before the Specialized Criminal Court, where he faced charges almost identical to those for which he has already been convicted. These include "breaking allegiance to and disobeying the ruler", "setting up an unlicensed organization" and "participating in establishing another organization (the Saudi Civil and Political Rights Association, ACPRA)".

35. On 29 October 2013, the Criminal Court in Jeddah sentenced him to three months of imprisonment, a sentence which was upheld on 6 February 2014 by the Court of Appeal in Mecca.

36. On 15 April 2014, Mr. Al-Khair was arrested after appearing at the fifth hearing of his trial before the Specialized Criminal Court in Riyadh. He was taken to Al-Ha'ir prison, where he was reportedly placed in solitary confinement and ill-treated. On 17 April 2014, he was allowed one brief telephone call to his wife, who was not allowed to visit him. Since then, he has reportedly been transferred to different detention centres and is currently detained in Briman prison in Jeddah. He is being allowed brief and regular telephone calls.

37. On 22 April 2014, Mr. Al-Khair's defence lawyers went to court to enquire about the reasons for their client's detention, at which time they found Mr. Al-Khair attending his sixth hearing. The judge reportedly refused to provide an explanation for his arrest and detention. The trial is ongoing.

38. The source submits that the deprivation of liberty of the nine persons mentioned above falls under category II of the categories relating to arbitrary detention, being in violation of articles 19 and 20 of the Universal Declaration of Human Rights. According to the source, the detention of the nine individuals, and especially that of ACPRA members, forms part of a recent crackdown on human rights activists in Saudi Arabia and constitutes a form of reprisal for their work to protect and defend human rights. The source argues that the pattern of arrests, detentions and charges targeting them demonstrates that they are being imprisoned solely for exercising their rights to freedom of expression and to freedom of peaceful assembly and association.

39. The source also submits that the deprivation of liberty of the aforementioned individuals falls under category III of the categories relating to arbitrary detention, being in violation of articles 9 and 10 of the Universal Declaration of Human Rights. The source further submits that these cases of deprivation of liberty involve grave violations of the right to a fair trial, which includes the obligation to define criminal offences precisely within the law. The source argues that most of the offences that these men have been

convicted of are too broad and imprecise, thereby allowing interpretations that undermine fundamental rights such as the rights to freedom of expression and to freedom of peaceful assembly and association. In the source's view, offences such as "breaking allegiance to and disobeying the ruler", "inciting disorder by calling for demonstrations", "harming the image of the State by disseminating false information to foreign groups" and "taking part in founding an unlicensed organization" fall short of international standards of fairness and are used to criminalize the exercise of the rights to freedom of expression and to freedom of peaceful assembly and association.

40. The source submits that the Specialized Criminal Court in Riyadh was set up to deal with terrorism and security-related cases and that its procedures and internal regulations have never been made public. As a consequence, the source alleges that the trials before the Court of several of the above-mentioned individuals have not complied with the most basic elements of the right to a fair and public hearing by an independent and impartial tribunal.

Response from the Government

41. The Working Group addressed a communication to the Government of Saudi Arabia on 15 September 2014 in which it requested detailed information about the situation of the detainees and a clarification of the legal provisions justifying their continued detention.

42. According to paragraph 15 of the Working Group's methods of work, the Government was requested to reply to the communication within 60 days from the date of its transmittal. The Government of Saudi Arabia replied on 29 October 2014.

43. In its response, the Government asserted that the facts as presented were inaccurate. According to the Government, Mr. Al-Rashudi was arrested on 2 February 2007 and questioned, in accordance with articles 33, 35 and 36 of the Code of Criminal Procedure (2001), in connection with allegations concerning, inter alia, his participation in the establishment of a clandestine organization seeking to provoke chaos and disrupt public order, his support for terrorist groups and his adoption of their ideology.

44. According to the Government, Mr. Al-Rashudi was questioned on the said allegations by the Bureau of Investigation and Public Prosecution in accordance with articles 3 and 14 of the Code of Criminal Procedure and, without being detained, was referred, pursuant to articles 16 and 126 of the Code, to the competent court before which he was tried. He was sentenced to a term of 15 years of imprisonment beginning at the time of his arrest and was banned from travelling outside Saudi Arabia for a similar period subsequent to his release from prison. According to the Government, the sentence became final in conformity with article 213 of the Code of Criminal Procedure and was enforced pursuant to article 215 thereof.

