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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021

Opinion No. 72/2021 concerning Abdullah al-Howaiti (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 42/22.

2. In accordance with its methods of work,¹ on 18 August 2021 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Abdullah al-Howaiti. The Government replied to the communication on 7 October 2021. 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).

* In accordance with paragraph 5 of the Working Group's methods of work, Priya Gopalan did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Abdullah al-Howaiti (also known as “Abdullah al-Huwaiti” and “Abdullah al-Hueti”) is a national of Saudi Arabia, born in 2002. Mr. Al-Howaiti was a 14-year-old student in high school when he was arrested. His usual place of residence is Duba, Saudi Arabia.

a. Arrest

5. The source submits that on 8 May 2017, Mr. Al-Howaiti was at home watching television with relatives when approximately 25 armed police officers raided the family home in Duba. Another relative was also home and asleep but was awoken when the police arrived. The officers ransacked the house, destroying furniture in bedrooms and the kitchen. The officers then arrested Mr. Al-Howaiti, who was 14 years old at the time, without presenting an arrest warrant or providing any reasons for the arrest. Officers took him to the local police station in Duba, where he was made to stand for hours. He was not officially charged with any crimes at this point. For the next four months, Mr. Al-Howaiti was held incommunicado, with no access to a lawyer. His family was not told the location of his detention.

b. Detention, interrogation and torture

6. The source reports that, without providing notice to his family, the authorities transferred Mr. Al-Howaiti to the criminal investigations centre in Tabuk Prison. Despite being a minor, Mr. Al-Howaiti was initially detained in the investigations centre for adult detainees, rather than in a social observation home where individuals aged 12 to 18 years are routinely held during investigations.

7. According to the source, while Mr. Al-Howaiti was in the criminal investigations centre, officers physically and psychologically tortured him to force a confession. The torture included : (a) being forced to stand for hours at a time until he lost consciousness; (b) being beaten and slapped on the face; (c) being hit with an electrical cable on the soles of his feet (*falaqa*); (d) being hit with an electrical cable on different parts of his body until he lost consciousness; (e) being forced to stand directly in front of an air conditioner; (f) being severely beaten; (g) being psychologically tortured by being told that his family members were in prison and would be released only once he confessed to having committed the crime.

8. The source submits that after enduring rounds of physical and psychological torture at the hands of an officer, Mr. Al-Howaiti told his tormentor to write whatever he wanted and agreed to sign it with his fingerprint.

9. According to the source, following the coerced confession, Mr. Al-Howaiti notified an investigator on 18 May 2017 that his “confession” at the criminal investigations centre had been made under duress. Mr. Al-Howaiti was then taken to a cell. Despite being a minor and despite the existence of juvenile centres, Mr. Al-Howaiti was held in an adult prison and shared a cell with adult detainees. At approximately midnight that night, the officer entered Mr. Al-Howaiti’s cell with a group of soldiers, and threatened to pull out Mr. Al-Howaiti’s nails, suspend him from one hand and torture him in other ways. Mr. Al-Howaiti pleaded with him and promised not to tell anyone about the torture.

c. Certification of confession in court

10. The source submits that the next day, on 19 May 2017, the officer took Mr. Al-Howaiti to court. The judge read out the confession that Mr. Al-Howaiti had been coerced into signing. Mr. Al-Howaiti, afraid of what would happen if he revealed the realities of the torture, pleaded guilty.

11. According to the source, and as particularized by Mr. Al-Howaiti’s lawyers in their defence memorandum, on 13 June 2017, Mr. Al-Howaiti was taken to court to certify the confession. Mr. Al-Howaiti told the court that his confession had been extracted by coercion and he had been subjected to beatings and threats so that he would confess to a crime that he had not committed. Mr. Al-Howaiti also said that the reason why the guards had brought him to court was because they had asked him to change his statement so that it would fit the other

suspects' statements. Mr. Al-Howaiti's allegations of torture were not investigated. The source explains that at no point during this period was Mr. Al-Howaiti given access to a lawyer.

d. Charges

12. The source reports that after Mr. Al-Howaiti had been detained for approximately four months, the public prosecutor officially charged him with the robbery of a jewellery store and the murder of a police officer.

13. Reportedly, although the public prosecutor charged Mr. Al-Howaiti after approximately four months in detention, the full list of charges was not officially issued until his hearing on 16 April 2018.

14. The source explains that Mr. Al-Howaiti was charged with the following offences: (a) formation of gangs; (b) armed robbery of a jewellery store; (c) intentional and aggravated murder of a patrol officer using a machine gun; (d) theft of gold worth 816,165 riyals, and concealment of the stolen gold and the two firearms used in the commission of the theft; (e) seizure of, tampering with and destruction of an official patrol vehicle to the cost of 20,000 riyals, and attempted arson of an official patrol vehicle by means of a green petrol-like substance, as well as opening fire on and injuring two individuals; (f) possession of an individual firearm (a handgun) with two rounds of live ammunition without a permit, possession of a machine gun without a permit, and possession of 23 rounds of live ammunition for use in a weapon without a permit.

e. Trials

15. The source reports that on 30 October 2019, Tabuk Criminal Court handed down a death sentence to Mr. Al-Howaiti. The crimes that he had allegedly committed had been classified as the *hudud* offence of *herebah*.² Mr. Al-Howaiti's five co-defendants were tried in the same trial, and they were each sentenced to 15 years' imprisonment and 1,000 lashes.

16. On 28 November 2019, Mr. Al-Howaiti's lawyers submitted a defence memorandum to Tabuk Court of Appeal, in which they raised Mr. Al-Howaiti's juvenility at the time of the alleged offence, the evidentiary deficiencies in the prosecution's case, the torture-tainted confession and the impossibility of Mr. Al-Howaiti having committed the alleged offence as demonstrated by his alibi.

