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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019

#### Opinion No. 26/2019 concerning Abdelkarim Mohamed Al Hawaj and Mounir Abdullah Ahmad Aal Adam (Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 2 August 2018 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Abdelkarim Mohamed Al Hawaj and Mounir Abdullah Ahmad Aal Adam. The Government replied to the communication on 28 September 2018. 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 or her sentence or despite an amnesty law applicable to him or her) (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 Covenant (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. Abdelkarim Mohamed Al Hawaj was born on 19 November 1995 and usually resides in Al Mishari, in Al Qatif region, Eastern Province. He was a minor when the protests related to his case took place.

5. Mounir Abdullah Ahmad Aal Adam was born on 24 August 1992 and usually resides in Al Awamiyah, also in Al Qatif region, Eastern Province. According to the source, he suffers from a visual and auditory disability.

(a) Arrest and detention of Mr. Al Hawaj

6. The source reports that on 17 January 2014 Mr. Al Hawaj – aged 19 at the time – was arrested at a checkpoint in Al Qatif by members of the intelligence services (Al Mabathith). Those officers failed to inform Mr. Al Hawaj of the reasons for his arrest and did not show a warrant.

7. Following his arrest, Mr. Al Hawaj was allegedly forcibly disappeared for five months. In addition to being held in solitary confinement during that period, he was subjected to various forms of torture. Officers allegedly tied him up, beat him on different parts of his body and pulled out his toenails. He was denied the use of the bathroom. It is also alleged that officers forced him, by threatening to kill his family members, to sign written confessions admitting his participation in an illegal protest in Al Qatif.

8. Five months after his arrest, Mr. Al Hawaj was reportedly transferred to the prison of the General Directorate of Investigations in Dammam, where his family was allowed to visit him for the first time. Since then, his family has been allowed to visit him, on and off, once a month.

(b) Charge and trial of Mr. Al Hawaj

9. Mr. Al Hawaj's trial before the Specialized Criminal Court commenced on 31 March 2016. The source points out that the Court, established in 2008 by the Ministry of the Interior, is a court of exception that has jurisdiction to try cases of terrorism and that has prosecuted human rights activists and peaceful political dissidents on the grounds of protecting national security. The Court is composed by a panel appointed by the Ministry of the Interior and cannot be considered independent.

10. During his trial, Mr. Al Hawaj was informed for the first time of the charges against him. They included: "throwing two Molotov cocktails at Al Qatif General Court, which resulted in some parts of it being burned down", in alleged violation of article 15 of the law on explosives and fireworks and of Council of Senior Scholars decision No. 148;<sup>1</sup> "burning tyres and placing them in the middle of the street with the intention of blocking the way, disrupting security and preventing the security services from carrying out their duties", in alleged violation of article 7 of the law on combating bribery; "participating in protests and demonstrations", "chanting anti-government slogans", "sharing photos and videos about the protests in Al Qatif and Bahrain on the social media applications WhatsApp and Zello, as well as using them to publicize the locations of gatherings, to harm the rulers of the country through insults and curses and to warn others about the location of security checkpoints" and "interfering in the internal affairs of a neighbouring and brotherly State (Bahrain) by showing sympathy and support for troublemakers within it", in alleged violation of article 12 of the Basic Law and article 7 (1) of the law on cybercrime.

11. The source underlines that all events referenced in the charges took place when Mr. Al Hawaj was 16 years old.

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<sup>1</sup> The source informs that the Council of Senior Scholars is the highest religious authority in Saudi Arabia and advises the King on religious matters. It issues religious rulings or "fatwas" and responds to questions submitted to it in order to clarify issues of Islamic belief and practice. The Council's decision No. 148 provides for the possibility of punishment by death.

12. Mr. Al Hawaj's lawyer was reportedly denied access to the case file from the moment of his arrest and throughout his trial. Mr. Al Hawaj was not assisted by legal counsel during his interrogation or during his trial because his lawyer was threatened by the Specialized Criminal Court to drop the case. According to the source, this is common in Saudi Arabia, as lawyers defending individuals in political cases are perceived to be disloyal to the State.

13. When Mr. Al Hawaj's relatives complained before the judge that his confessions had been extracted under torture, the judge reportedly requested that they prove their claims and threatened to arrest them if they continued to make such allegations.

14. The source reports that on 28 July 2016 the Specialized Criminal Court issued its verdict convicting Mr. Al Hawaj of all charges and sentenced him to death.

15. Mr. Al Hawaj's death sentence was reportedly upheld by the Supreme Court of Saudi Arabia in a final ruling, not subject to appeal, on 11 September 2017. On the same day, Mr. Al Hawaj's family was informed that the execution order had been signed but did not receive a copy of it.

(c) Conditions of detention during Mr. Al Hawaj's appeal

16. Between 12 July and 23 September 2017, Mr. Al Hawaj was transferred to Al Ha'ir Prison in Riyadh so that he could attend his appeal hearings. However, prison officers did not allow him to attend those hearings and told Mr. Al Hawaj's lawyer that there would be no hearings. Mr. Al Hawaj was held incommunicado for the vast majority of that period. He was only permitted to make one short telephone call to his family on 31 August.

17. The source alleges that while in Al Ha'ir Prison, Mr. Al Hawaj was subjected to torture and ill-treatment, including by being held in solitary confinement for the entire period, having his food thrown at him and being forced to sleep on the floor.

Arrest and detention of Mr. Aal Adam

18. The source reports that on 10 April 2012 Mr. Aal Adam was arrested at a shop in the village of Al Awamiyah, in the Eastern Province, by intelligence officers dressed in civilian clothes.

19. The officers reportedly failed to inform Mr. Aal Adam of the reasons for his arrest and did not show a warrant. Mr. Aal Adam was then taken to Al Qatif police station, where he was interrogated without a lawyer being present and allegedly tortured. He was subjected to flogging so severe that he could not stand up for several days.

20. Two weeks after his arrest, Mr. Aal Adam was transferred to the prison of the General Directorate of Investigations in Dammam. During the first three months of his imprisonment, Mr. Aal Adam was allegedly forcibly disappeared. In an attempt to determine his whereabouts, his family filed complaints with the prison administration and the Ministry of the Interior, to no avail.

