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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023**

### **Opinion No. 17/2023 concerning Aïda al-Ghamdi and Adel al-Ghamdi (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 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 23 November 2022, the Working Group transmitted to the Government of Saudi Arabia a communication concerning Aïda al-Ghamdi and Adel al-Ghamdi. The Government replied to the communication on 23 January 2023. 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).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Aïda al-Ghamdi is a Saudi citizen born in 1958. She usually resides in Dammam, Saudi Arabia.

5. Adel al-Ghamdi is a Saudi citizen born in 1997. He usually resides in Dammam, Saudi Arabia. He is the youngest son of Ms. Al-Ghamdi.

#### a. Context

6. The source submits that Ms. Al-Ghamdi is a relative of a political and human rights activist who left Saudi Arabia in 2000. In 2004, while abroad, the activist publicized his peaceful activism and campaigned for human rights and political reform in Saudi Arabia. He was granted political asylum abroad in 2012.

#### b. Arrest and detention

7. Reportedly, on 26 March 2018, while they were in their car on the way to a shopping centre located in Hay al-Jamiaa, Ms. Al-Ghamdi and her youngest son, Mr. Al-Ghamdi, were both arrested without a warrant by agents of the General Directorate of Investigations (the Mabahith) of the Ministry of the Interior, who were wearing civilian clothes. The Mabahith agents arrived in several vehicles and forced Ms. Al-Ghamdi and Mr. Al-Ghamdi to stop their car before taking them to an unknown destination.

8. At the same time as they were being arrested, another member of Ms. Al-Ghamdi and the activist's family was also arrested, in Dammam. That same day, that family member was transferred to Riyadh, where he was coerced into recording a video, in which he denounced the activist living abroad and asserted that his family had no ties with him, in exchange for Ms. Al-Ghamdi and Mr. Al-Ghamdi's freedom. However, although the video was posted by the intelligence services on social media (Facebook and Twitter), the authorities did not release Ms. Al-Ghamdi and Mr. Al-Ghamdi. At the present time, the above-mentioned family member is under police surveillance; he wears an electronic monitoring bracelet and is forbidden from having any contact with the activist living abroad.

9. Four days after the arrest of the individuals, an agent of the Mabahith contacted another family member of Ms. Al-Ghamdi and indicated that, if any family member tried to contact the activist living abroad, Ms. Al-Ghamdi would be sentenced and executed.

10. After their arrest, both Ms. Al-Ghamdi and Mr. Al-Ghamdi were reportedly held in secret detention for three months. Their family had no knowledge of their whereabouts and approached various authorities, including the Ministry of the Interior, to enquire about them. They all denied that they were being held in detention. Ms. Al-Ghamdi and Mr. Al-Ghamdi were therefore in a situation of enforced disappearance.

11. After three months, Ms. Al-Ghamdi was allowed to make a brief telephone call to her family to inform them that she and her son were being held in Dhahban prison in Jeddah.

12. Reportedly, both Ms. Al-Ghamdi and Mr. Al-Ghamdi claim that they were tortured in front of each other. They were severely beaten, punched and kicked, in particular in the face, and both had cigarettes put out on their skin.

13. During the first year of Ms. Al-Ghamdi and Mr. Al-Ghamdi's detention in Dhahban prison, their family contacted several lawyers, but all refused to take the case because of its political nature and for fear of reprisals.

14. After 13 months in Dhahban prison, Ms. Al-Ghamdi and Mr. Al-Ghamdi were transferred to Dammam prison and brought before a competent judicial authority on an unspecified date. They were accused of communicating by telephone with their family member living abroad – their communications having been recorded; Ms. Al-Ghamdi was accused of receiving on several occasions sums of money from her family member as material aid, which she did not deny; and both were accused of not disclosing their telephone contacts to the authorities.

15. As soon as they were transferred to Dammam prison, a family member managed to obtain a lawyer to prepare for a possible trial. The lawyer appointed by the family tried to consult about the criminal proceedings and requested to visit his clients in prison, but to no avail. In reaction to pressure put upon him, the lawyer subsequently decided to withdraw from the case.

16. During a visit to Dammam prison, their family learned that a closed trial had taken place and that Ms. Al-Ghamdi had been sentenced to 14 years' imprisonment and Mr. Al-Ghamdi to 5 years' imprisonment. The family was unable to obtain further information about the judicial process and the conditions under which the trial had been held.

c. Analysis of violations

i. Category I

17. The source submits that Ms. Al-Ghamdi and Mr. Al-Ghamdi were arrested in the street in Jeddah by agents of the State security (the Mabahith) who were wearing plain clothes, without an arrest warrant and without being informed of the reasons for their arrest or of their rights, contrary to principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

18. Following their arrest, both were taken to an unknown location and subjected to what amounted to enforced disappearance for at least three months, from 26 March to 26 June 2018. The authorities intentionally removed them from the protection of the law by subjecting them to enforced disappearance and by denying them access to the outside world. The enforced disappearance of Ms. Al-Ghamdi and Mr. Al-Ghamdi constitutes a violation of their right to be considered as persons before the law, in contravention of article 6 of the Universal Declaration of Human Rights.