17. On 19 January 2021, the Court of Appeal upheld the Criminal Court's ruling, confirming that Mr. Al-Howaiti should be sentenced to death for the *hudud* offence of *herebah*.

18. The source explains that Mr. Al-Howaiti is being held in Tabuk Prison. His case is at the last stage of the appeal process and is currently before the Supreme Court. The Supreme Court in Saudi Arabia does not consider any further advocacy from the defence lawyers or the public prosecution. The Supreme Court may either grant a retrial or uphold the death sentence, which would mean that Mr. Al-Howaiti's death sentence would be final and that he would be at risk of imminent execution.

f. Alibi and evidentiary deficiencies

19. According to the source, despite the Court of Appeal having upheld the death sentence, Mr. Al-Howaiti has an alibi and there are clear deficiencies in the public prosecutor's evidence. Regarding the alibi, on 6 May 2017, the day of the robbery of the jewellery store and the murder of the police officer, Mr. Al-Howaiti was with his relatives and friends on the corniche in Dubai. Reportedly, this claim was confirmed and corroborated by eyewitnesses, as well as surveillance cameras. The source explains that the corniche is approximately 199 kilometres away from the scene of the crime.

² The source explains that *herebah* falls under the *hudud* category, crimes directly stipulated in the Qur'an and sharia. *Herebah* may be described as organized crime, banditry or crimes against society. Armed robbery also falls under this category, and if the robbery leads to murder, a *herebah* death sentence routinely applies.

20. Regarding the evidentiary deficiencies, the source explains that the prosecution submitted that they had forensic DNA evidence linking Mr. Al-Howaiti to the scene of the crime. However, as particularized by Mr. Al-Howaiti's lawyers in their defence memorandum, this "evidence" should not have been admissible, as Mr. Al-Howaiti was allegedly found to be a DNA match and arrested before the results of the DNA tests were even published. According to the source, Mr. Al-Howaiti's lawyers stated in the defence memorandum that he had been arrested on 11 Sha'ban A.H. 1438 (8 May A.D. 2017) on the basis of the results of genetic tests not published until 13 Sha'ban A.H. 1438 (10 May A.D. 2017), and that in the indictment the public prosecutor had recorded the date of arrest as 14 Sha'ban A.H. 1438 (11 May A.D. 2017). The lawyers held that there was no concrete evidence of fingerprints, weapons, gold, clothes, swabs of smokeless powder remnants or the vehicle that it was claimed had been waiting for the culprit.

21. On 23 February 2021, several special procedure mandate holders sent an urgent appeal to Saudi Arabia concerning Mr. Al-Howaiti,³ to which it responded on 15 April 2021.⁴

g. Analysis of violations

22. The source argues that the authorities' failure to observe international norms and domestic law relating to due process and fair trial renders Mr. Al-Howaiti's arrest and detention arbitrary under categories I and III.

i. Category I

23. According to the source, the arrest and detention of Mr. Al-Howaiti is arbitrary under category I for lack of any legal basis or justification. Mr. Al-Howaiti was arrested and was subjected to incommunicado detention for four months, during which time he was tortured into confessing with no access to a lawyer.

24. The source submits that the authorities placed Mr. Al-Howaiti outside the protection of the law by means of incommunicado detention for four months. The order holding him under incommunicado detention meant that Mr. Al-Howaiti did not have access to a lawyer.

25. The source argues that throughout the period of incommunicado detention, Mr. Al-Howaiti was unable to challenge the basis of his detention. Though Mr. Al-Howaiti was taken to certify his confession in court on 19 May and 13 June 2017, these perfunctory appearances could not have enabled him to effectively challenge the lawfulness of his detention, as the order holding him under incommunicado detention denied him access to legal assistance. Such treatment amounts to a prima facie form of arbitrary detention, rendering Mr. Al-Howaiti's detention arbitrary under category I.

26. The source recalls that the right to be brought promptly before a court following an arrest and to trial within a reasonable time are enshrined in articles 9 (4) and 14 (3) of the International Covenant on Civil and Political Rights and article 14 (5) of the Arab Charter on Human Rights.⁵ According to the source, while Saudi Arabia is not a signatory to the Covenant, much of the content of the Covenant is generally recognized as customary international law. As such, Saudi Arabia is bound by many of its principles.

27. The source submits that the requirements for a prompt hearing and expeditious trial apply in all cases without exception,⁶ and are imperative to ensure that the detention of a person who has been arrested is brought under judicial control.⁷ Delays for a first judicial

³ Letter from the Working Group, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, dated 23 February 2021, to the Permanent Mission of Saudi Arabia to the United Nations Office and other international organizations in Geneva (UA SAU 4/2021). Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26054>.

⁴ Reply from the Permanent Mission, dated 15 April (HRC/NONE/2021/SP/27). Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36149>.

⁵ Saudi Arabia ratified the Arab Charter in 2006.

⁶ Human Rights Committee, general comment No. 35 (2014), paras. 32 and 37.

⁷ Human Rights Committee, *Kulomin v. Hungary*, communication no. 521/1992, para. 11.3; and *Musaev v. Uzbekistan* (CCPR/C/104/D/1914,1915&1916/2009), para. 9.3.

hearing should not exceed a few days from the time of arrest, and reasons for any delay after 48 hours should be exceptional and justified under the circumstances.⁸ It follows that the risk of ill-treatment is unnecessarily increased as the length of detention continues without judicial control.⁹

28. According to the source, once detained, a person is entitled to trial within a reasonable time or to be released. This requirement applies specifically to periods of pretrial detention, that is, detention between the time of arrest and the time of judgment at first instance.¹⁰ In addition, extremely prolonged pretrial detention may also jeopardize the presumption of innocence under article 14 (2) of the Covenant.¹¹ Persons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence.¹² Pretrial detention should not be general practice, but be based on an individualized determination that is reasonable and necessary in all the circumstances. Factors should be specified in law and should not include vague standards such as “public security”.¹³

29. The source submits that Mr. Al-Howaiti was brutally tortured and coerced into confessing during his pretrial detention. Mr. Al-Howaiti’s first hearing, whereby the charges were issued, took place in April 2018, nearly a year after his arrest. Mr. Al-Howaiti’s lengthy pretrial detention is thus in contravention of the requirement for a prompt and expeditious trial, rendering his detention arbitrary under category I.