21. During that three-month period, Mr. Aal Adam was allegedly subjected to torture and ill-treatment. Intelligence officers allegedly electrocuted different parts of his body and subjected him to severe beatings, to the extent that he became completely deaf in one ear. They forced him, by threatening him with more torture and with the arrest of family members, to sign and fingerprint a pre-written confession, which he was not allowed to read, acknowledging that he had participated in illegal gatherings in Al Qatif in 2012.

22. Mr. Aal Adam was reportedly held in solitary confinement for the entire three months of his disappearance, and for an additional month thereafter. While in solitary confinement, he was often deprived of food and sleep. After his reappearance, Mr. Aal Adam was held incommunicado for three months.

23. The source also reports that Mr. Aal Adam was denied legal counsel during his interrogation. In addition, his lawyer did not have access to the case file and only represented him during the first three trial hearings, after which the Court threatened him into dropping the case.

24. According to the source, despite his repeated requests and despite the pre-existing hearing disability, which made him particularly vulnerable to further harm, Mr. Aal Adam was only examined by a prison doctor two years after his arrest. His medical records show that during that period he lost all hearing in one ear, which is believed to be the result of torture.

(d) Charges and trial of Mr. Aal Adam

25. In September 2015, Mr. Aal Adam was tried before the Specialized Criminal Court and informed of the charges against him for the first time. These included: “participating in and organizing demonstrations in Al Qatif”, “stopping cars when the light was green, while chanting anti-government slogans”, “marching in demonstrations with a rifle in anticipation of attacks by the Saudi air forces”, “shooting said rifle at security forces and then fleeing”, “planning with others to shoot at Al Awamiyah police station”, “shooting at Al Awamiyah police station”, “shooting at Al Awamiyah police station from the back in order to disperse and distract the security forces stationed on the roof”, “signalling for another terrorist group to begin shooting at Al Awamiyah police station”,<sup>2</sup> “throwing rocks at Al Awamiyah police station and covering for someone who was shooting at security forces during this period and on another occasion” and “allowing the aforementioned individual to ride with him on his motorbike, with his weapon and taking him to two other locations”.

26. According to the source, Mr. Aal Adam was allowed to consult his lawyer only once, during his second hearing. The lawyer was then threatened by the Court to drop the case during the third hearing.

27. When Mr. Aal Adam stated that his confessions were being extracted under torture, the judge reportedly demanded that he should prove his claim. The defence lawyer consequently requested that the interrogation videotapes be admitted as evidence but the request was denied.

28. On 1 June 2016, the Specialized Criminal Court sentenced Mr. Aal Adam to death for having committed the above-mentioned charges and for violating the sharia principle of ta’zir. Since ta’zir crimes and the punishments they may incur are not codified, judges have a margin of discretion as to which crimes fall under this category and how they should be punished.

29. The source reports that Mr. Aal Adam’s sentence was upheld by both the Court of Appeals and the Supreme Court, on 25 May and 23 July 2017 respectively, and is not subject to further appeal.

(e) Legal analysis

(i) Category I

30. The source submits that the detention of Messrs. Al Hawaj and Aal Adam falls under category I, as the two men were arrested without being presented with warrants or any reason for their arrest. The circumstances of their arrest do not constitute flagrante delicto and they were informed of the charges once their trials had started. The source argues that Mr. Al Hawaj’s detention from 17 January 2014 to 31 March 2016 was not based in law and that Mr. Aal Adam’s detention from 10 April 2012 to September 2015 lacked any legal basis, in violation of article 9 of the Universal Declaration of Human Rights.

31. The source adds that Messrs. Al Hawaj and Aal Adam were both subjected to enforced disappearance and held incommunicado. Both were placed outside the protection of the law and were deprived of their legal safeguards, including their right to challenge the legality of their detention and to be recognized as persons before the law.

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<sup>2</sup> According to the source, the authorities did not specify exactly which terrorist organization.

## (ii) Category II

32. The source alleges that the detention of Messrs. Al Hawaj and Aal Adam is a direct consequence of the exercise of their fundamental rights to freedom of expression and peaceful assembly.<sup>3</sup> They were convicted for sharing information about, and showing support for, anti-government protests, acts allegedly falling within their right to freedom of expression under article 19 of the Universal Declaration of Human Rights.

33. With regard to Mr. Al Hawaj, who was 16 years old at the time of the protests, the source submits that Saudi Arabia violated its obligations under article 13 (1) of the Convention on the Rights of the Child. In relation to Mr. Aal Adam, the Saudi authorities allegedly disregarded their obligations under article 21 of the Convention on the Rights of Persons with Disabilities.

34. The source adds that Messrs. Al Hawaj and Aal Adam were also charged and convicted for “participating in protests” and “organizing demonstrations”. The source submits that these charges refer to acts that clearly fall within the right to peaceful assembly, enshrined in article 20 (1) of the Universal Declaration of Human Rights, and, in relation to Mr. Al Hawaj, in article 15 of the Convention on the Rights of the Child.

35. The source also submits that the laws used to sentence Messrs. Al Hawaj and Aal Adam do not meet international standards of legal certainty, as article 12 of the Basic Law provides that the consolidation of national unity is a duty, and the State will prevent anything that may lead to disunity, sedition and separation. The source argues that such vague wording allows for the criminalization of acts of peaceful dissent. Likewise, the sharia principle of ta’zir used to sentence Mr. Aal Adam is not codified, allowing a significant margin of interpretation for judges to punish peaceful dissent with death sentences.

36. Finally, the source alleges that there is no evidence that proves their involvement in any act of violence and that gatherings and demonstrations must be presumed peaceful under international law (A/HRC/31/66, para. 18). Even isolated acts of violence during a demonstration do not strip a protest of its peaceful character and should not be used to prosecute peaceful participants.

## (iii) Category III

## Enforced disappearance and incommunicado detention

37. Messrs. Al Hawaj and Aal Adam were allegedly not presented with a warrant, nor were they given reasons for their arrest, in violation of principle 10 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. In the case of Mr. Aal Adam’s detention, this circumstance contravenes article 14 (1) (b) of the Convention on the Rights of Persons with Disabilities.

