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Working Group on Arbitrary Detention

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Opinion No. 59/2021 concerning Salman bin Abdulaziz bin Salman Al Saud and Abdulaziz bin Salman bin Mohammad Al Saud (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 13 January 2021 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Salman bin Abdulaziz bin Salman Al Saud and Abdulaziz bin Salman bin Mohammad Al Saud. The Government has not replied to the communication. 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,

¹ [A/HRC/36/38](#).

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. Salman bin Abdulaziz bin Salman Al Saud is a national of Saudi Arabia born in 1982. He is also known as Salman Ghazalan and is a member of the Saudi royal family. He holds a doctorate in law from Paris-Sorbonne University. He has been involved in diplomatic activities, which have allowed him to build connections with foreign leaders and diplomats. He is the cousin of the Crown Prince of Saudi Arabia, Mohamad bin Salman.

5. Abdulaziz bin Salman bin Mohammad Al Saud is a national of Saudi Arabia born in 1959 and a member of the Saudi royal family. He is the father of Mr. Salman Al Saud.

a. Context

6. The source reports that, after King Abdullah bin Abdulaziz Al Saud died in 2015 and King Salman Bin Abdulaziz Al-Saud acceded to the throne, Mohamad bin Salman was appointed Crown Prince in June 2017. Three months later, the Saudi authorities allegedly began cracking down on individuals perceived to be opponents of the Crown Prince. According to the source, by January 2019, more than 380 individuals, including intellectuals, clerics, human rights defenders and members of the royal family, had been arrested, and many of them continue to be detained without charge.

b. Arrest and detention

7. The source reports that, on 4 January 2018, Mr. Salman Al Saud was asked to report to the Saudi royal palace, where around 30 other members of the royal family had gathered. The source adds that those members of the royal family had gone to the royal palace in order to enquire about the reasons behind the arrest of another member of the royal family who was a close relative of those present.

8. After arriving at the palace at around 4 a.m., Mr. Salman Al Saud and other members of the royal family were allegedly beaten by a group of 20 guards, in the presence of a close adviser of the Crown Prince. According to the source, the latter had ordered the beatings.

9. Mr. Salman Al Saud was reportedly arrested, alongside 10 other members of the royal family, the rest of whom were all released a few months later. Due to his injuries from the physical beatings, Mr. Salman Al Saud was no longer able to walk, and he had to be treated in hospital in Riyadh, where he remained for two weeks.

10. According to the source, on 5 January 2018, at 8.30 p.m., around 50 police officers raided the house of Mr. Salman Al Saud's father, Mr. Abdulaziz Al Saud, who was not there at the time. They broke all the security cameras in the house, as they waited for him to return home. When he came home an hour later, they immediately arrested him and took him away. The officers were reportedly heavily armed and were wearing masks that covered their faces.

11. At the time of their arrests, neither Mr. Salman Al Saud, nor his father, Mr. Abdulaziz Al Saud, were presented with arrest warrants or given the reasons for their arrests. According to the source, Mr. Salman Al Saud may have been arrested due to the Crown Prince's feelings of resentment towards him, given that Mr. Salman Al Saud is well-known and respected.

12. After spending two weeks in the hospital, Mr. Salman Al Saud was reportedly transferred to Al Ha'ir prison in Riyadh. His father was immediately transferred there, after his arrest on 5 January 2018. Both men were reportedly detained incommunicado during the first seven months, after which they were able to contact their family for the first time. The source adds that, despite their family's attempts to locate them, the authorities never acknowledged that they were held in Al Ha'ir prison. In addition, Messrs. Salman and Abdulaziz Al Saud were placed in solitary confinement throughout their detention in the prison.

13. In mid-January 2019, after spending over 12 months in Al Ha'ir prison, the two men were transferred to a villa in Riyadh, where they were placed under house arrest under a high level of security surveillance. The source adds that the villa belongs to the Saudi authorities and is constantly guarded by at least 10 members of the Saudi Arabian National Guard, the police and the Saudi Arabian Royal Guard.