45. The Government points out that, like other prisoners, the individual in question was protected by statutory measures designed to preserve his dignity and ensure that he was not subjected to physical or psychological harm, torture or degrading treatment. He and his family were duly notified pursuant to articles 2 and 116 of the Code of Criminal Procedure.

46. According to the Government, all accused persons undergo a medical examination at the time of their admission to prison and prison inmates undergo medical examinations on a periodic basis pursuant to paragraph 5 of the medical services regulations, they are entitled to receive family visits pursuant to article 12 of the prison and detention regulations and accused persons have the right to appoint a lawyer under article 4 of the Code of Criminal Procedure.

47. The Government submits that all places of detention and prisons in the country are under the judicial supervision of the Bureau of Investigation and Public Prosecution (Office of the Attorney General), which, pursuant to article 37 of the Code of Criminal Procedure,

inspects prisons in order to verify the condition of detainees and prisoners and ensure that regulations are being applied and not infringed or violated. In accordance with article 5, paragraphs 6 and 7, of the statute of the Human Rights Commission, representatives of the Commission are empowered to make unannounced visits to all prisons and places of detention in the country and to receive complaints. According to the Government, representatives of the National Society for Human Rights too are empowered to make such visits, in accordance with its statute, in order to ascertain that the relevant governmental authorities are applying the human rights rules and regulations in force and also to expose any violations of those regulations and to take the requisite legal action in that regard. According to the Government, the Human Rights Commission and the National Society for Human Rights also have offices in some prisons to monitor the condition of prisoners and detainees.

48. The Government also claims that human rights are guaranteed under article 26 of the Basic Law of Governance. Rights may be asserted and claimed either individually or collectively through a number of judicial and administrative channels, the most notable of which is the open-door policy pursued in the public audiences of the King and the Crown Prince, which are held in accordance with article 43 of the Basic Law. According to the Government, State officials are instructed to follow the same policy by listening to any complaint, grievance or proposal on the understanding that collective demands must not be allowed to prejudice public order or harm the interests of society or the rights of others.

49. The Government contends that neither Mr. Al-Rashudi nor his representatives have submitted a complaint to the competent authorities. In the light of the foregoing, the Government rejects all the allegations.

Comments from the source on the reply of the Government

50. On 14 November 2014, the source transmitted to the Working Group its comments to the Government's response. In its submission, the source points out that the Government responded to the situation of Mr. Al-Rashudi and failed to respond to the situation of Messrs. Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Badawi, Al-Manasif and Al-Khair. The source thus adduces the following additional information, relating to: (a) the arbitrary nature of Mr. Al-Rashudi's arrest on 2 February 2007 and subsequent detention; (b) the unfair trial, sentencing and appeal leading to his rearrest on 12 December 2012; and (c) his current prison conditions.

Comments regarding the arrest on 2 February 2007

51. The source reports that Mr. Al-Rashudi was detained on numerous occasions, including in 1993, 1995, 2004, on 2 February 2007 and on 12 December 2012. The Saudi Arabian authorities state in their reply to the Working Group that Mr. Al-Rashudi's arrest on 2 February 2007 was carried out in accordance with the Code of Criminal Procedure. The source contends that Mr. Al-Rashudi's arrest on 2 February 2007 is not the basis for the current submission to the Working Group, but rather that his arrest and detention on 12 December 2012 are.

52. The source underlines that the arrest on 12 December 2012 was prompted by the appeal decision brought against Mr. Al-Rashudi in connection with his arrest on 2 February 2007. This first episode of detention was the subject of opinion No. 27/2007, rendered by the Working Group on 28 November 2007. In paragraph 32 of that opinion, the Working Group considered the detention of Mr. Al-Rashudi and eight other men to be arbitrary, being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights, and to fall within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

53. Furthermore, the source argues that the arrest on 2 February 2007 was arbitrary for two reasons. First, Mr. Al-Rashudi was only brought to trial in May 2011, which means he had spent more than four years in detention without any charge or trial, a period that far exceeds the 24 hours specified in article 33 of the Code of Criminal Procedure.

54. Second, Mr. Al-Rashudi and others with him were arrested without a warrant when military units raided the house by using an explosive to blow up the door to the house where they had gathered, forcing their way into the room, ordering the men to lie face down on the floor and handcuffing them. They were kept with guns pointed at them in that position for around 40 minutes while the security forces searched the place. They confiscated all laptops and mobile telephones and, without presenting an arrest warrant or explaining the reasons for the arrest, took all of them to prison. The source claims that this was in violation of article 35 of the Code of Criminal Procedure.