19. Ms. Al-Ghamdi and Mr. Al-Ghamdi were arrested, detained in a secret location for three months, then transferred to Dhahban prison in Jeddah, without ever being presented before a competent judicial authority. It was only in early July 2019, after 13 months of detention in the prison in Jeddah under the custody of the General Directorate of Investigation, that they were presented for the first time before a judicial authority. The fact of being held in detention for over 15 months without being brought before a judicial authority constitutes a violation of articles 3, 6 and 9 of the Universal Declaration of Human Rights.

20. For these reasons, the source argues that the deprivation of liberty of Ms. Al-Ghamdi and Mr. Al-Ghamdi, from 26 March 2018 to early July 2019, is without legal basis and is arbitrary under category I.

ii. Category II

21. The source submits that Ms. Al-Ghamdi's relative living abroad was known as a dissident critical of the regime of Saudi Arabia and that he quickly became a target of the Government's crackdown on dissent. After being threatened with arrest and even death, he decided to flee the country and seek asylum abroad. His departure did not prevent him from campaigning to denounce violations and he continued to advocate, from abroad, for reform in Saudi Arabia.

22. The arrest of Ms. Al-Ghamdi and Mr. Al-Ghamdi, and their subsequent ill-treatment, was intended not only as reprisal against the relative living abroad for peacefully expressing dissenting views, but was also to blackmail and silence him.

23. According to the source, the cause of Ms. Al-Ghamdi and Mr. Al-Ghamdi's arbitrary deprivation of liberty does not stem from their own exercise of the rights guaranteed by the Universal Declaration of Human Rights, but rather from the exercise of those rights by their family member living abroad.

24. The source submits that Ms. Al-Ghamdi and Mr. Al-Ghamdi's deprivation of liberty is all the more arbitrary because it results from the exercise by a family member living outside of the country of the rights and freedoms guaranteed by articles 7, 14, 18 and 19 of the

Universal Declaration of Human Rights. Their detention must therefore be considered arbitrary under category II.

iii. Category III

25. The source argues that the State party's blatant and total disregard for international fair trial standards, as set out in the Universal Declaration of Human Rights and other international instruments, is of such gravity as to render Ms. Al-Ghamdi and Mr. Al-Ghamdi's deprivation liberty arbitrary.

26. Both individuals were detained for over a year without being presented before a competent judicial authority and without being charged or informed of the charges against them, in violation of principles 11 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

27. The source submits that, consequently, they were unable to challenge the lawfulness of their detention, which constitutes a violation of articles 8, 9 and 10 of the Universal Declaration of Human Rights and is contrary to principles 32 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

28. At the time of the submission of their communication, both Ms. Al-Ghamdi and Mr. Al-Ghamdi were unaware of the legal charges of which they were convicted and for which they were sentenced to heavy prison terms; their family ties with an activist living abroad could in no way constitute a crime or punishable offence.

29. The source submits that the non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights, gives Ms. Al-Ghamdi and Mr. Al-Ghamdi's detention an arbitrary character under category III.

*Response from the Government*

30. On 23 November 2022, the Working Group transmitted the allegations from the source to the Government of Saudi Arabia under its regular communications procedure. The Working Group requested the Government to provide, by 23 January 2023, detailed information about the current situation of Ms. Al-Ghamdi and Mr. Al-Ghamdi and to clarify the legal provisions justifying their continued detention, as well as the compatibility of such detention with the obligations of Saudi Arabia under international human rights law. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of Ms. Al-Ghamdi and Mr. Al-Ghamdi. In the current context of the global coronavirus disease (COVID-19) pandemic, and in accordance with the World Health Organization recommendations of 15 March 2020 concerning the response to COVID-19 in places of detention, the Working Group urged the Government to prioritize the use of non-custodial measures at all stages of criminal proceedings, including during the pretrial, trial and sentencing phases, as well as after sentencing.

31. The Government responded to the communication on 23 January 2023. In its response, the Government provided information on the arrest of Ms. Al-Ghamdi and Mr. Al-Ghamdi and denied their allegations, describing them as incorrect and unsubstantiated. The Government states that the arrest and trial of the two individuals were carried out on sound legal grounds, with full respect for the law of Saudi Arabia and consistent with international conventions to which Saudi Arabia is a party.