14. The source reports that, on 27 March 2020, Mr. Salman Al Saud was taken from the villa and transferred to an unknown location for two months, after which he was returned to the same villa. It is still unknown where Mr. Salman Al Saud was taken and for what reasons. Other than contact with their immediate family, the two men have had no means of communication with the outside world. The source notes that there was also a period, in mid-October 2020, when Mr. Salman Al Saud was denied calls to his family.

15. According to the source, following the arrests of Messrs. Salman and Abdulaziz Al Saud, several members of the European Parliament sent letters to the Saudi authorities expressing concern over Mr. Salman Al Saud's arrest. On 29 September 2020, a member of European Parliament reportedly sent a letter to the Crown Prince, expressing concern that the two men had allegedly been held arbitrarily for 1,000 days, without any legal basis, and calling for their immediate and unconditional release. The Chair of the European Parliament Subcommittee on Human Rights also sent a letter to the Crown Prince, expressing concern over the conditions surrounding the detention of Messrs. Salman and Abdulaziz Al Saud and asking for their release. The source adds that the French authorities have also been informed of Mr. Salman Al Saud's arrest and detention. To date, however, the diplomatic efforts by the French authorities and the European Parliament to secure the release of the two men have reportedly yielded no result.

16. The source reports that, although three years have elapsed since their arrest, no charges have been brought against Messrs. Salman and Abdulaziz Al Saud. They have not been interrogated by a law enforcement authority about any criminal offence.

17. The source also reports that, on 28 November 2020, Messrs. Salman and Abdulaziz Al Saud were taken away from the villa where they had been held under house arrest, to an unknown location. They have been disappeared since that time, and their family have been denied information on their fates and whereabouts.

c. Analysis of violations

18. In the light of the information set out above, the source submits that the arrests and detention of Mr. Salman and Mr. Abdulaziz Al Saud is arbitrary, falling within categories I and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. Following a period of incommunicado detention, they were held under house arrest in Riyadh until their disappearance on 28 November 2020. In that regard, the source recalls that the Working Group has affirmed in its deliberations that without prejudging the arbitrary character or otherwise of the measure, house arrest may be compared to deprivation of liberty, provided that it is carried out in closed premises which the person is not allowed to leave.²

i. Lack of legal basis for detention

19. The source submits that Messrs. Salman and Abdulaziz Al Saud were arrested without a warrant and have not been informed of the reasons for their arrests.

20. The source refers to article 36 of the Basic Law of Governance of Saudi Arabia, whereby no one may be confined, arrested or imprisoned without reference to the law. The source also refers to principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose. The source further refers to principle 10 of the Body of Principles, which states that anyone who is arrested shall be

² See deliberation No. 1 (E/CN.4/1993/24, sect. II).

informed at the time of his or her arrest of the reason for the arrest and shall be promptly informed of any charges against him or her.

21. The source adds that, although the Body of Principles and the Basic Law of Governance of Saudi Arabia protect individuals from being subject to arbitrary detention, those guarantees were never afforded to Messrs. Salman and Abdulaziz Al Saud. Because the authorities responsible for their arrest and detention never presented them with an arrest warrant or informed them of the justification for their arrest, the source submits that their detention is in clear violation of the Basic Law of Governance and principles 2 and 10 of the Body of Principles.

ii. Violation of the right to be promptly brought before a judicial authority

22. The source submits that, to date, Messrs. Salman and Abdulaziz Al Saud have not been brought before any judicial authority and have not been informed of the charges brought against them.

23. The source notes that, according to article 14 (5) of the Arab Charter on Human Rights, to which Saudi Arabia is a party, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial, within a reasonable time frame, or to be released. The source also refers to principle 11 of the Body of Principles, which states that a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.

24. The source therefore submits that the Saudi authorities' arrest and detention of Messrs. Salman and Abdulaziz Al Saud stand in clear violation of the right to be brought promptly before a judicial authority, as set out in article 14 (5) of the Arab Charter on Human Rights and principle 11 of the Body of Principles.

iii. Secret detention

25. The source submits that, for the first seven months after their arrests, Messrs. Salman and Abdulaziz Al Saud were held in secret detention. During that time, the authorities did not recognize their detention in Al Ha'ir prison, their whereabouts were unknown, and they were unable to contact their family or a lawyer.