Comments regarding the fairness of Mr. Al-Rashudi's trial and appeal leading to his rearrest on 12 December 2012 and his current detention

55. The source argues that, contrary to the Government's claim in its response that the investigation and trial of Mr. Al-Rashudi were carried out in accordance with Saudi Arabian law and articles 3, 14, 16 and 126 of the Code of Criminal Procedure, the conviction and sentencing of Mr. Al-Rashudi were based on a grossly unfair trial.

56. The assessment of the source is based on the elements set out below. The trial against Mr. Al-Rashudi and 15 other defendants began in early May 2011 before the Specialized Criminal Court in Jeddah. That Court had been established in 2008 to try detainees held on terrorism-related charges. Its procedures are not made public and most of its sessions are held in secret. Local human rights activists and lawyers who have been tried by the Court have refused to recognize its legitimacy largely because they claim that it is run by the Ministry of the Interior, which also appoints the judges.

57. According to the source, when the 16 men were brought before a judge, they were read the charges and told to respond to them at the next court session but were not provided with the charge sheet in writing. Their lawyers and families were not given a copy of the charge sheet either, despite repeated requests. Two days later, the 16 men were provided with the charge sheet so that they could consider how to respond to it, but were not allowed to provide it to their lawyers.

58. In the beginning, the trial was closed even to the family members of the defendants and to the media. However, some family members were later allowed to attend the court sessions, as were the State-owned and State-controlled media. Lawyers have complained of facing obstacles in accessing the court. One of them, Bassem Alim, who represented 15 of the defendants, said that he was made to wait for the response to a request by the judge to the Ministry of the Interior to allow him to attend the trial, and that he waited at the door of the court for three sessions, unable to enter despite having power of attorney. At one point, Mr. Alim withdrew from the proceedings in protest at the way the court was handling the case. He said that court officials had refused to process his complaints about errors in the legal proceedings. He also complained that the judge shouted at him and insulted him, accusing him of not having been "brought up properly". He also raised concerns about the treatment of the defendants in the courtroom, saying that they had been kept blindfolded and handcuffed for eight hours during one court session.

59. Mr. Al-Rashudi and 15 other defendants were presented with numerous charges, including of forming a secret organization called "Tawasso", attempting to seize power, inciting acts against the King and financing terrorism and money-laundering. Some of the charges appeared to relate simply to acts of freedom of expression and peaceful assembly.

60. Mr. Alim explained that Tawasso was the human rights association the nine reformists, including Mr. Al-Rashudi, had wanted to set up and that the name was an acronym of the Arabic words meaning “public peaceful national gathering”. Other charges related to alleged criminal activities such as “belonging to and promoting Al-Qaida”. The defendants denied all the charges against them.

61. On 22 November 2011, the 16 men were convicted and sentenced to terms of imprisonment ranging from 5 to 30 years. Mr. Al-Rashudi was convicted of several charges, including “breaking allegiance to the ruler, disobeying him” and “participating in forming an organization called ‘Tawasso’ in order to spread chaos under the cover of advice and reform”, and sentenced to 15 years in prison to be followed by a 15-year travel ban. A number of trial observers and a lawyer with power of attorney for four of the men were reportedly refused entry to the court session. They stood outside as the session took place while some State media observers and some relatives were allowed entry.

62. Furthermore, the Government, in its response, also refers to articles 213 and 215 of the Code of Criminal Procedure to justify the legality of the sentence and detention of Mr. Al-Rashudi, stating that the sentence was only imposed after it had been upheld by the Court of Appeal.

63. In that regard, the source points out that Mr. Al-Rashudi was detained on 12 December 2012 after he gave a talk on the legality of demonstrations in sharia law, a recording of which was posted online. It was only while he was detained that he was surprised to learn that the Court of Appeal had upheld his sentence on 5 December 2012. He was not informed of the Court’s decision when he was arrested.

Comments regarding Mr. Al-Rashudi’s detention conditions

64. The source submits that Mr. Al-Rashudi has been detained in conditions that are especially difficult for a man of his age. He is currently being held in a small cell measuring around 5 by 6 metres together with four other prisoners, one of whom apparently suffers from a mental health condition and continuously harasses and threatens Mr. Al-Rashudi. Mr. Al-Rashudi is rarely exposed to the sun despite orders to that effect from his doctor and contrary to the Standard Minimum Rules for the Treatment of Prisoners. He has also complained about the poor quality of the food given to him. In their reply, the authorities mention that they received no formal complaints from Mr. Al-Rashudi or anyone in his family.