30. The source argues that the torture of Mr. Al-Howaiti by officers and the reliance on a torture-tainted confession contravene Saudi domestic law. The source explains article 36 of the Code of Criminal Procedure requires that a detainee be treated with dignity and may not be subjected to any physical or moral harm. Furthermore, article 102 of the Code stipulates that any interrogation must be conducted in a manner that does not affect the will of the accused to make a statement, and that the accused must not be asked to take an oath or be subjected to any coercive measures.

31. The source also recalls that section 9 (arts. 188–192) of the Code provides various circumstances that invalidate proceedings. Article 190 states that if an “invalid action” can be corrected during the proceedings, the court must correct it; however, if it cannot be corrected, the action “shall be held invalid”. Article 191 states that a violation of the procedures within a case does not invalidate all of the proceedings. Article 192 states that if an action entails an essential defect that cannot be corrected, the court must issue a judgment dismissing the case. The case may be refiled when the legal requirements have been satisfied, that is, when the “invalid action” has been corrected.

32. The source argues that Mr. Al-Howaiti’s coerced confession and the reliance upon it for his death sentence are at odds with article 102 of the Code. The appropriate remedy in Mr. Al-Howaiti’s case is for the case to be dismissed and refiled, as per article 192. The illegality of the proceedings leading to Mr. Al-Howaiti’s continued detention renders his detention arbitrary under category I.

33. The source argues that Mr. Al-Howaiti’s treatment contravenes the obligations of Saudi Arabia obligations under the Convention on the Rights of the Child, to which it acceded on 26 January 1996. The source recalls article 37 (a), which prohibits the application of the death penalty for child defendants; article 37 (b), under which no child may be arbitrarily deprived of his or her liberty unlawfully or arbitrarily; article 37 (c), which provides that every child deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person; and article 37 (d), which requires that every child deprived of liberty be given prompt access to counsel. In the present case, Saudi Arabia sentenced Mr. Al-Howaiti to death despite knowing that he was 14 years old at the time of

⁸ Human Rights Committee, *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), paras. 7.3–7.5; and *Pichugina v. Belarus* (CCPR/C/108/D/1592/2007), paras. 7.3–7.5.

⁹ CCPR/C/79/Add.89, para. 17.

¹⁰ Human Rights Committee, general comment No. 32 (2007), para. 61.

¹¹ Human Rights Committee, *Cagas et al. v. Philippines*, communication No. 788/1997, para. 7.3.

¹² Human Rights Committee, general comment No. 32 (2007), para. 35; and *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 7.2.

¹³ CCPR/C/BIH/CO/1, para. 18.

the alleged offences and 17 years old at the time of his sentencing, in contravention of article 37 (a). Moreover, Mr. Al-Howaiti was tortured and held incommunicado for four months, during which time he was not given access to counsel, in contravention of article 37 (b), to (d).

34. The source also recalls that in addition to the above obligations, it is widely recognized that the prohibition of execution of child defendants is a norm of customary international law.¹⁴

35. The source argues that in addition to contravening its obligations under the Convention on the Rights of the Child, the treatment of Mr. Al-Howaiti by Saudi Arabia contravened its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Saudi Arabia acceded on 23 September 1997. The source recalls article 2, which requires a non-derogable prohibition of the use of torture; articles 12 and 13, which provide for the duty to investigate complaints of torture promptly and impartially; and article 15, which stipulates that coerced or torture-tainted confessions may not be invoked as evidence in any proceedings.

36. Officers allegedly tortured Mr. Al-Howaiti while he was detained incommunicado, contrary to article 2 of the Convention against Torture. In contravention of article 15, and despite Mr. Al-Howaiti recanting his confession citing that he had been tortured, the confession was still used as evidence in the proceedings whereby he was sentenced to death. Moreover, despite Mr. Al-Howaiti having flagged that he had been tortured by officers in detention – which was later reiterated by his defence lawyer – Saudi Arabia failed to investigate the complaints promptly, in violation of articles 12 and 13.

37. In view of the above, the source submits that the contravention by Saudi Arabia of its international obligations relating to Mr. Al-Howaiti's treatment in detention renders his detention arbitrary under category I.

ii. Category III

38. The source submits that Mr. Al-Howaiti's detention is arbitrary under category III given the authorities' failure to observe international minimum standards for due process and a fair trial and domestic law.

39. The source notes that the rights to liberty and security and to a fair trial are enshrined in articles 9 and 10 of the Universal Declaration of Human Rights and articles 5, 6 and 13 of the Arab Charter.

40. Moreover, the source recalls that the Convention against Torture provides for the absolute and non-derogable prohibition of torture (art. 2), the requirement to investigate complaints of torture promptly and impartially (arts. 12 and 13) and the prohibition of the use of torture-tainted confessions in any proceedings (art. 15).

41. The source submits that in addition to the right to fair proceedings enshrined in the Universal Declaration of Human Rights and the Arab Charter, there are provisions in domestic law that protect an individual's right to seek legal representation. These include article 4 of the Code of Criminal Procedure, under which accused persons may seek the assistance of a legal representative or lawyer to defend them during the investigation and the trial. Article 70 of the Code prohibits investigators from separating accused persons from their legal representative or lawyer. Despite these provisions, Mr. Al-Howaiti was detained incommunicado for four months, during which time he was tortured and had no access to legal representation, in contravention of the international minimum standards for a fair trial and domestic law, thus rendering Mr. Al-Howaiti's detention arbitrary under category III.