26. The source refers to deliberation No. 1 of the Working Group, in which it noted that secret and/or incommunicado detention constituted the most heinous violation of the norm protecting the right to liberty of human beings under customary international law.³ In that regard, the source also refers to previously adopted opinions of the Working Group, in which it has stated that holding a person incommunicado is not permitted under international human rights law, because it breaches the right to challenge the lawfulness of detention before a judge⁴ and maintained that incommunicado detention is impermissible under articles 8, 10 and 11 of the Universal Declaration of Human Rights.⁵

27. The source recalls that placing detainees under secret detention, outside the protection of the law, is a prima facie form of arbitrary detention and constitutes a violation of article 6 of the Universal Declaration of Human Rights, which provides that everyone has the right to recognition everywhere as a person before the law.⁶

iv. Continuous denial of the right to habeas corpus

28. The source submits that, due to their being held in secret detention, Messrs. Salman and Abdulaziz Al Saud were prevented from challenging the lawfulness of their detention and were thereby deprived of their right to habeas corpus. In addition, the denial of the right to habeas corpus reportedly continued after their placement under house arrest.

³ Deliberation No. 9 (A/HRC/22/44, sect. III), para. 60.

⁴ Opinion No. 46/2017, para. 22.

⁵ Opinion No. 10/2018, para. 48.

⁶ See also opinion No. 93/2017, para. 48.

29. The source refers to article 14 (6) of the Arab Charter on Human Rights, whereby anyone who is deprived of his or her liberty by arrest or detention shall be entitled to proceedings before a court, in order that a court may decide without delay on the lawfulness of his or her arrest or detention, and order his or her release. In addition, reference is made to principle 32 of the Body of Principles, which stipulates that a detained person or his or her counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his or her detention in order to obtain his or her release without delay, if it is unlawful.

30. Throughout their detention, however, whether in Al Ha'ir prison or under house arrest, Messrs. Salman and Abdulaziz Al Saud have reportedly continuously been denied any proceedings before a court that may have decided on the lawfulness of their arrest and detention.

31. The source submits that the continuous denial of their right to habeas corpus is in violation of articles 8, 10 and 11 of the Universal Declaration of Human Rights, principle 32 of the Body of Principles and article 14 (6) of the Arab Charter on Human Rights.

v. Prolonged detention without legal basis

32. The source submits that, throughout the detention of the two men, whether in Al Ha'ir prison or under house arrest, the authorities have not invoked any legal basis justifying their arrests, in clear violation of article 11 (2) of the Universal Declaration of Human Rights, which states that no one shall be held guilty of any penal offence on account of any act or omission which does not constitute a penal offence, under national or international law, at the time when it was committed.

33. The source also refers to article 35 of the Law on Criminal Procedure of Saudi Arabia, whereby no person shall be arrested or detained except on the basis of order from the competent authority, and persons shall also be advised of the reasons of their detention and shall be entitled to communicate with any person of their choosing to inform him or her of their arrest.

34. The source argues that, even three years after their arrests, Messrs. Salman and Abdulaziz Al Saud have not yet been informed of the justification or the legal basis behind their arrests and detention, in contravention of article 11 (2) of the Universal Declaration of Human Rights.

35. Given the above-mentioned information, the source submits that the deprivation of liberty of Messrs. Salman and Abdulaziz Al Saud should be characterized as arbitrary under category I, because it lacks any legal basis.

vi. Violation of the right to legal assistance

36. The source submits that Messrs. Salman and Abdulaziz Al Saud have been denied access to legal counsel, from the time of their arrest to date. The source refers to principle 9 of 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,⁷ whereby all persons deprived of their liberty shall have the right to legal assistance by counsel of their choosing, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons shall be promptly informed of that right.

37. The source adds that, although Messrs. Salman and Abdulaziz Al Saud are not currently on trial, the Saudi authorities have violated their right to legal assistance. The authorities reportedly never informed them of their right to legal assistance, nor have they allowed either of them to contact a lawyer. The source submits that, in the event of a trial, that violation of their right to legal assistance would seriously impede their ability to prepare their defence, in violation of principle 9 of the Basic Principles and Guidelines.⁸

⁷ A/HRC/30/37.