38. Messrs. Al Hawaj and Aal Adam were reportedly also put in a state of enforced disappearance and held incommunicado. The source recalls that both are *prima facie* forms of arbitrary detention and constitute a violation of the right of a detainee to be considered a person before the law, in contravention of article 6 of the Universal Declaration of Human Rights. In Mr. Aal Adam’s case, they also violate the obligations of Saudi Arabia under article 12 (1) of the Convention on the Rights of Persons with Disabilities. The source also recalls that enforced disappearance enables torture and can in itself constitute a form of torture.<sup>4</sup> As such, the enforced disappearance of Messrs. Al Hawaj and Mr. Aal Adam allegedly violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>3</sup> The source refers to opinions No. 52/2016 and No. 61/2016.

<sup>4</sup> CAT/C/54/D/456/2011, para. 6.4.

#### Right to habeas corpus and to be promptly brought before a judge

39. Messrs. Al Hawaj and Aal Adam were reportedly brought before a judicial authority for the first time during their trials, two and three years after their arrest. The source submits that this violates principles 11 and 37 of the Body of Principles.

40. As a consequence, Messrs. Al Hawaj and Aal Adam were also unable to challenge the lawfulness of their detention, in violation of their right to habeas corpus. In that respect, the source recalls that the Working Group recognizes habeas corpus as being, in itself, a self-standing human right stemming from articles 8, 9 and 10 of the Universal Declaration of Human Rights (A/HRC/19/57, paras. 59 and 77).

#### Torture and coerced confessions

41. Messrs. Al Hawaj and Aal Adam were allegedly subjected to torture and cruel, inhuman and degrading treatment, in violation of the obligations of Saudi Arabia under the Convention against Torture. They were reportedly held in solitary confinement, for four and nearly eight months respectively, which might have facilitated the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and could in itself constitute a form of such treatment.<sup>5</sup>

42. According to the source, the facts demonstrate that the security forces used torture with the intention of coercing Messrs. Al Hawaj and Aal Adam into signing pre-written self-incriminating statements. This contravenes the absolute prohibition of torture enshrined in articles 2 and 16 of the Convention against Torture and article 5 of the Universal Declaration of Human Rights.

43. The confessions extracted from Messrs. Al Hawaj and Aal Adam under torture were allegedly admitted as evidence despite the fact that both men had informed the judicial authorities that the confessions had been extracted under torture and that they had not been allowed to read them beforehand, in contravention of article 15 of the Convention against Torture. The source also highlights that, instead of ordering an investigation into the allegations, the judges of the Specialized Criminal Court requested that the victims prove that they had been tortured and threatened their families to stop making the allegations. These actions allegedly contravene the obligations of Saudi Arabia under article 13 of the Convention against Torture, principle 33 (4) of the Body of Principles and rules 56 (3) and 57 (2) and (3) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

#### Denial of access to medical treatment

44. Despite repeatedly asking to be examined by a doctor, Mr. Aal Adam was only given access to medical care two years after his initial arrest, allegedly in violation of the obligations of Saudi Arabia under article 25 (b) of the Convention on the Rights of Persons with Disabilities. Such a prolonged period exceeds the time frame set out in both principle 24 of the Body of Principles and rule 30 of the Nelson Mandela Rules, which stipulate that a medical examination should take place as promptly as possible.

#### Trial before a court of exception

45. The source reports that Messrs. Al Hawaj and Aal Adam were both prosecuted before the Specialized Criminal Court, which is composed of a panel appointed by the Ministry of the Interior, lacking independence (CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, paras. 17–18). As such, the Ministry of the Interior is allegedly both judge and party to a trial that cannot be impartial or respect due process, in contravention of article 10 of the Universal Declaration of Human Rights.

#### Denial of right to legal counsel

46. The source asserts that Mr. Al Hawaj was denied access to legal counsel during his interrogation and throughout his trial. Mr. Aal Adam was allowed to consult with his

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<sup>5</sup> General Assembly resolution 60/148, para. 11.

lawyer once only, during his second hearing, and was only represented by legal counsel during his first three hearings.

47. The source submits that the threats faced by the lawyers, which led them to drop the cases, coupled with the fact that they were not able to present all their evidence, contravene the principle of equality of arms. This situation also violates principle 18 (3) of the Body of Principles and rule 61 (1) of the Mandela Rules, both of which stipulate that defendants must have access to legal counsel without delay. Messrs. Al Hawaj and Aal Adam were also denied the time and facilities necessary to prepare their defence, violating article 11 of the Universal Declaration of Human Rights and principle 18 (2) of the Body of Principles. The absence of a contradictory debate contravened their right to be presumed innocent, as it made it impossible for them to challenge the prosecution's evidence.

#### Imposition of the death penalty

48. The source notes that the death penalty may be imposed only for the most serious crimes.<sup>6</sup> The source also notes that both death sentences were handed down for protest-related charges, in other words for actions directly related to the exercise of the right to freedom of peaceful assembly and association. As Messrs. Al Hawaj and Aal Adam were not convicted of causing an intentional loss of life, the crimes allegedly committed do not fall within the category of "most serious crimes" (A/HRC/4/20, para. 53).

49. In relation to Mr. Al Hawaj, the source recalls that article 37 of the Convention on the Rights of the Child, paragraph 43 (a) of General Assembly resolution 63/241 and paragraph 11 of Human Rights Council resolution 10/2 set out a prohibition on the imposition of the death penalty for offences committed by persons under the age of 18.<sup>7</sup> The Committee on the Rights of the Child, referring to the case of Mr. Al Hawaj specifically, among others, has urged the State party to immediately halt the execution of people who were below the age of 18 at the time of the alleged commission of the offence (CRC/C/SAU/CO/3-4, para. 21).

50. Finally, the source argues that the imposition of the death penalty following an unfair trial that does not meet international standards amounts to arbitrary deprivation of life, in violation of article 3 of the Universal Declaration of Human Rights and article 5 of the Arab Charter on Human Rights. Moreover, in relation to Mr. Al Hawaj, it also contravenes article 6 (1) of the Convention on the Rights of the Child and, with regard to Mr. Aal Adam, article 10 of the Convention on the Rights of Persons with Disabilities.<sup>8</sup>

51. The source submits that the non-observance of the international norms relating to the right to a fair trial gives Messrs. Al Hawaj and Aal Adam's deprivation of liberty an arbitrary character under category III.