¹⁴ Statute of the International Court of Justice, art. 38; and Inter-American Commission on Human Rights, *Michael Domingues v. United States of America*, Case No. 12.285, Report No. 62/02, 22 October 2002, paras. 84–85.

42. In addition to the above-mentioned obligations of Saudi Arabia under the Convention against Torture, the source recalls that it is widely accepted that the prohibition of torture has attained the status of *jus cogens*.¹⁵

43. The source submits that, in accordance with articles 12 and 13 of the Convention against Torture, a thorough investigation should be initiated immediately or without delay as soon as there is a suspicion of torture or an explicit allegation.¹⁶ The source recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called upon retentionist States to rigorously observe the restrictions and conditions imposed by articles 1 and 16 of the Convention, since the imposition and enforcement of a death sentence following violations of the right to a fair trial was considered particularly cruel, inhuman and degrading and in violation of those articles.¹⁷ Furthermore, the Human Rights Committee has stated that a death sentence issued following a trial conducted in violation of domestic laws of criminal procedure will generally be both arbitrary and unlawful,¹⁸ and that a death sentence following breaches of the right to a fair trial under international law constitutes a violation of the right to life.¹⁹ Specifically, violations of fair trial guarantees in proceedings resulting in the imposition of the death penalty might involve the use of forced confessions and lack of effective representation during all stages of the criminal proceedings.²⁰

44. In view of the above, the source argues that the authorities' treatment of Mr. Al-Howaiti – namely torturing him into confessing, failing to investigate his and his lawyers' torture allegations, and relying on the torture-tainted confession – constitutes a breach of the obligations of Saudi Arabia under international law, rendering his detention arbitrary under category III.

Response from the Government

45. On 18 August 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 18 October 2021, detailed information about the current situation of Mr. Al-Howaiti and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Saudi Arabia under international human rights law, in particular with regard to the treaties to which the State is party. Moreover, the Working Group called upon the Government to ensure Mr. Al-Howaiti's physical and mental integrity.

46. On 7 October 2021 the Government submitted its reply. The Government recalls the joint letter, dated 23 February 2021, sent by a number of special procedure mandate holders, including the Working Group, regarding the case of Mr. Al-Howaiti. The Government further recalls its response, dated 15 April 2021.

47. The Government submits that the source's claims and allegations in the present case are not true and are based on information that lacks backing or proof. The Government alleges that, in response to the joint letter from the special procedure mandate holders, it investigated all of the claims, clarified the facts surrounding them in detail and demonstrated the relevant domestic laws and the procedures followed with regard to Mr. Al-Howaiti's case. The Government considers that its response to the joint letter demonstrates its agreement with international principles and standards of human rights and the Government's cooperation with international human rights mechanisms.

¹⁵ *Armed Activities on the Territory of Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 6; and European Court of Human Rights, *Gäfgen v. Germany*, Application No. 22978/05, Judgment, 1 June 2010.

¹⁶ A/HRC/13/39, para. 45.

¹⁷ A/67/279, paras. 58 and 80.

¹⁸ Human Rights Committee, general comment No. 36 (2018), para. 11.

¹⁹ Human Rights Committee, general comment No. 32 (2007), para. 59; and general comment No. 36 (2018), paras. 41 and 67.

²⁰ Human Rights Committee, general comment No. 36, para. 41.

48. With regard to the source's analysis of the claims presented in the present case, particularly where the source regards the deprivation of liberty as arbitrary under categories I and III, the Government considers that it has clarified and responded to those claims in its response to the joint letter. The Government invites the Working Group to refer to that response, and reiterates its commitment to international human rights law.

49. Further, the Government seeks to answer the Working Group's request for detailed information on Mr. Al-Howaiti's case, clarification of the legal provisions justifying his continued detention, and the correspondence of these provisions with the Government's commitment to its obligations under international human rights law.

50. In this regard, the Government submits that Mr. Al-Howaiti was arrested for committing a criminal offence and that his case is still under judicial review. As stated in its previous response, the Government notes that Mr. Al-Howaiti was not arrested until all evidence was available, and until an order of arrest was issued in accordance with article 2 of the Code of Criminal Procedure. Under that article, no person may be arrested, searched, detained or imprisoned except where provided for by law, and that a person may be detained or imprisoned only in a location designated for such purposes and for the period prescribed by the competent authority. Arrested persons may not be subjected to physical or moral harm or to torture or degrading treatment. Article 35 of the Code stipulates that, except in cases of *flagrante delicto*, no one may be arrested or detained without an order from the competent authority.

51. According to the Government, Mr. Al-Howaiti was arrested pursuant to an arrest warrant, after an investigation by the competent body, and charged with having committed serious crimes that necessitated detention, in accordance with article 112 of the Code. Mr. Al-Howaiti allegedly confessed of his own free will, in the presence of the investigating authorities, and then confirmed his confession to the charges against him before the judiciary. The Government submits that he was not coerced into confessing, in accordance with article 101 of the Code, and that he had full legal capacity. He was reportedly treated in accordance with laws and regulations for juveniles, pursuant to article 12 of the Code, under which the investigation and prosecution of juveniles must be in accordance with the relevant rules and regulations.

52. The Government notes that the Kingdom's laws guarantee the right of all accused persons to a fair public trial before an independent judiciary, including article 38 of the Basic Law of Governance, under which there can be no crime and no punishment save on the basis of sharia (that is, from the Qu'ran or Sunna) or statutory provisions. The Government notes that article 3 of the Code also stipulates that no one may be sentenced to a criminal penalty save for an act that is prohibited by sharia or statutory law. The Government notes that national legislation include several guarantees that regulate criminal proceedings to safeguard the right of the accused to be presumed innocent until found guilty by way of a final court judgment.