⁸ Ibid., para. 32.

38. The source submits that the two men have been denied contact with the outside world, beyond their immediate family, and that, three years after their arrest, they continue to be denied access to legal assistance, in violation of principles 17, 18 and 19 of the Body of Principles and principle 9 of the Basic Principles and Guidelines.

vii. Violation of the right not to be subjected to torture

39. The source refers to article 35 of the Law on Criminal Procedure of Saudi Arabia, whereby all detained or arrested persons shall be treated decently and shall not be subjected to any bodily or moral harm. Nevertheless, when Mr. Salman Al Saud was at the royal palace before being arrested, he was allegedly beaten unconscious, in the presence, and on the orders of, the adviser to the Crown Prince. As a result, he had to be treated in hospital for two weeks.

40. The source adds that Messrs. Salman and Abdulaziz Al Saud were held in solitary confinement for one year, when detained in Al Ha'ir prison. The source refers to the observations on communications transmitted to Governments and replies received with regard to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in which he stated that prolonged or indefinite periods of solitary confinement amounted to torture.⁹ Such practices also contradict rules 43 and 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

41. The source submits that, in subjecting Messrs. Salman and Abdulaziz Al Saud to ill-treatment and practices that amount to torture, the Saudi authorities violated the absolute prohibition of torture, as enshrined in article 8 of the Arab Charter on Human Rights and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

viii. Violation of the right to be tried without undue delay

42. According to the source, Messrs. Salman and Abdulaziz Al Saud have not yet been tried or informed of a trial date, despite the fact that they have been detained for three years, leading to a prolonged state of uncertainty about their fates.

43. Considering the absence of a scheduled date for a trial, and in the absence of an indictment, the source submits that the prolonged detention of Messrs. Salman and Abdulaziz Al Saud therefore constitutes a manifest violation of the right to be tried without undue delay, as guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights.

44. The source therefore submits that the deprivation of liberty of Messrs. Salman and Abdulaziz Al Saud should be characterized as arbitrary under category III, due to the non-observance of the international norms relating to the right to a fair trial.

Response from the Government

45. On 13 January 2021, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting that the Government provide it with detailed information by 15 March 2021 about the current situation of Messrs. Salman and Abdulaziz Al Saud and clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Saudi Arabia under international human rights law. The Working Group also called upon the Government of Saudi Arabia to ensure their physical and mental integrity.

46. The Working Group regrets that the Government of Saudi Arabia has not responded to the Committee's request for information. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

47. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

⁹ The source refers to [A/HRC/31/57/Add.1](#).

48. As a preliminary issue, the Working Group takes note of the submission by the source, which has not been contested by the Government, that, after spending 12 months in Al Ha'ir prison, Messrs. Salman and Abdulaziz Al Saud were transferred to a villa in Riyadh in mid-January 2019, where they were placed under house arrest under a high level of security surveillance. The source adds that the villa, which belongs to the Saudi authorities, is constantly guarded by at least 10 members of the National Guard, the police and the Royal Guard. On 28 November 2020, the source notes that the two men were reportedly taken away from the villa where they were held under house arrest, to an unknown location, and that they have been disappeared since then.

49. Given that not every house arrest amounts to a deprivation of liberty,¹⁰ the Working Group recalls that an assessment must be carried out in each individual case. As the Working Group has stated, deprivation of liberty is not only a question of legal definition, but also of fact. If the person concerned is not at liberty to leave, then all the appropriate safeguards that are in place to guard against arbitrary detention must be respected.¹¹ Moreover, the Working Group has maintained that house arrest amounts to a deprivation of liberty, provided that it is carried out in closed premises which the person is not allowed to leave.¹² In determining whether that is the case, the Working Group considers whether there are limitations placed on the person's physical movements, ability to receive visits from others and various means of communication, as well as the level of security around the place where the person is allegedly detained.¹³

50. In the present case, the source has alleged, and the Government does not contest, that, for a period of almost two years, Messrs. Salman and Abdulaziz Al Saud were placed under house arrest under a high level of security surveillance, and they were unable to leave the place at will. It is also not contested that they spent 12 months in Al Ha'ir prison prior to being placed under house arrest and that they subsequently disappeared. The Working Group therefore considers that their situation under house arrest amounted to that of deprivation of liberty, and that there has been a continuous period of deprivation of liberty from their initial arrests on 4 and 5 January 2018, as at the time of issuance of the present opinion.