#### (iv) Category V

52. The source submits that Messrs. Al Hawaj and Aal Adam were subjected to unfair trials, as well as to torture and other cruel, inhuman and degrading treatment, as a direct result of their religious beliefs as members of the Shiite minority.

53. In that respect, the source notes that Saudi Arabia is a Sunni majority country that adheres to Wahabism and allegedly has historically discriminated against the Shiite minority in the Eastern Province. Shiite Muslims are perceived to be a deviant sect with diverging religious practices.

54. The source notes that the Saudi authorities have reportedly allowed religious leaders to refer to the Shiite minority in derogatory terms and vilify them in official documents, including those often cited in courts. Government officials, including scholars and clerics, have made pejorative comments about the Shiite community on social media. These

<sup>6</sup> Safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50, annex).

<sup>7</sup> See also the Committee on the Rights of the Child general comment No. 10 (2007) on children's rights in juvenile justice.

<sup>8</sup> See also A/HRC/14/24, para. 51 (a).

comments have sometimes met the threshold for hate speech or incitement to hatred or discrimination.

55. The Council of Senior Scholars has issued at least seven fatwas and publicly responded to questions in a manner that is derogatory to the Shiite community. The source argues that given the Council's reach and influence, such statements play a key role in bolstering systematic discrimination against the Shiite minority and inciting violence against them.

56. According to the source, after analysing 10 separate trial judgments of Shias accused of protest-related crimes, Human Rights Watch found that "detainees alleged that confessions were extracted through torture, but judges quickly dismissed these allegations without investigation, admitted the confessions as evidence, and then convicted the detainees almost solely on the basis of these confessions, sometimes handing down death sentences".<sup>9</sup> Reportedly, of the 96 death sentences handed down in Saudi Arabia between 2013 and 2016, 38–40 per cent were given to members of the Shiite community on account of their participation in demonstrations. The Shiite minority constitutes 10–15 per cent of the population.<sup>10</sup>

57. The source notes that members of the Shiite community are often tried in mass trials and sentenced to death on the basis of vague offences that frequently violate their rights to freedom of expression and peaceful assembly. In 2016, 24 demonstrators were put on trial and 14 of them received the death penalty. In another case, the Shiite sheikh Nimr Al Nimr, who publically supported demonstrators, was sentenced to death in October 2014 and executed in January 2016.

58. The source recalls that both Messrs. Al Hawaj and Aal Adam were tried before the Specialized Criminal Court, which is composed of Sunni judges and prosecutors and which has ties to the Ministry of the Interior, a Sunni institution. Of the 96 death sentences handed down by the Court between 2013 and 2016, 38 were to members of the Shiite community. The trials described in the present case allegedly follow the pattern of 36 other Shiite protesters who have been sentenced to death since 2013.

59. Finally, Mr. Al Hawaj's sentence was based on Council of Senior Scholars decision No. 148 and is, therefore, a ruling issued allegedly by a body that has repeatedly and publically displayed anti-Shia sentiments that have met the threshold for hate speech. Mr. Aal Adam was sentenced to death on the basis of the Sharia principle of ta'zir, which allows judges to decide on both the definition and the punishment of crimes. This principle is not codified and is applied by religiously trained judges whose work is based on the rulings of bodies such as the Council of Senior Scholars. The source argues that anti-Shia bias was intrinsic to the judges' legal reasoning.

#### *Response from the Government*

60. On 2 August 2018, the Working Group transmitted the allegations made by the source to the Government. The Working Group requested the Government to provide, by 1 October 2018, detailed information about the situation of Messrs. Al Hawaj and Aal Adam and any comments on the source's allegations. The Working Group called upon the Government to ensure Messrs. Al Hawaj and Aal Adam's physical and mental integrity.

61. According to the Government's response, received on 28 September 2018, an arrest warrant for Mr. Al Hawaj had been issued in accordance with article 35 of the Code of Criminal Procedure and the security forces arrested him in accordance with article 26 of that same law.

62. The Government denies the source's claim that Mr. Al Hawaj was subjected to enforced disappearance for five months, during which time he was held in solitary confinement, subjected to torture and forced to confess. Since he is being held in the prison of the General Directorate of Investigations of the Eastern Province, a known location, it cannot be said that he was subjected to enforced disappearance. All detention centres are

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<sup>9</sup> Human Rights Watch, "Saudi Arabia: allegations of abuse, death in custody", 14 March 2018.

<sup>10</sup> Ibid., "Saudi Arabia: 14 protesters facing execution after unfair trials", 6 June 2017.



subject to inspections pursuant to article 5 of the law on prisons and detention. Article 2 of the Code of Criminal Procedure forbids the arrest, search, detention or imprisonment of any person save in the cases provided for by law, and article 37 of the Code provides that detention may be carried out only in places designated by law. Detention centres are subject to oversight and inspection by the Bureau of Investigation and Public Prosecution, which also has the authority to hear and act upon complaints from detainees. With regard to the claim of solitary confinement, investigators have the power to prevent outside contact for a specific time period in the interest of the investigation. Mr. Al Hawaj is allowed contact with and visits from his family, who know where he is.

63. The Government also denies the allegation of torture against Mr. Al Hawaj. All forms of torture and other cruel, inhuman or degrading treatment are criminal offences under articles 2 and 36 (1) of the Code of Criminal Procedure. Article 102 prohibits coerced interrogations and statements. The Bureau of Investigation and Public Prosecution supervises the conduct of law enforcement officers pursuant to article 25 of the Code of Criminal Procedure. The Human Rights Commission is empowered to visit detention centres at any time, without permission from the authorities, to receive and verify complaints and to take the corresponding legal measures.

64. In response to the allegation of coerced confession, the Government claims that Mr. Al Hawaj acknowledged his confession in court. The Government states that the Specialized Criminal Court was established to improve the provision of justice. It adds that, in line with the same procedures used for all criminal courts, judges are appointed by royal order pursuant to a decision of the Supreme Judicial Council; in accordance with article 47 of the judiciary code, the judges have obtained the relevant qualifications and met the necessary requirements.