65. The source claims that the family has on several occasions sent appeals and letters to the relevant authorities expressing their concerns regarding Mr. Al-Rashudi’s poor prison conditions and their impact on his health. The family has also submitted several requests for Mr. Al-Rashudi to attend family gatherings and events with the permission of the authorities.

66. The source regrets that the open-door policy that the authorities claim to follow was not effectively implemented in the case of Mr. Al-Rashudi, as in those of many other Saudi Arabian human rights defenders.

67. The source reiterates that, as mentioned in its initial submission, Mr. Al-Rashudi’s arrest on 12 December 2012 and subsequent detention are arbitrary and in violation of international human rights standards and of articles 32 and 35 of the Saudi Arabian Code of Criminal Procedure.

68. Based on the above, the source argues that Mr. Al-Rashudi is being deprived of his liberty solely for exercising his rights to freedom of expression and to freedom of peaceful assembly and association.

Discussion

69. The Working Group considers the transmission of the response of the Government as a positive step in improving cooperation. Nevertheless, the Working Group notes with regret that the Government responded only to the situation of Mr. Al-Rashudi and not to that of Messrs. Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Badawi, Al-Manasif and Al-Khair. The Working Group notes with concern the consistent pattern of arbitrary arrest and detention in Saudi Arabia. The present case raises a specific and grave concern, as it appears to be part of the pattern identified in all previous opinions rendered by the Working Group.¹

70. Despite the Government's response denying the arbitrary and unlawful nature of the deprivation of liberty of Mr. Al-Rashudi and in the absence of any response concerning the situation of Messrs. Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Badawi, Al-Manasif and Al-Khair, the Working Group observes that the deprivation of their liberty falls under category II of the categories relating to arbitrary detention, being in violation of articles 19 and 20 of the Universal Declaration of Human Rights.

71. The Working Group considers that the detention of Messrs. Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Badawi, Al-Manasif and Al-Khair, especially that of ACPRA members, forms part of both the continued and recent persecution of human rights activists in Saudi Arabia. Such a practice clearly constitutes a form of reprisal for their work to protect and defend human rights.

72. This assertion is also convincingly corroborated by the ongoing pattern of previous arrests, detentions and charges against Messrs. Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Badawi, Al-Manasif and Al-Khair. The chronology of the events that have led to the deprivation of their liberty confirms the fact that they have been imprisoned solely for exercising their rights to freedom of expression and to freedom of peaceful assembly and association.

73. Furthermore, most of the offences of which Messrs. Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Badawi, Al-Manasif and Al-Khair have been convicted are too broad and imprecise, thereby allowing for interpretations that undermine fundamental rights such as the rights to freedom of expression and to freedom of peaceful assembly and association. Such offences as "breaking allegiance to and disobeying the ruler", "inciting disorder by calling for demonstrations", "harming the image of the State by disseminating false information to foreign groups" and "taking part in founding an unlicensed organization" fall short of international standards and can easily be used to criminalize the peaceful exercise of the rights to freedom of expression and to freedom of peaceful assembly and association.

74. The Working Group finds that the deprivation of liberty of Messrs. Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa'id, Badawi, Al-Manasif and Al-Khair falls under category III of the categories relating to arbitrary detention, being in violation of articles 9 and 10 of the Universal Declaration of Human Rights. The deprivation of liberty of these individuals results from grave and systematic violations of the norms related to the right to a fair trial, including the obligation of the Government to define criminal offences precisely within the law.

¹ In many of its opinions, the Working Group noted with concern a consistent pattern of arrest and detention of persons exercising their basic human rights, in particular their right to freedom of opinion, expression and association. See, for instance, opinions No. 22/2008, 36/2008, 37/2008, 2/2011, 10/2011, 30/2011, 42/2011 and 45/2013.

75. In the case of Mr. Al-Rashudi, the Working Group observes the following violations of the right to a fair trial: (a) on 12 December 2012, Mr. Al-Rashudi was arrested without a warrant by the General Directorate of Investigations of the Ministry of the Interior; (b) he was prevented from learning that his appeal had been rejected by the Court of Appeal until the time of detention; (c) the arrest on 12 December 2012 was prompted by the appeal decision on the case brought against Mr. Al-Rashudi following his arrest on 2 February 2007, which was considered arbitrary by the Working Group in its opinion No. 27/2007; and (d) he appears to have been detained repeatedly for exercising his rights to freedom of expression and peaceful assembly, and his current deprivation of liberty appears to be part of the ongoing persecution against him.