51. In determining whether the detention of Messrs. Salman and Abdulaziz Al Saud is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹⁴ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

52. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the right to liberty of person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set out in the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other applicable international and regional instruments.¹⁵ Consequently, even if the detention is in conformity with national legislation,

¹⁰ See, for example, opinion No. 37/2018.

¹¹ [A/HRC/36/37](#), para. 56.

¹² See, for example, opinions No. 37/2018 and No. 13/2007; and deliberation No. 1 ([E/CN.4/1993/24](#), sect. II).

¹³ See, for example, opinion No. 16/2011, para. 7. See also opinions No. 39/2013, No. 30/2012, No. 12/2010, No. 47/2006, No. 18/2005, No. 11/2005, No. 11/2001, No. 4/2001, No. 41/1993 and No. 21/1992.

¹⁴ [A/HRC/19/57](#), para. 68.

¹⁵ See, inter alia, General Assembly resolution 72/180, preambular para. 5; and Human Rights Council resolutions 41/2, preambular para. 2; 41/6, para. 5 (b); 41/10, para. 6; 41/17, preambular para. 1; 43/26, preambular para. 13; 44/16, preambular para. 25; 45/19, preambular para. 9; 45/20, preambular para. 2; 45/21, preambular para. 3; and 45/29, preambular para. 3. See also Commission on Human Rights resolutions 1991/42, para. 2; and 1997/50, para. 15; Human Rights Council resolutions 6/4, para.

regulations and practices, the Working Group is entitled, and indeed obliged, to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.¹⁶

53. The source has argued that the detention of Messrs. Salman and Abdulaziz Al Saud is arbitrary and falls under categories I and III. The Working Group will proceed to examine each of the allegations in turn.

(a) Category I

54. The Working Group notes that, from 4 January 2018, when Mr. Salman Al Saud was first asked to report to the Saudi royal palace, where he and other members of the royal family were allegedly beaten by a group of 20 guards, in the presence of a close adviser of the Crown Prince, he has not been formally given the charges that justified his summoning and subsequent arrest, alongside 10 other members of the royal family, the rest of whom were released a few months later.

55. According to the source, the raid of the house of Mr. Salman Al Saud's father, Mr. Abdulaziz Al Saud, on the night of 5 January 2018, conducted by 50 heavily armed and masked police officers, and Mr. Abdulaziz Al Saud's subsequent arrest, were done with no arrest or search warrants, or reason for the action, being given.

56. Following a two-week period of hospitalization after the beating he had received, Mr. Salman Al Saud was reportedly transferred to Al Ha'ir prison in Riyadh, whereas his father was immediately transferred there, after his arrest on 5 January 2018. The incarceration of both men at that facility was reportedly incommunicado for the first seven months of their detention, after which they were able to contact their family.

57. Regrettably, the Government has not responded to the allegations that the arrest was executed by dozens of officers, who were heavily armed and masked and who broke into Mr. Abdulaziz Al Saud's residence during the night. There is no evidence or any suggestion whatsoever that either of the men had attempted to evade the authorities or in any way to obstruct the execution of an arrest and, as such, the manner in which the arrest was executed was excessive and clearly disproportionate to what was necessary. Those circumstances are exacerbated by the fact that, according to the available information from the source, there were no warrants authorizing the arrests. The Working Group has found, in a series of recent cases relating to Saudi Arabia, that arrest warrants were not presented at the time of the arrests concerned, which further bolsters the credibility of the source's claims.¹⁷

58. Although the requirement of prompt information is not to be equated with the requirement to provide information at the time of the arrest, in the present case, the Working Group notes that, since their respective arrests, Messrs. Salman and Abdulaziz Al Saud have not been informed of the reasons for their arrests. In order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest, the authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant. The Saudi authorities should have informed Messrs. Salman and Abdulaziz Al Saud of the reasons for their arrests at the time of arrest, and informed them of the charges against each of them promptly. The Working Group finds a violation of their right to be informed of the reasons for arrest, and the charges against them, which is integral to establishing the legal basis for their arrests and detention, as well as to ensuring their fundamental fair trial rights.