65. All citizens and residents enjoy their rights and exercise their freedoms. The law guarantees freedom of opinion and expression provided that it does not have an adverse impact on public order, society, individuals or stability. This restriction is consistent with the relevant international standards, in particular article 29 (2) of the Universal Declaration of Human Rights. No person may be detained except where provided for by the law, pursuant to article 36 of the Basic Law, article 38 of which enshrines the principle of personal criminal liability and prohibits retroactive prosecution. The laws guarantee the right of the accused to a fair and public trial before an independent judiciary and provide numerous statutory assurances and rights, based on the provisions of Islamic Sharia, which require rulers to judge their people fairly.

66. Regarding the fact that Mr. Al Hawaj was 16 years old at the time of his alleged offences, the Government states that he held full criminal responsibility at the time because he had reached the legal majority according to the domestic requirements, in conformity with the obligations of Saudi Arabia under article 1 of the Convention on the Rights of the Child.

67. Mr. Al Hawaj had multiple defence lawyers, who visited him, were granted access to the case file and attended his hearings. The judge does not rely solely on confessions as evidence, but also on the proofs obtained, including the records of the arrest and investigations, witness statements and the discussions held during legal proceedings.

68. The Government also denies any discrimination against the Shiite minority. All citizens are Muslims and all citizens enjoy equal rights regardless of their sects. Discrimination is a punishable offence.

69. The Government largely repeats the same points in relation to the case of Mr. Aal Adam. It claims that he does not qualify as a person with disabilities for the purpose of article 1 of the Convention on the Rights of Persons with Disabilities because, based on the examination by a delegate from the Human Rights Commission, his loss of hearing is not a long-term impairment which in interaction with various barriers may hinder his full and effective participation in society on an equal basis with others. According to the Government, Mr. Aal Adam was taken to medical clinics.

*Further comments from the source*

70. The response from the Government was transmitted to the source on 1 October 2018 for further comments. In its response of 15 October 2018, the source points out that the Government has failed to produce evidence, such as the arrest warrants or any medical record, in support of their claims. The source also challenges and rebuts the Government's claims with regard to the elements relating to categories I, II, III and V.

*Execution of death sentence*

71. It has come to the Working Group's attention that Messrs. Al Hawaj and Aal Adam were executed on 23 April 2019 as part of the mass execution of 37 individuals carried out that day.<sup>11</sup>

**Discussion**

72. The Working Group expresses its dismay and outrage at the carrying out of Messrs. Al Hawaj and Aal Adam's death sentence as part of the mass execution of 37 persons on 23 April 2019. The Working Group had specifically called upon the Government to ensure their physical and mental integrity on 2 August 2018. The Human Rights Council, in its resolution 33/30, which Saudi Arabia had voted in favour of, had requested the States concerned to take account of the views of the Working Group and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty. The Working Group observes that while a situation of arbitrary detention can be remedied by releasing and according appropriate reparations to the detainee, bringing someone back from death is not possible. It is difficult to see how the executions, regarding cases that were still pending before the Working Group, square with the international obligations of Saudi Arabia, as a State Member of the United Nations, to take action to achieve universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, in accordance with articles 55 and 56 of the Charter of the United Nations. The Working Group refers the present case to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

73. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has presented a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).<sup>12</sup>

74. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty and that any national law allowing deprivation of liberty should be implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable instruments.<sup>13</sup> Even if the detention is in conformity with national legislation, the Working Group is

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<sup>11</sup> Office of the United Nations High Commissioner for Human Rights, "Bachelet strongly condemns mass executions in Saudi Arabia", 24 April 2019.

<sup>12</sup> See, for example, opinions No. 11/2018, para. 41; No. 19/2018, para. 25; No. 35/2018, para. 24; No. 36/2018, para. 37; No. 37/2018, para. 27; No. 40/2018, para. 42; No. 43/2018, para. 71; No. 44/2018, para. 78; No. 45/2018, para. 39; No. 46/2018, para. 45; No. 52/2018, para. 68; No. 67/2018, para. 69; No. 70/2018, para. 31; No. 75/2018, para. 57; No. 78/2018, para. 67; No. 79/2018, para. 68; and No. 90/2018, para. 29.

<sup>13</sup> See General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9, para. 4 (b). See also Working Group opinions No. 76/2017, para. 62; No. 83/2017, paras. 51 and 70; No. 88/2017, para. 32; No. 94/2017, para. 59; No. 38/2018, para. 60; No. 68/2018, para. 37; No. 82/2018, para. 25; and No. 87/2018, para. 51.

mandated to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with international law.<sup>14</sup>

*Applicability of the Convention on the Rights of the Child with respect to Mr. Al Hawaj*

75. In the discharge of its mandate, the Working Group refers to the relevant international standards, including the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), in accordance with its methods of work (A/HRC/36/38, para. 7).

76. The Working Group recalls the reference made in the preamble to the Convention on the Rights of the Child to the 1959 Declaration of the Rights of the Child, in which it is stated that the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection. Such special safeguards and care are particularly needed in cases involving the deprivation of life, liberty and security of the child.

77. The Committee on the Rights of the Child has repeatedly urged States parties to the Convention to review existing legislation to ensure that all children up to 18 years of age receive the protection they need, as provided for in the Convention (e.g., CRC/C/ALB/CO/2-4, para. 26) and observed that a national constitutional provision defining “child” as anyone under the age of 16 is not compatible with article 1 of the Convention (e.g., CRC/C/NAM/CO/2-3, para. 28).

78. In paragraphs 31 and 32 of its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee on the Rights of the Child expressed its understanding that article 40 (3) of the Convention obliges States parties to set a minimum age of criminal responsibility, adding that it considered a minimum age of criminal responsibility below 12 years of age not to be internationally acceptable.

79. The Committee specifically expressed its concern to the Government that, even though the age of majority is 18, a judge has the discretionary power to decide that a child has reached majority at an earlier age and recommended it to take the necessary legislative and other measures to unequivocally set the age of majority at 18 with no exception for specific cases, including within the juvenile justice system (CRC/C/SAU/CO/2, paras. 25–26).<sup>15</sup>

80. The Working Group notes that the Government has put forward no legitimate aim or justification for such judicial discretion in the determination of attainment of majority by a child under 18 years of age. The Government therefore cannot opt out from its international obligations under the Convention in the matter relating to Mr. Al Hawaj’s detention.