76. In the case of Mr. Al-Hamid, the Working Group notes the following violations of the right to a fair trial: (a) Mr. Al-Hamid has been detained for his legitimate activities several times on similar charges; (b) in the trial held on 11 June 2012 before the Criminal Court in Riyadh, he faced charges that included “breaking allegiance with the ruler”, “forming an unlicensed organization”, “questioning the integrity of officials”, “seeking to disrupt security and inciting disorder by calling for demonstrations” and “disseminating false information to foreign groups”, all of which were based on the broad and imprecise application of Saudi Arabian laws; and (c) on 9 March 2013, when the Criminal Court in Riyadh sentenced Mr. Al-Hamid to five years in prison pursuant to article 6 of the law against cybercrime, the Court also ordered him to serve the remaining six years of a sentence handed down in May 2005 and for which he had already been pardoned.

77. In the case of Mr. Al-Qahtani, the Working Group notes the following violations of the right to fair trial: (a) on 9 March 2013, Mr. Al-Qahtani was found guilty of a number of offences, including “breaking allegiance to and disobeying the ruler”, “questioning the integrity of officials”, “seeking to disrupt security and inciting disorder by calling for demonstrations”, “disseminating false information to foreign groups” and “forming an unlicensed organization”; (b) on 3 March 2014, Mr. Al-Qahtani was placed in solitary confinement; and (c) on 5 March 2014, prison officials refused to allow his legal representatives to visit him.

78. Similarly, in the case of Mr. Al-Khoder, the Working Group notes the following violations of the right to fair trial: (a) in January 2013, Mr. Al-Khoder was charged with a number of vague, imprecise and broad offences, including “disobeying the ruler”, “inciting disorder by calling for demonstrations”, “harming the image of the State by disseminating false information to foreign groups” and “taking part in founding an unlicensed organization”; (b) on 24 June 2013, he was found guilty of the above charges and sentenced to eight years in prison and a 10-year travel ban; and (c) on 6 January 2014, the Court of Appeal ordered a retrial before the Criminal Court in Buraydah, resulting in yet another trial starting on 7 May 2014 and the continued deprivation of Mr. Al-Khoder’s liberty to the present day.

79. In the case of Mr. Al-Bajadi, the Working Group notes the following violations of the right to a fair trial: (a) the trial of Mr. Al-Bajadi that had begun in August 2011 was held in secrecy as neither his charges nor his sentence were made public; (b) his defence lawyers were denied access to him and informed that their right to represent him had not been recognized by the court; (c) his lawyers and family were neither informed about the hearings nor allowed to attend them; (d) on 10 April 2012, the Specialized Criminal Court in Riyadh sentenced him to four years of imprisonment followed by a five-year travel ban based upon the vague, imprecise and overly excessive charges of participating in the establishment of an unlicensed organization, harming the image of the State through the media, calling on the families of political detainees to protest and hold sit-ins, contesting the independence of the judiciary and having banned books in his possession; (e) he and his legal representative were unaware that the Court of Appeal had rejected the sentence

handed down by the Specialized Criminal Court and had sent the case back for retrial; (f) although his second trial had started on 15 August 2013, he was not informed of the retrial until prison security guards asked him to go to court to receive a copy of his first sentence; he later learned that he had been called to court so that he would attend the first hearing in his retrial; and (g) four court sessions were conducted in the absence of both Mr. al-Bajadi and his legal team.

80. In the case of Mr. Al-Sa'id, the Working Group notes the following violations of the right to a fair trial: (a) on 28 April 2013, Mr. Al-Sa'id's legal representative was prevented from attending the interrogations that led to his client's arrest on the scene; (b) Mr. Al-Sa'id's lawyers were prevented from visiting him in prison when he was remanded in custody; (c) on 12 December 2013, he was convicted of a number of overly broad and excessive offences, including those of "disobeying the ruler", "membership in an unlicensed organization", "inciting disorder by calling for demonstrations" and "harming the image of the State by disseminating false information"; moreover, he was sentenced to four years in prison, 300 lashes and a four-year travel ban, and his first trial session before the court was held in secrecy; (d) his lawyers were unable to attend the final session of his trial on 12 December 2013 as they had not been notified of its date despite repeatedly requesting the judge for this information; and (e) Mr. Al-Sa'id was only informed of the final date of trial when prison guards transported him to the court.