1 (a); and 10/9, para. 4 (b); and Working Group opinions No. 41/2014, para. 24; No. 3/2018, para. 39; No. 18/2019, para. 24; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

¹⁶ See opinions No. 1/1998, para. 13; No. 82/2018, para. 25; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

¹⁷ Opinions 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.

On that basis, the Working Group finds violations of article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles.

59. In the present case, the source alleges, and the Government does not refute, that more than three years after their arrests, Messrs. Salman and Abdulaziz Al Saud have not yet been informed of the justification for, or the legal basis behind, their arrests and detention, in contravention of article 11 (2) of the Universal Declaration of Human Rights. The Working Group takes note of the allegation by the source that, following the arrests of the two men, they were held in secret detention for the first seven months. During that time, the authorities did not recognize their detention in Al Ha'ir prison, their whereabouts were unknown, and they were unable to contact their family or a lawyer.

60. The Working Group considers that to be a grave allegation and, in the absence of any response from the Government, finds that Messrs. Salman and Abdulaziz Al Saud were initially detained in circumstances that amount to an enforced disappearance. The source adds that, after a period of house arrest, the men have allegedly disappeared again (see paras. 17 and 18 above). In so finding, the Working Group has taken note of the criteria used for determining whether an enforced disappearance has occurred, as set out in the Declaration on the Protection of All Persons from Enforced Disappearance, and the constitutive elements of the offence defined by the Working Group.¹⁸ The Working Group notes that enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.¹⁹ The Working Group therefore refers the present matter to the Working Group on Enforced or Involuntary Disappearances.

61. The Working Group recalls that placing detainees under secret detention, outside the protection of the law, is a *prima facie* form of arbitrary detention and constitutes a violation of article 6 of the Universal Declaration of Human Rights.²⁰ The Working Group also recalls that secret and/or incommunicado detention is not permitted under international human rights law, because it breaches the right to challenge the lawfulness of detention before a judge, and is in violation of articles 6, 8, 10 and 11 of the Universal Declaration of Human Rights.²¹ It is also a breach of principle 32 of the Body of Principles.

62. The Working Group observes that Messrs. Salman and Abdulaziz Al Saud were not brought promptly before a judge, within 48 hours of arrest, barring absolutely exceptional circumstances, as is the international standard set out by the Working Group.²²

63. The Working Group has consistently held that, in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court.²³ The Working Group wishes to recall that, according to the Basic Principles and Guidelines, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserving legality in a democratic society.²⁴ That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty²⁵ and to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention and detention under counter-terrorism measures.²⁶

64. The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty²⁷ and is essential in ensuring that detention has a legal basis. Given that Messrs. Salman and Abdulaziz Al Saud were not able to challenge their continued

¹⁸ A/HRC/16/48/Add.3, para. 21.

¹⁹ See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020.

²⁰ See, *inter alia*, opinion No. 93/2017, para. 48.

²¹ See opinions No. 46/2017, para. 22; and No. 10/2018, para. 48.

²² 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.

²³ See, for example, opinions No. 1/2017, No. 6/2017, No. 8/2017, No. 30/2017, No. 2/2018, No. 4/2018, No. 42/2018, No. 43/2018, No. 79/2018 and No. 49/2019.

²⁴ A/HRC/30/37, annex, paras. 2–3.

²⁵ *Ibid.*, para. 11.

²⁶ *Ibid.*, para. 47 (a).

²⁷ A/HRC/30/37, annex, para. 3.

detention, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights was also violated.

65. The Working Group therefore concludes that the deprivation of liberty of Messrs. Salman and Abdulaziz Al Saud is arbitrary under category I, because it lacks a legal basis.

(b) Category III

66. The Working Group notes that the source alleges, and the Government does not refute, that Messrs. Salman and Abdulaziz Al Saud have been denied access to legal counsel, from the time of their arrest to date. The source adds that, although they are not currently on trial, the Saudi authorities have violated their right to legal assistance.