53. According to the Government, after the investigation procedure was completed, the case was referred to the competent court, in accordance with article 15 of the Code, under which the prosecutor's office, pursuant to its own statutes, initiates and pursues criminal proceedings before the competent court. Article 126 of the Code adds that if the prosecutor's office decides, after the investigation has been concluded, that there is sufficient evidence against the accused, the case is referred to the competent court and the accused summoned to appear. Reportedly, after Mr. Al-Howaiti appeared at his trial, accompanied by his legal representatives and in the presence of the prosecutor, the case for the prosecution was read out to him and he was given a copy, in accordance with article 160 of the Code. That article stipulates that the court must inform the accused of the charges, read and explain the memorandum of the charges and provide him with a copy thereof, then call on the accused to respond. The Government reports that Mr. Al-Howaiti's trial continued and the court issued a verdict only after it had heard statements from all the parties, after all oral and written pleas had been submitted, after the evidence, parties' statements and case material had been examined, and after the closing arguments had been made in Mr. Al-Howaiti's presence. This is in accordance with article 172 of the Code, which provides that any of the parties may provide the court with written information related to the case for inclusion in the case file, and article 173, under which that the court first hears the case of the prosecutor, then the

response of the accused or the accused's representative or lawyer, then the petition of the civil party, and lastly the response of the accused or the accused's representative or lawyer. The Code also provides that each of the parties has the right to comment on the statements of the other parties, and that the accused is the last to address the court. The court then delivers its judgment and imposes a penalty in case of a guilty verdict, and rules on the petition of the civil party. The Government submits that Mr. Al-Howaiti's case was heard by three judges at the court of first instance, in accordance with article 20 of the Statutes of the Judiciary.

54. Reportedly, once the first-instance judgment had been handed down, Mr. Al-Howaiti was granted the right to challenge the judgment by filing a memorandum of appeal within 30 days of receiving a copy of that judgment, in accordance with article 192 (1) of the Code.

55. According to the Government, after Mr. Al-Howaiti filed a challenge, the judges upheld their judgment, and the case file was then referred to the Court of Appeal pursuant to article 196 of the Code. That article stipulates that the division that rendered the contested judgment must examine the grounds on which the challenge is based without hearing submissions, unless necessary, and may uphold or amend the judgment. If it upholds the judgment, it refers the case, together with a copy of the case records, the memorandum of appeal and all other case documents, to the Court of Appeal. If it amends the judgment, all the parties to the case are so informed and the normal procedural rules apply. In the case of a death penalty, it is mandatory to submit the case file to the Court of Appeal, even if none of the parties submits such a request, pursuant to article 194 of the Code. That article provides that the time limit for filing an appeal or request for review is 30 days; if no appeal is filed during that period, the right of appeal or review expires, unless a death sentence is handed down, in which case it must be submitted to the Court of Appeal for review, even if none of the parties submits a request. Article 15 (1) of the Statutes of the Judiciary provides that cases involving the death penalty are examined by five judges at the Court of Appeal.

56. The Government reports that Mr. Al-Howaiti's case was heard by the Court of Appeal during several sessions, which were attended by the public prosecutor, the defendant and his legal representative, in accordance with article 197 (1) of the Code, which requires the Court of Appeal to schedule a session to consider the petition for appeal or scrutiny and, if it decides to hear submissions, notify the parties concerned to attend that session.

57. After examining the case file and hearing the statements of all the parties involved, the Court ruled to uphold the death sentence against Mr. Al-Howaiti and the requirement to pay compensation for the injuries of the two victims. This was in accordance with article 197 (2) of the Code, which stipulates that the Court of Appeal must consider the petition for appeal or scrutiny on the basis of the documents contained in the case file and on the basis of pleadings and information presented by the parties to support their challenge, as per the memorandum of appeal. Having heard from the parties in the petition for appeal or scrutiny (if it has decided to hear submissions), the Court rules either to uphold the judgment or to overturn it, either fully or in part, and it issues its own judgment in that regard.

58. The Court of Appeal overturned the part of the first-instance judgment that required Mr. Al-Howaiti to pay the value of the stolen goods. The case was then referred to the Supreme Court, in accordance with article 10 of the Code, which provides that sentences of death issued or upheld by the Court of Appeal are not final until they are confirmed by the Supreme Court, and article 198, which provides that the convicted party, the public prosecutor or the civil party may make an application for cassation before the Supreme Court against judgments or rulings issued or upheld by the Courts of Appeal.

59. The Government notes that an application was filed on Mr. Al-Howaiti's behalf, which was accepted and was examined by five judges at the Supreme Court, in accordance with article 10 (4) of the Statutes of the Judiciary. The Government submits that the aforementioned procedures and safeguards are in accordance with international standards concerning a fair trial and due process of law, and with international safeguards guaranteeing protection of the rights of those facing the death penalty, including the content of Economic and Social Council resolution 1984/50.

60. With regard to the Working Group's call for the Government to ensure Mr. Al-Howaiti's physical and mental safety in the light of the current global coronavirus disease (COVID-19) pandemic, and to prioritize non-custodial measures at all stages of criminal

procedures, the Government submits that Mr. Al-Howaiti enjoys all his rights, receives the necessary medical care, similarly to other detainees and prisoners, and is in excellent health condition and does not suffer from any diseases. The Government adds that it was one of the first countries to take measures to confront the outbreak of COVID-19 in prisons and detention centres in accordance with the protocols and guidelines adopted by the Ministry of Health. The Government notes that it has taken specific measures at the national and district levels to ensure the safety of prison personnel and inmates, including through the creation of medical teams and health units in prisons, the training of employees and inmates, the use of tools developed by the Global Centre for Mass Gatherings Medicine at the Ministry of Health and the Saudi Centre for Disease Prevention and Control, and the continued examination of all detainees and prisoners to ensure their safety, free of charge and without discrimination on the basis of legal status.