*Applicability of the Convention on the Rights of Persons with Disabilities to Mr. Aal Adam’s deprivation of liberty*

81. In the discharge of its mandate, the Working Group also refers to the Convention on the Rights of Persons with Disabilities, in accordance with paragraph 7 of its methods of work.

82. Article 1 of the Convention describes persons with disabilities as including those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

83. The Working Group notes that the Committee on the Rights of Persons with Disabilities has concluded that the national legislation of Saudi Arabia is based on a charity

<sup>14</sup> See, for example, opinions No. 1/1998, para. 13; No. 5/1999, para. 15; No. 1/2003, para. 17; No. 33/2015, para. 80; No. 94/2017, paras. 47–48; No. 38/2018, para. 60; No. 68/2018, para. 37; No. 82/2018, para. 25; and No. 87/2018, para. 51.

<sup>15</sup> On 30 September 2016, the Committee reiterated its serious concern that the Government does not intend to change the fact that judges have discretion to determine the age of majority (CRC/C/SAU/CO/3-4, paras. 13–14).

model of disability that runs counter to the Convention and the Committee's recommendation that the Government initiate a full transition to a human rights model of disability in laws and policies, with a view to harmonizing them with the general principles and provisions in the Convention (CRPD/C/SAU/CO/1, paras. 5 (a) and 6 (a)).<sup>16</sup>

84. The Government has provided no justification, no medical evidence, nor any other type of material to substantiate its argument that Mr. Aal Adam's hearing impairment does not constitute "disability" for the purpose of the Convention. A mere assertion cannot meet the burden of proof.

#### *Category I*

85. The source alleges that Messrs. Al Hawaj and Aal Adam were not presented with an arrest warrant or informed of the reasons for their arrest, and that they were not promptly informed of any charges against them. The Government has not refuted this allegation with credible substantiations.

86. The Working Group notes that Messrs. Al Hawaj and Aal Adam were arrested without a warrant and without being informed at that time of the reasons for their arrest, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and of principles 2, 4 and 10 of the Body of Principles. In Mr. Al Hawaj's case, this also violates article 37 (b) of the Convention on the Rights of the Child and, in Mr. Aal Adam's case, article 14 (1) (a) and (b) of the Convention on the Rights of Persons with Disabilities.<sup>17</sup> The Working Group finds no valid grounds to justify an exception to this principle in the present case.

87. The Working Group finds that the authorities should have informed Messrs. Al Hawaj and Aal Adam of the reasons for their arrest at the time of arrest and of the charges against them promptly. It is evident that the two men were not promptly informed of the charges against them, in violation of article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles, which in Mr. Al Hawaj's case constitutes a violation of article 40 (2) (b) (ii) of the Convention on the Rights of the Child.<sup>18</sup> In fact, as Mr. Al Hawaj was not informed of the charges against him until 31 March 2016 and Mr. Aal Adam not until September 2015, the former's first 26 months of detention and the latter's first 41 months of detention were without any legal basis.

88. The source further maintains, and the Government does not demonstrate otherwise, that Messrs. Al Hawaj and Aal Adam were held incommunicado for five and three months respectively. Such lengthy and severe deprivation of liberty lacks any legal basis and is arbitrary, as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and, in Mr. Aal Adam's case, article 12 (1) of the Convention on the Rights of Persons with Disabilities.<sup>19</sup>

89. The Working Group notes that neither Mr. Al Hawaj nor Mr. Aal Adam were brought promptly before a judge and that neither was afforded the right to initiate proceedings before a court so that it may decide without delay on the lawfulness of the detention, in violation of articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles.<sup>20</sup> While international standards

<sup>16</sup> The Working Group acknowledges that Saudi Arabia is not alone in the sense that "most states parties continue to face challenges in interpreting and implementing the human rights model of disability conceptualization enshrined in article 1 (2)". Emily Kakoullis and Yoshikazu Ikehara, "Article 1: purpose", in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou, eds. (Oxford, Oxford University Press, 2018).

<sup>17</sup> See opinions No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; and No. 82/2018, para. 29. See also article 14 (1) of the Arab Charter on Human Rights.

<sup>18</sup> See also article 14 (3) of the Arab Charter on Human Rights.

<sup>19</sup> See also the Declaration on the Protection of All Persons from Enforced Disappearance, Working Group opinion No. 82/2018, para. 28, and article 22 of the Arab Charter on Human Rights.

<sup>20</sup> See also articles 12, 14 (1), (5) and (6), and 23 of the Arab Charter on Human Rights.

prescribe that the arrested person is to be brought before a judge within 48 hours,<sup>21</sup> a stricter standard of 24 hours is applicable for Mr. Al Hawaj under the Convention on the Rights of the Child.<sup>22</sup> In the Working Group's view, a similar need for a heightened level of safeguards and care for persons with disability should justify a 24-hour rule for Mr. Aal Adam as well.

90. In addition, the Working Group recalls that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and that judicial remedy is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3).<sup>23</sup>

91. In addition, the Working Group cannot fail to observe that the death sentence imposed on Mr. Al Hawaj for alleged offences committed when he was under 18 years of age is in clear contravention of article 37 (a) of the Convention on the Rights of the Child and is in any case null and void for having a deficient legal basis.

92. The Working Group therefore considers that Messrs. Al Hawaj and Aal Adam's arrests, detentions and death sentences lack a legal basis and are thus arbitrary under category I.

### *Category II*

93. The source asserts that Messrs. Al Hawaj and Aal Adam were arbitrarily detained for exercising their fundamental human rights, while the Government claims that they were arrested, tried and sentenced to death for their alleged terrorist activities.

94. Article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one's rights and freedoms must be for the purposes of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society. In this connection, the right to freedom of expression includes the expression of views and opinions that offend, shock or disturb (A/HRC/17/27, para. 37).<sup>24</sup> Protecting national security or countering terrorism cannot be used to justify restrictions on the right to expression unless: (a) the expression is intended to incite imminent violence; (b) the expression is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence (*ibid.*, para. 36).<sup>25</sup>

95. Even by the Government's own admission, Messrs. Al Hawaj and Aal Adam have been charged, convicted and sentenced to death, *inter alia*, for organizing protests and sharing information about them. While the perpetrators of individual acts of violence that occur during the protests may be held legally liable, the organizers, promoters and participants of protests cannot be held personally responsible for acts of violence by others.<sup>26</sup>

96. In the Working Group's view, vaguely defined phrases such as "disunity, sedition and separation", which appears in article 12 of the Basic Law, have a chilling effect on the exercise of rights. The undefined *ta'zir* crimes, with discretionary punishments, *a fortiori* have a chilling effect on the exercise of rights.