67. In the Working Group's view, the Government of Saudi Arabia has failed to respect the right of the two men to legal assistance at all times, which is inherent in the right to liberty and security of person and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and principles 15, 17 and 18 of the Body of Principles.

68. The Working Group recalls that persons deprived of their liberty should have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension.²⁸ Upon apprehension, all persons should be promptly informed of that right.²⁹ The Working Group also recalls that, in order to ensure an effective exercise of the right to challenge the legality of detention before a court, anyone detained should have access, from the moment of arrest, to legal assistance of their own choosing, as stipulated in principle 9 of the Basic Principles and Guidelines. The right to legal assistance also entitles persons deprived of liberty to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information.³⁰

69. The Working Group considers that those violations substantially undermined the capacity of Messrs. Salman and Abdulaziz Al Saud to defend themselves in any subsequent judicial proceedings.³¹ The Working Group notes that the present case is another example of legal representation being denied to, or limited for, individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Saudi Arabia.³²

70. The source has alleged, and the Government has chosen not to rebut, that, before being arrested, Mr. Salman Al Saud was allegedly beaten unconscious at the royal palace, in the presence, and on the orders of, the adviser to the Crown Prince. As a result, he had to be treated in hospital for two weeks. The source submits that Messrs. Salman and Abdulaziz Al Saud were held in solitary confinement for a period of one year, when detained in Al Ha'ir prison.

71. The Working Group finds that the source's allegations are credible and recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, whereby some of the harmful psychological effects of isolation can become irreversible,³³ or incommunicado detention in a secret place, may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁴

²⁸ See [A/HRC/30/37](#), annex. See also [A/HRC/45/16](#), paras. 50–55.

²⁹ [A/HRC/30/37](#), annex, para. 12.

³⁰ *Ibid.*, para. 14.

³¹ *Ibid.*, paras. 12, 15, 67 and 71.

³² Opinions 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.

³³ [A/63/175](#), para. 56; and [A/66/268](#), para. 61. Likewise, rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) refers to solitary confinement for a time period in excess of 15 consecutive days as being prolonged solitary confinement.

³⁴ [A/56/156](#), para. 14.

72. The Working Group recalls that torture or ill-treatment of detainees is not only a grave violation of human rights, but it also seriously undermines the fundamental principles of a fair trial, given that it can compromise the ability to defend oneself, especially in the light of the right not to be compelled to testify against oneself or to confess guilt.³⁵ The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

73. The source alleges, and the Government has chosen not to rebut, that Messrs. Salman and Abdulaziz Al Saud have not yet been tried, nor have they been informed of an upcoming trial date, despite the fact that they have been detained for close to four years, leading to a prolonged state of uncertainty about their fates. The Government had the opportunity to inform the Working Group of any upcoming trial against either of the two men, and it has chosen not to do so. The Working Group therefore notes that there does not appear to be any intention of bringing the men to trial at all, and it is concerned that that may lead to a state of de facto indefinite detention. The Working Group finds that the prolonged detention of Messrs. Salman and Abdulaziz Al Saud constitutes a serious violation of the right to be tried without undue delay, guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights.

74. Consequently, noting all of the information above, the Working Group considers that the violations of the right of Messrs. Salman and Abdulaziz Al Saud to a fair trial were of such a gravity as to give their detention an arbitrary character, falling under category III.

(c) Category V

75. Although the source has not argued that the detention of Messrs. Salman and Abdulaziz Al Saud is arbitrary under category V, the Working Group takes note of the allegation by the source that, in 2017, the Saudi authorities initiated a crackdown on individuals perceived to be opponents of the Crown Prince, including members of the royal family. The source submits that Mr. Salman Al Saud was severely beaten by a group of 20 guards and arrested alongside 10 other members of the royal family. The source adds that Mr. Salman Al Saud may have been arrested due to the Crown Prince's feelings of resentment towards him, given that Mr. Salman Al Saud is well-known and respected. The source also reports that Mr. Abdulaziz Al Saud was arrested in a raid conducted by 50 heavily armed and masked police officers wearing face coverings. The Government had the opportunity to respond to those allegations, but it has chosen not to do so.