81. In the case of Mr. Badawi, the Working Group notes the following violations of the right to fair trial: (a) he was charged with apostasy by the General Prosecutor, an overly excessive and broad crime that violates the right to freedom of religion and carries the death penalty; (b) his trial before the General Court in Jeddah began in July 2012 despite the fact that, on 21 January 2013, the General Court had sent the case to the Criminal Court in Jeddah after finding that it lacked jurisdiction over the case owing to its failure to establish a charge of apostasy; (c) the General Prosecutor nonetheless insisted that Mr. Badawi be tried for apostasy, as a result of which his case was sent from the Criminal Court to the Court of Appeal and back again; (d) on 29 July 2013, despite the Criminal Court of Jeddah finding him guilty of committing such offences as violating the information technology law of Saudi Arabia and insulting religious authorities by creating and managing an online forum and despite having sentenced him to seven years in prison and 600 lashes, on 25 December 2013 another judge in the Criminal Court ruled that it did not have jurisdiction to review the case arguing that the charges relate to apostasy; (e) Mr. Badawi's case was then transferred to the Court of Appeal for a decision on which court was competent to examine the case and subsequently returned to the same judge in the Criminal Court in Jeddah; and (f) eventually, on 7 May 2014, Mr. Badawi was sentenced to 10 years in prison, 1,000 lashes and a fine of 1 million Saudi riyals along with a ban on travelling for 10 years. In this regard, the Working Group observes that Mr. Badawi was subjected to a flagrant misadministration of criminal justice, which manifested itself in multiple trials and convictions at different levels of the courts.

82. In the case of Mr. Al-Manasif, the Working Group notes the following violations of the right to a fair trial: (a) on 2 October 2011, Mr. Al-Manasif was arrested and transferred to Dhahran police station and detained incommunicado and in solitary confinement for about nine days, until 10 October 2011; (b) on the same day, he was transferred to the prison of the General Directorate of Investigations in Dammam, Al-Mabahith, and was held incommunicado while being subjected to torture and ill-treatment by security forces during the first days of his arrest with the aim of extracting a confession; (c) he was permitted to telephone his family only twice a month until 11 November 2012, when his family was finally granted visiting rights; (d) although his trial before the Specialized Criminal Court in Riyadh had begun on 28 February 2012, more than two years later, on 17 April 2014, the Specialized Criminal Court convicted him of overly broad and imprecise charges, including "breaking allegiance to the ruler", "stirring sedition and sectarian

division between citizens by inciting protests and marches”, “communicating with foreign media to harm the Kingdom’s government, its people and national unity” and “founding a banned association”; and (f) he received an excessive punishment of 15 years of imprisonment, followed by a travel ban of 15 years, and a fine of 100,000 Saudi riyals for the legitimate exercise of his rights.

83. In the case of Mr. Al-Khair, the Working Group notes the following violations of the right to a fair trial: (a) on 15 April 2014, Mr. Al-Khair was arrested after appearing at the fifth hearing of his trial before the Specialized Criminal Court in Riyadh and taken to Al-Ha’ir prison, where he was placed in solitary confinement and subjected to ill-treatment; (c) on 17 April 2014, he was allowed to make one brief telephone call to his wife, who was not allowed to visit him; and (d) on 22 April 2014, upon his sixth trial session in court, his lawyers attended to enquire about the reasons for his detention and the judge refused to provide an explanation for his arrest and detention.

84. Furthermore, the Working Group is particularly concerned that, while the Specialized Criminal Court in Riyadh was set up to deal with terrorism and security-related cases, its procedures and internal regulations have never been made public. As a consequence, the trials of several of the above-mentioned individuals before that Court have not complied with the most basic elements of the right to a fair and public hearing by an independent and impartial tribunal.

Disposition

85. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Messrs. Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Sa’id, Badawi, Al-Manasif and Al-Khair is arbitrary, being in contravention of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

86. Consequent upon the opinion rendered, the Working Group requests the Government to take, without delay, the steps necessary to remedy the situation and bring it into conformity with the standards and principles enshrined in the Universal Declaration of Human Rights and the relevant international norms.

87. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be the immediate release of the detainees and the provision of reparation for the harm caused by the grievances.

88. The Working Group encourages the Government of Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

89. In the light of the allegations of torture and other ill-treatment inflicted upon the detainees, as specifically observed in the case of the Mr. Al-Manasif, the Working Group considers it appropriate, in accordance with article 33 (a) of its methods of work, to refer those allegations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and to the Committee against Torture for appropriate action.

[Adopted on 4 September 2015]