61. Further, the Government notes that it held a virtual training course, in partnership with the United Nations Office on Drugs and Crime, for the countries of the Gulf Cooperation Council on the prevention and control of infectious diseases (including COVID-19) in prisons, and has implemented preventive measures to prevent the spread of the virus, including the testing of new prisoners, coordination with police stations to ensure that no prisoners are transferred without a medical report confirming that they are free of COVID-19, the expansion of amnesties to reduce the number of prisoners, the use of optical and thermal screening points in prisons, the use of remote trials and the daily sterilization and disinfection of prisons.

62. The Government also notes the issuance of a royal order on 4 April 2020 that suspended the implementation of final judgments and judicial orders related to the imprisonment of individuals convicted in civil cases and ordered the immediate temporary release of those imprisoned in the implementation of those provisions and orders. Reportedly, all individuals covered by the royal order have benefited from its provisions. The Government reminds the Working Group of its commitment to limiting the outbreak of COVID-19 and ensuring the safety of everyone in the Kingdom, and to human health.

63. The Government reiterates that the source's conclusions that Mr. Al-Howaiti's detention is arbitrary under categories I and III are clearly not valid, do not rely on correct legal foundations and are built on illegal justifications and false information.

64. The Government further notes that articles 188–192 referred to by the source as being from the Code of Criminal Procedure belong in fact to the Code of Criminal Procedure issued in 2001, which was replaced by the Code issued in 2013. The Government submits that since Mr. Al-Howaiti was charged with a crime that occurred in 2017, only the Code issued in 2013 applies in his case.

65. The Government recalls that it strives to cooperate with international human rights mechanisms by responding to letters, appeals and communications submitted to it, and clarifying all facts contained therein. The Government hopes that this cooperation will be matched by the commitment of these mechanisms, including that of the Working Group. The Government encourages the Working Group to take this information into account and seek accuracy and objectivity in reaching an opinion based in integrity, rather than relying on information received from the source and adopting the latter's personal opinion.

66. The Government concludes that the source's allegations and claims are incorrect, as evidenced by the measures taken in Mr. Al-Howaiti's case, which are consistent with and do not contradict international human rights standards, including the Government's obligations under the Convention on the Rights of the Child and the Convention against Torture.

67. Lastly, the Government wishes to remind the Working Group of the Code of Conduct for Special Procedure Mandate Holders of the Human Rights Council, adopted by the Council in its resolution 5/2 on 18 June 2007, and in particular their obligations under articles 6 (a)–(c), 9 (a) and (d)–(e), 12 (a)–(b) and 13 (a)–(b).

Additional comments from the source

68. On 8 October 2021 the Government's reply was sent to the source for additional comments, which it submitted on 15 October 2021.

69. The source submits that the Government's response fails to rebut the allegations raised in its initial complaint and does not fulfil the required burden of proof. The source asserts that the Government merely cites existing legislation without explaining how these laws were applied in Mr. Al-Howaiti's case or substantiating its statements with evidence, and that the mere existence of prohibitive legislation does not suffice as a rebuttal to the allegations of torture and the issues of due process raised. The source claims that the Government failed to provide any evidence that a warrant existed and was presented to Mr. Al-Howaiti at the time of his arrest, to refute the source's allegations of torture and ill-treatment, to provide evidence proving that Mr. Al-Howaiti's testimony was not credible, to substantiate its assertion that Mr. Al-Howaiti had confessed freely and without duress, and to address the delays in making Mr. Al-Howaiti aware of the full list of charges against him.

70. Further, the source submits that the Government has not acted in accordance with international human rights standards, including its obligations under the Convention against Torture and the Convention on the Rights of the Child, insofar as Mr. Al-Howaiti was held incommunicado for four months without access to counsel, was coerced into making a confession and was sentenced to death, all of which occurred when he was still a minor. The source also notes that the laws referred to in its submission were unchanged in their content by the 2013 Code, and that no outdated provisions were therefore relied upon in the source's analysis.

71. On 11 November 2021, the Working Group was informed that the Supreme Court had overturned Mr. Al-Howaiti's conviction and that he would now have to undergo a retrial.

Discussion

72. The Working Group thanks the source and the Government for their submissions.

73. In determining whether Mr. Al-Howaiti's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law 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.²¹

74. The source has argued that Mr. Al-Howaiti's detention is arbitrary and falls under categories I and III of the Working Group. The Government denies these allegations and argues that the arrest and subsequent detention of Mr. Al-Howaiti has been carried out in accordance with the national legislation of Saudi Arabia. The Working Group recalls that it has repeatedly stated in its jurisprudence that, even when the detention of a person is carried out in conformity with national legislation, it must ensure that the detention is also consistent with the relevant provisions of international law.²²

75. The Working Group shall proceed to examine the submissions under each of the categories.

Category I

76. The source has submitted that Mr. Al-Howaiti, a 14-year-old boy at the time, was arrested on 8 May 2017 when some 25 police officers broke into his home, ransacked it and arrested him without presenting a warrant. He was subsequently held incommunicado for some four months and throughout this time denied legal assistance.

77. The Government in turn states that Mr. Al-Howaiti was arrested only when investigations against him were complete and when there was an order for his arrest. However, the Working Group observes that the Government does not address the detailed submissions as to how the arrest of Mr. Al-Howaiti was executed, presents no justification for the level of force allegedly used during the arrest and does not explain when the arrest warrant was produced to Mr. Al-Howaiti. In this regard, the Working Group is particularly

²¹ A/HRC/19/57, para. 68.

²² See opinions No. 46/2011, No. 42/2012, No. 50/2017, No. 79/2017, No. 1/2018, No. 20/2018, No. 37/2018, No. 50/2018 and No. 86/2020.

mindful that Mr. Al-Howaiti was a mere 14-year-old at the time of the arrest, and it was therefore the duty of the officers to inform his parents or legal guardians of the reasons for his arrest and to produce the arrest warrant.