76. In the absence of any response from the Government, the Working Group notes that there is no evidence, or any suggestion whatsoever, that either Mr. Salman Al Saud or Mr. Abdulaziz Al Saud had attempted to evade the authorities or in any way to obstruct the execution of an arrest and, as such, it has already established above that the manner in which the arrest was executed was excessive and clearly disproportionate to what was necessary (see para. 57 above). The Working Group also notes that the two men appear to have been targeted for being who they are and for their membership of the royal family, rather than for something that they have done. The Working Group has no information to suggest that either of them had been involved in any criminal activity. The Working Group notes that, although Mr. Salman Al Saud was arrested alongside 10 other members of the royal family, the others were released a few months later, whereas Mr. Salman Al Saud remains in detention along with his father.

77. The Working Group considers that Messrs. Salman and Abdulaziz Al Saud were deprived of their liberty on the grounds of discrimination, namely, on the basis of their birth and family ties, in violation of articles 2 and 7 of the Universal Declaration of Human Rights.³⁶ Their deprivation of liberty is therefore arbitrary, falling under category V.

(d) Concluding remarks

78. The Working Group notes the denial of the right of Messrs. Salman and Abdulaziz Al Saud to be visited by, and to correspond with, their family and to be given adequate

³⁵ Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

³⁶ See also opinion No. 31/2021.

opportunity for contact with the outside world, subject to reasonable conditions and restrictions, as specified by law or lawful regulations, in accordance with rules 43 (3) and 58 (1) of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles. The Working Group expresses its serious concern about the allegations that, on 28 November 2020, the two men were moved from the villa where they were held under house arrest to an unknown location, that they have disappeared since and that their family has been denied information on their fates and whereabouts. The Working Group notes with concern that various members of the royal family have allegedly been arrested in recent years. Although some of them have subsequently been released, it would appear that none of them have been charged with a crime or brought to trial.

79. The Working Group notes that Mr. Abdulaziz Al Saud, who was born in 1959, has been held in what appears to be a state of de facto indefinite detention since January 2018, as established above, and that there is no information about any upcoming charges or a trial in order to resolve his situation. The Working Group refers the present case to the Independent Expert on the enjoyment of all human rights by older persons, for appropriate action.

80. In its 30-year history, the Working Group has found Saudi Arabia to have been in violation of its international human rights obligations in over 60 cases.³⁷ The Working Group reiterates its concern that that indicates a systemic problem with 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.³⁸

81. The Working Group welcomes the voluntary pledges and commitments pursuant to General Assembly resolution 60/251 made by Saudi Arabia.³⁹ In particular, the Working Group lauds the willingness expressed by the Government to cooperate with the Human Rights Council and its various mechanisms, including the special procedures. In the light of that pledge, and recalling its request for a country visit reiterated on 24 August 2021, the Working Group would welcome the opportunity, at the earliest convenience of the Government, 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 relating to instances of arbitrary deprivation of liberty.

³⁷ 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. 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 34/2021.

³⁸ [A/HRC/13/42](#), para. 30; and Working Group 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.

³⁹ [A/75/377](#), annex.

Disposition

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

The deprivation of liberty of Salman bin Abdulaziz bin Salman Al Saud and Abdulaziz bin Salman bin Mohammad Al Saud, being in contravention of articles 2, 3, 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, III and V.

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

84. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Messrs. Salman and Abdulaziz Al Saud immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (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 their immediate release.

85. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Messrs. Salman and Abdulaziz Al Saud and to take appropriate measures against those responsible for the violation of their rights.

86. The Working Group recommends that the Government ratify the International Covenant on Civil and Political Rights and the International Convention for the Protection of All Persons from Enforced Disappearance.

87. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Independent Expert on the enjoyment of all human rights by older persons, for appropriate action.

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

Follow-up procedure

89. 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 Messrs. Salman and Abdulaziz Al Saud have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Messrs. Salman and Abdulaziz Al Saud;

(c) Whether an investigation has been conducted into the violation of the rights of Messrs. Salman and Abdulaziz Al Saud, 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.

90. 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.

91. 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.

92. 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 that they have taken.⁴⁰

[Adopted on 16 November 2021]

⁴⁰ Human Rights Council resolution 42/22, paras. 3 and 7.