<sup>21</sup> See opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

<sup>22</sup> See Committee on the Rights of the Child general comment No. 10, para. 83.

<sup>23</sup> See also opinion No. 39/2018, para. 35.

<sup>24</sup> In addition, the Human Rights Council, in paragraph 5 (p) (i) of its resolution 12/16, called upon States to refrain from imposing restrictions that are not consistent with article 19 (3) of the International Covenant on Civil and Political Rights, including on discussion of government policies and political debate.

<sup>25</sup> See A/HRC/17/27, para. 37, citing the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Principle 6, as endorsed in E/CN.4/1996/39. See also Supreme Court of the United States of America, *Brandenburg v. Ohio*, 395 US 444, 8 June 1969.

<sup>26</sup> See opinion no. 22/2017, para. 74.

97. The Working Group is therefore of the opinion that Messrs. Al Hawaj and Aal Adam's deprivation of liberty is arbitrary, falling within category II, as it violates articles 18, 19 and 20 (1) of the Universal Declaration of Human Rights, as well as articles 13 (1), 14 (1) and 15 (1) of the Convention on the Rights of the Child in Mr. Al Hawaj's case and article 21 of the Convention on the Rights of Persons with Disabilities in Mr. Aal Adam's case.

### *Category III*

98. Given its finding that the deprivation of liberty of Messrs. Al Hawaj and Aal Adam is arbitrary under category II, the Working Group wishes to emphasize that the trials should never have taken place. However, as they did take place, the Working Group will consider whether the alleged violations of the right to a fair trial and due process were grave enough to give the deprivation of liberty an arbitrary character under category III.

99. According to the information provided by the source, which the Government did not refute with credible information, Messrs. Al Hawaj and Aal Adam were denied the right to notify and communicate with their family and lawyers, contrary to principles 15–19 of the Body of Principles. In the view of the Working Group, such procedural defects severely compromised their due process and fair trial rights.

100. Subsequently, the Government failed to respect Messrs. Al Hawaj and Aal Adam's right to legal assistance and their right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in violation of articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and, in Mr. Al Hawaj's case, of articles 37 (d) and 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child. The denial of legal assistance at the critical stages of criminal proceedings exposed them to torture and other coercive means used to extract confessions. The lawyers had no access to case files and were forced to resign because of personal threats against them. The Working Group therefore finds serious violations of articles 10 and 11 (1) of the Universal Declaration and, for Mr. Al Hawaj, article 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child.<sup>27</sup> The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.

101. Mr. Al Hawaj's pretrial detention from 17 January 2014 to 31 March 2016, for 26 months, and Mr. Aal Adam's from 10 April 2012 to September 2015, for 41 months, without individualized judicial determination, undermines the presumption of innocence and the right to be tried within a reasonable time or to be released pending trial, under article 11 (1) of the Universal Declaration of Human Rights and principles 36 (1) and 38 of the Body of Principles, as well as, in Mr. Al Hawaj's case, articles 37 (b) and 40 (2) (b) (i) of the Convention on the Rights of the Child and paragraph 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.<sup>28</sup>

102. In the Working Group's view, the Specialized Criminal Court, which tried, convicted and sentenced to death Messrs. Al Hawaj and Aal Adam, is not composed of independent judges, but of a panel appointed by the Ministry of the Interior and cannot be considered independent, as confirmed by the Committee against Torture (CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17).

103. The Working Group cannot fail to express its gravest concern at the allegations of torture and ill-treatment. While in detention, Mr. Al Hawaj endured extraction of toe nails, denial of access to the bathroom, death threats against his family and solitary confinement. Also while in detention, Mr. Aal Adam suffered electrocution of various body parts, brutal beatings that left him completely deaf in one ear, denial of medical care, threats against family, sleep deprivation, denial of food and solitary confinement. Such practices clearly violate articles 5 and 25 (1) of the Universal Declaration of Human Rights and principle 6 of the Body of Principles, in addition to the relevant provisions of the Convention against Torture and, for Mr. Al Hawaj, articles 24 (1) and 37 (a) and (c) of the Convention on the Rights of the Child.<sup>29</sup> The treatment described reveals a *prima facie* breach of the absolute

<sup>27</sup> See also articles 12, 13 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

<sup>28</sup> See also articles 14 (6) and 16 of the Arab Charter on Human Rights.

<sup>29</sup> See also articles 8 (1), 14 (4), 20 (1), 34 (3) and 39 (1) of the Arab Charter on Human Rights.

prohibition of torture, which is a peremptory norm of international law.<sup>30</sup> The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

104. In the Working Group's view, not only is torture a grave violation of human rights, but it seriously undermines the ability of persons to defend themselves and hinders the exercise of their right to a fair trial, especially in light of the right not to be compelled to testify against oneself or to confess guilt. The use of a confession extracted through ill-treatment also constitutes a violation of article 15 of the Convention against Torture and principle 21 of the Body of Principles.<sup>31</sup>

105. The Working Group also considers that vague provisions such as article 12 of the Basic Law or uncodified principles of *ta'zir* could be used to deprive individuals of their liberty without a legal basis and violate the due process of law, undergirded by the principle of legality, as stipulated in article 11 (2) of the Universal Declaration of Human Rights or article 40 (2) (a) of the Convention on the Rights of the Child. The principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.<sup>32</sup>

106. Given 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 Messrs. Al Hawaj and Aal Adam's deprivation of liberty an arbitrary character under category III.

#### *Category V*

107. The Working Group will now examine whether Messrs. Al Hawaj and Aal Adam's detention constitutes illegal discrimination under international law under category V.

108. The Working Group notes historic discrimination against the Shiite ethno-religious minority. This has included the executions of Shiites following protests in 2011.