78. Moreover, the Working Group observes that the Government has chosen not to address the allegations that Mr. Al-Howaiti was held incommunicado following his arrest or the submission that he was denied legal assistance during this time. While the Government argues that Mr. Al-Howaiti's legal representative took part in the trial, it has not explained when Mr. Al-Howaiti was allowed legal assistance.

79. The Working Group has previously stated that, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.²³ The international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9 respectively of the Universal Declaration of Human Rights and article 37 (b) of the Convention on the Rights of the Child, as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²⁴ Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles.

80. The Working Group also recalls its previous jurisprudence concerning Saudi Arabia,²⁵ where it has consistently held that an arrest warrant, even assuming that it was issued by the Minister of the Interior or by delegated organs such as the Directorate of General Investigation, does not meet the requirement that any form of detention or imprisonment should be ordered by, or be subject to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. The Working Group reiterates its views that the Ministry of the Interior or its delegated organs cannot be considered as a competent authority in this respect. The Working Group once again stresses that any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial judicial authority is arbitrary and lacks legal basis.

81. In the present case, Mr. Al-Howaiti was arrested without a warrant, was not provided with the reasons for his arrest and was not promptly informed of the charges against him. The prosecution first informed him of the charges some four months after his arrest, and the official list of charges was issued only on 16 April 2018, nearly a year after his arrest. The Working Group therefore concludes that articles 3 and 9 of the Universal Declaration of Human Rights and article 40 (2) (b) (ii) of the Convention on the Rights of the Child were violated.

82. The Working Group notes with concern that it has received numerous complaints about incommunicado detention in Saudi Arabia by the General Directorate of Investigation, the Ministry of the Interior's domestic intelligence service doubling as a secret police agency, which has been nearly ubiquitous in the cases referred to the Working Group from Saudi Arabia for nearly three decades, since its first appearance in a decision by the Working Group at its eighth session, in 1993.²⁶ In the present case, the Working Group is particularly alarmed

²³ See opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018, No. 79/2018 and No. 86/2020.

²⁴ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. See also Arab Charter, art. 14 (1).

²⁵ See opinions No. 93/2017 and No. 10/2018.

²⁶ The Working Group found the deprivation of liberty of the person(s) concerned to be arbitrary in decisions No. 60/1993, No. 19/1995 and No. 48/1995, and in 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.

as Mr. Al-Howaiti was a mere 14-year-old boy at the time of his arrest and incommunicado detention.

83. The Working Group notes that incommunicado detention effectively places the victims outside the protection of the law and deprives them of any legal safeguards. It recalls that no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus.²⁷

84. Indeed, such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the victims or to acknowledge their detention, lacks any valid legal basis and is inherently arbitrary as it places the victims outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.²⁸ The Working Group thus finds a further breach of Mr. Al-Howaiti's rights under articles 3, 6 and 9 of the Universal Declaration of Human Rights and articles 37 (b) and 40 (1) of the Convention on the Rights of the Child.

85. Moreover, as the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court.²⁹ The Working Group notes that Mr. Al-Howaiti was not brought promptly before a judge or afforded the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention. In fact, he was not brought before a judicial authority until 19 May 2017, an allegation which has not been contested by the Government. He was also denied legal assistance from the moment of his arrest, in contravention of article 40 (2) (b) (ii) of the Convention on the Rights of the Child, which adversely affected his ability to challenge the legality of his detention. The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty,³⁰ and is essential in ensuring that detention has a legal basis. Given that Mr. Al-Howaiti was not able to challenge the legality of his detention, his rights under articles 8 and 10 of the Universal Declaration of Human Rights and article 37 (b) of the Convention on the Rights of the Child were also violated.

86. Noting all the above, the Working Group therefore considers that Mr. Al-Howaiti's arrest and detention violate articles 3, 6, 8, 9 and 10 of the Universal Declaration of Human Rights, lack a legal basis and are thus arbitrary under category I.

Category III

87. The source has argued that Mr. Al-Howaiti was denied legal assistance. While the Government has stated that Mr. Al-Howaiti's legal representative was present during the trial, it has failed to address the specific allegations that legal assistance was denied from the outset of detention and during his four months of incommunicado detention. In particular, the Working Group is concerned at the uncontested allegations that he was interrogated in the absence of a lawyer.

88. The Working Group therefore considers the source's allegations as credible and finds that the absence of Mr. Al-Howaiti's legal counsel violated his right to legal assistance as part of his right to a fair trial and due process under articles 10 and 11 (1) of the Universal

18/2011, No. 19/2011, No. 30/2011, No. 31/2011, No. 33/2011, No. 41/2011, No. 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, No. 68/2018, No. 22/2019, No. 26/2019, No. 56/2019, No. 71/2019, No. 33/2020 and No. 86/2020. The Working Group did not find the detention of the person concerned to be arbitrary in opinion No. 44/2006, and it filed the case after the release of the detainee(s) in decision No. 37/1993 and opinions No. 22/2005 and No. 18/2014.

²⁷ [A/HRC/16/47](#) and [A/HRC/16/47/Corr.1](#), para. 54.

²⁸ See the Declaration on the Protection of All Persons from Enforced Disappearance; and opinions No. 56/2019 and No. 33/2020. See also Arab Charter, art. 22.

²⁹ See opinions No. 28/2016, No. 79/2017, No. 93/2017, No. 33/2020 and No. 86/2020.

³⁰ 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 ([A/HRC/30/37](#)), para. 3.

Declaration of Human Rights, article 40 (2) (b) (ii) of the Convention on the Rights of the Child and principles 17 and 18 of the Body of Principles.

89. Furthermore, the Working Group notes with the gravest concern the allegations of the treatment to which Mr. Al-Howaiti, a child merely 14 years of age, was subjected, which the source submits amounted to torture and was directed at extracting a confession. The Working Group notes that the Government has merely dismissed these allegations as untrue, without providing any specific details as to what steps the judicial and other authorities undertook to investigate them.

90. The Government also submits that confessions made by Mr. Al-Howaiti were entirely voluntary. However, the Working Group has already established, and the Government has not contested, that the confessions were provided while Mr. Al-Howaiti was being held incommunicado, without access to a lawyer, during interrogations without a lawyer. As the Working Group has previously stated, the presence of legal counsel during interrogations is an essential safeguard in ensuring that any admissions by an individual are given freely. The Working Group considers that confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.³¹

91. In the present case, not only was Mr. Al-Howaiti subjected to very serious ill-treatment while he was being interrogated in the absence of his lawyer, but the judge took no action when he brought this ill-treatment to the court's attention during his second hearing, on 13 June 2017. The admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.³² The burden is on the Government to prove that statements were given freely, but in this case it has not done so.

92. The Working Group therefore finds a violation of Mr. Al-Howaiti's fundamental fair trial rights, including the right to be presumed innocent and the right not to confess guilt, under articles 10 and 11 of the Universal Declaration of Human Rights and article 40 (2) (b) (i) and (iv) of the Convention on the Rights of the Child. The Working Group also notes that the use of a confession extracted through ill-treatment is tantamount if not equivalent to torture and may constitute a violation by Saudi Arabia of its international obligations under article 15 of the Convention against Torture and article 37 (a) of the Convention on the Rights of the Child. Furthermore, principle 21 of the Body of Principles specifically prohibits taking undue advantage of the situation of detention to compel confession or incriminating statements. The Working Group refers the present case to 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, for appropriate action.

93. The Working Group notes the numerous pieces of exculpatory evidence and even an alibi that have been presented by the source (see paras. 19–20 above), which the Government has chosen not to address at all. The Working Group has consistently held that it does not fall within its mandate to reassess the sufficiency of the evidence or deal with errors of law allegedly committed by a domestic court.³³ However, in the present case, it feels obliged to place on record its very serious doubts over the overall fairness of the proceedings against Mr. Al-Howaiti, given the credible submissions by the source indicating that Mr. Al-Howaiti could not have committed the alleged crimes, and noting that, as established above, Mr. Al-Howaiti was tortured into a confession that was subsequently admitted as evidence in the proceedings.

94. Lastly, the Working Group notes the uncontested allegations that Mr. Al-Howaiti was held in pretrial detention from the moment of his arrest on 8 May 2017 until he was sentenced on 30 October 2019. While the Government, in its reply, has argued that Mr. Al-Howaiti was only arrested once evidence against him had been gathered, it has provided no explanation as to the delay in bringing the case to trial, and there is no evidence that the conduct of the

³¹ [A/HRC/45/16](#), para. 53. See also opinions No. 40/2012, No. 1/2014, No. 14/2019 and No. 59/2019; and [E/CN.4/2003/68](#), para. 26 (e).

³² Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

³³ See opinion No. 15/2017.

accused could have served as a reason for such a delay. In these circumstances, and especially noting Mr. Al-Howaiti's young age, the Working Group finds a breach of article 10 of the Universal Declaration of Human Rights.

95. Given all the above considerations, the Working Group concludes that the violations of Mr. Al-Howaiti's right to a fair trial and due process are of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

Concluding remarks

96. Although the Working Group has been informed that the Supreme Court has overturned Mr. Al-Howaiti's conviction and ordered a retrial, the Working Group is deeply disturbed that the death penalty was imposed originally. The Working Group is especially concerned that the courts appear to have ignored Mr. Al-Howaiti's very young age, in breach of article 37 (a) of the Convention on the Rights of the Child. The Working Group refers the case to the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on Violence against Children, for appropriate action.

97. The Working Group notes that the allegations against Mr. Al-Howaiti concern the killing of a police officer, and it wishes to underline that the present opinion is adopted without prejudice to the guilt or otherwise of Mr. Al-Howaiti or anyone else. The Working Group appeals to the Government of Saudi Arabia to treat Mr. Al-Howaiti as a child, with the fullest adherence to its obligations as a State party to the Convention on the Rights of the Child.

98. In its 30-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in over 65 cases.³⁴ The Working Group reiterates its concern that this indicates a widespread or systemic problem of arbitrary detention in Saudi Arabia, which amounts to a serious violation of international law. 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.³⁵

99. The Working Group welcomes the voluntary pledges pursuant to General Assembly resolution 60/251 concerning the Human Rights Council by Saudi Arabia.³⁶ In particular, the Working Group lauds the expressed willingness of the Government to cooperate with the Human Rights Council and its various mechanisms including the special procedures. In the light of this, and recalling its request for a country visit reiterated on 24 August 2021, the Working Group would welcome the opportunity, at the Government's earliest convenience, to conduct a visit to Saudi Arabia in order to engage with the Government in a constructive manner and to offer its assistance in addressing its serious concerns regarding instances of arbitrary deprivation of liberty.

³⁴ 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. 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, No. 68/2018, No. 22/2019, No. 26/2019, No. 56/2019, No. 71/2019, No. 33/2020, No. 86/2020, No. 92/2020 and No. 34/2021.

³⁵ [A/HRC/13/42](#), para. 30; and 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.

³⁶ See [A/75/377](#).

Disposition

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

The deprivation of liberty of Abdullah al-Howaiti, being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

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

102. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Howaiti immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate and unconditional release of Mr. Al-Howaiti.

103. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Al-Howaiti and to take appropriate measures against those responsible for the violation of his rights.

104. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on Violence against Children, for appropriate action.

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

Follow-up procedure

106. 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 Mr. Al-Howaiti has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Al-Howaiti;
- (c) Whether an investigation has been conducted into the violation of Mr. Al-Howaiti's rights and, if so, the outcome of the investigation;
- (d) 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;
- (e) Whether any other action has been taken to implement the present opinion.

107. 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.

108. 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.

109. 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.³⁷

[Adopted on 18 November 2021]

³⁷ Human Rights Council resolution 42/22, paras. 3 and 7.