109. The Working Group also notes that in 2018 the Committee on the Elimination of Racial Discrimination expressed concern that ethno-religious minorities faced obstacles in freely practicing their right to freedom of religion or belief and that certain ethno-religious minorities faced discrimination in education, employment and the legal system (CERD/C/SAU/CO/4-9, para. 23). The Committee recommended that Saudi Arabia take all measures necessary to ensure the rights of ethno-religious minorities (*ibid.*, para. 24).

110. In view of the violations identified above, which provide a background to the present case, the Working Group considers that Messrs. Al Hawaj and Aal Adam's deprivation of liberty constitutes discrimination based on their ethno-religious origin and political opinion, a violation of articles 2 and 7 of the Universal Declaration of Human Rights, as well as of article 2 of the Convention on the Rights of the Child for Mr. Al Hawaj and article 3 (b) of the Convention on the Rights of Persons with Disabilities for Mr. Aal Adam. Their deprivation of liberty therefore falls under category V.<sup>33</sup>

111. In its 28-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in about 60 cases.<sup>34</sup> The Working Group is

<sup>30</sup> Opinion No. 39/2018, para. 42. As the Committee against Torture has concluded, States should ensure that all victims of torture are able to access remedy and obtain redress, wherever acts of torture occurred and regardless of the nationality or the perpetrator or victim, including by restricting the application of State immunity laws (CAT/C/CAN/CO/6, para. 15, and CAT/C/CAN/CO/7, paras. 40–41).

<sup>31</sup> See also opinions No. 48/2016, para. 52; No. 3/2017, para. 33; No. 6/2017, para. 43; No. 29/2017, para. 64; and No. 39/2018, para. 42.

<sup>32</sup> See opinion no. 62/2018, para. 57.

<sup>33</sup> See also article 3 (1) of the Arab Charter on Human Rights, article 2 of the African Charter on Human and Peoples' Rights and article 3 of the African Charter on the Rights and Welfare of the Child.

<sup>34</sup> See decisions No. 40/1992, No. 60/1993, No. 19/1995 and No. 48/1995, and opinions No. 8/2002, No. 25/2004, No. 34/2005, No. 35/2005, No. 9/2006, No. 12/2006, No. 36/2006, No. 37/2006, No. 4/2007, No. 9/2007, No. 19/2007, No. 27/2007, No. 6/2008, No. 11/2008, No. 13/2008, No. 22/2008, No. 31/2008, No. 36/2008, No. 37/2008, No. 21/2009, No. 2/2011, No. 10/2011, No. 11/2011, No. 17/2011, No. 18/2011, No. 19/2011, No. 30/2011, No. 31/2011, No. 33/2011, No. 41/2011, No.

concerned that this indicates a systemic problem with arbitrary detention. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity (A/HRC/13/42, para. 30).<sup>35</sup> The Working Group has alluded to this possibility in its past cases concerning Saudi Arabia.<sup>36</sup>

112. Given its finding that Messrs. Al Hawaj and Aal Adam were arbitrarily deprived of their liberty without legal basis as a result of exercising their freedom of expression and in violation of their right to a fair trial and non-discrimination, the Working Group considers that their death sentences are indefensible and the execution thereof inexcusable. Therefore, the execution of Messrs. Al Hawaj and Aal Adam amounts to arbitrary deprivation of life in violation of article 3 of the Universal Declaration of Human Rights.<sup>37</sup>

113. The Working Group reminds the Government that the General Assembly, in its resolution 73/175, called upon all States to establish a moratorium on executions with a view to abolishing the death penalty. The Working Group refers the present case to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

### Disposition

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

(a) The deprivation of liberty of Abdelkarim Mohamed Al Hawaj, being in contravention of articles 3, 5–11, 18–19, 20 (1) and 25 (1) of the Universal Declaration of Human Rights and articles 2, 13 (1), 14 (1), 15 (1), 24 (1), 37 and 40 (2) (a) and (b) (i)–(iv) of the Convention on the Rights of the Child, is arbitrary and falls within categories I, II, III and V;

(b) The deprivation of life and liberty of Mounir Abdullah Ahmad Aal Adam, being in contravention of articles 3, 5–11, 18–19, 20 (1) and 25 (1) of the Universal Declaration of Human Rights and articles 3 (b), 10, 12 (1), 14 (1) and 21 of the Convention on the Rights of Persons with Disabilities, is arbitrary and falls within categories I, II, III and V.

115. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Messrs. Al Hawaj and Aal Adam without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

116. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Messrs. Al Hawaj and Aal Adam's families an enforceable right to compensation and other reparations, in accordance with international law.

117. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Messrs. Al Hawaj and Aal Adam and to take appropriate measures against those responsible for the violation of their rights.

118. The Working Group requests the Government to revise article 12 of the Basic Law to meet the requirement of the principle of legality and to codify ta'zir principles and

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42/2011, No. 43/2011, No. 44/2011, No. 45/2011, No. 8/2012, No. 22/2012, No. 52/2012, No. 53/2012, No. 32/2013, No. 44/2013, No. 45/2013, No. 46/2013, No. 14/2014, No. 32/2014, No. 13/2015, No. 38/2015, No. 52/2016, No. 61/2016, No. 10/2017, No. 63/2017, No. 93/2017, No. 10/2018 and No. 68/2018.

<sup>35</sup> See opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

<sup>36</sup> See opinions No. 93/2017, para. 61; No. 10/2018, para. 85; and No. 68/2018, para. 60.

<sup>37</sup> See also article 5 of the Arab Charter on Human Rights.



punishments, which are currently left at the discretion of the judges, in conformity with the findings in the present opinion and with its obligations under international law.

119. The Working Group requests the Government to revise its laws, in particular those concerning the imposition of the death penalty, the discretion granted to judges to determine the age of majority and the operation of the General Directorate of Investigations and the Specialized Criminal Court, to meet the requirement of due process and fair trial in conformity with the findings in the present opinion and with its obligations under international law.

120. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers.

121. The Working Group recommends that the Government ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as their optional protocols.

122. The Working Group requests the Government to publish and disseminate the present opinion through all available means and as widely as possible.

### **Follow-up procedure**

123. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to Messrs. Al Hawaj and Aal Adam's families;
- (b) Whether an investigation has been conducted into the violation of Messrs. Al Hawaj and Aal Adam's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Saudi Arabia with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

124. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

125. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

126. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>38</sup>

*[Adopted on 2 May 2019]*

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<sup>38</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.