32. The Government claims that Ms. Al-Ghamdi and Mr. Al-Ghamdi were arrested on the basis of two arrest warrants that were issued against them by the competent authority, in accordance with articles 2 and 5 of the Counter-terrorism and Financing of Terrorism Act. It states that Ms. Al-Ghamdi was charged with committing a number of terrorism-related crimes, including the following: endorsement of a terrorist entity; financing of terrorism and terrorist acts; inciting two of her sons to travel to conflict zones and join a terrorist entity; and posting on the Internet content prejudicial to public order, which constitutes an offence punishable under the Repression of Cybercrime Act.

33. The Government states that Mr. Al-Ghamdi was also charged with committing a number of terrorism-related crimes, including participating in the financing of terrorism and

terrorist acts, and producing, posting and storing on the Internet content prejudicial to public order (punishable under the Repression of Cybercrime Act).

34. The Government maintains that both Ms. Al-Ghamdi and Mr. Al-Ghamdi were informed of the reasons for their arrest in accordance with article 36 (1) of the Code of Criminal Procedure, which stipulates that “persons who are detained shall be treated in a matter conducive to the preservation of their dignity and shall not be harmed physically or mentally. They shall be informed of the reasons for their detention and shall have the right to contact anyone whom they wish to notify of their detention”. In addition, article 116 of the Code stipulates that “persons who are arrested or detained shall be promptly informed of the grounds for their arrest or detention and shall have the right to contact anyone whom they wish to notify”.

35. According to the Government, Ms. Al-Ghamdi and Mr. Al-Ghamdi acknowledged by their signatures that they had been informed of their legal rights, including the right to legal assistance in accordance with article 22 of the implementing regulations of the Code of Criminal Procedure, and of the charges against them, in accordance with article 101 (1) of the Code. Thereafter, their cases were referred by the Public Prosecutor to the competent court; they subsequently appeared before this court, in accordance with the law.

36. The Government avers that Ms. Al-Ghamdi and Mr. Al-Ghamdi attended the trial in the presence of the Public Prosecutor. The Public Prosecutor’s statement was read to them and a copy of it was handed over, in accordance with article 160 of the Code of Criminal Procedure, which stipulates that, during the arraignment, the court shall inform the accused of the charges against him or her.

37. Regarding legal representation, the Government states that the court respected Ms. Al-Ghamdi and Mr. Al-Ghamdi’s right to appoint a lawyer to represent them, in accordance with article 4 (1) of the Code of Criminal Procedure, and that if they did not have the financial ability to appoint a lawyer, they could have requested the court to assign a lawyer to defend them at the expense of the State, in accordance with article 139 of the Code. In their case, they requested the appointment of a number of legal representatives to defend them, and their request was granted.

38. In its response, the Government explains the law on court matters and submits that Ms. Al-Ghamdi and Mr. Al-Ghamdi were given a fair hearing, which was followed by a judgment. The concerned persons had the right to object to the judgment within 30 days of the date on which they received a copy of it, in accordance with article 192 (1) of the Code of Criminal Procedure. After the defendants and the Public Prosecutor had objected to the judgment, the (first instance) judges confirmed their ruling, and the case was submitted to the Court of Appeal, in accordance with article 196 of the Code of Criminal Procedure, which stipulates that “the division that rendered the challenged judgment shall examine the grounds on which the objection is based, without hearing submissions, unless necessary...”.

39. The Government submits that due process was followed and the Appeal Court ruled against the defendants. The Public Prosecutor filed an appeal for cassation and the Supreme Court subsequently overturned the ruling and returned the case to the Appeal Court to be decided anew by different judges, in accordance with the law. The Appeal Court ultimately delivered a judgment, in which Ms. Al-Ghamdi was sentenced to imprisonment for 16 years, while her son was given 14 years’ imprisonment. Although the parties were informed of their right to file an appeal for cassation of that decision, they did not do so, thereby rendering the judicial review complete and the judgment final and enforceable.

40. Ms. Al-Ghamdi and Mr. Al-Ghamdi are currently serving their sentences at the General Directorate of Investigation (the Mabahith) prison in eastern Saudi Arabia.

41. The Government reiterates that it protects and promotes all human rights through its application of the principle of legality, and that no one can be punished except as is provided by law. The Government emphasizes that terrorism is one of the most serious threats to international peace and security, as confirmed in international charters, instruments and resolutions, including General Assembly resolution 60/288 on the United Nations Global Counter-Terrorism Strategy.

42. The Government states that it recognizes and is committed to all human rights, including those relating to fair trial, equality before the law and the right to freedom of opinion and expression, and that it guarantees every human being the exercise of this right, unless there is infringement or abuse of the rights or reputations of others, national security, public order, public health or morals.

43. Regarding the treatment of prisoners and other detained persons, the Government refers to provisions of its domestic laws that guarantee detainees' or prisoners' rights, such as article 2 of the Code of Criminal Procedure, which prohibits physical or mental harm to arrested persons, and subjecting such persons to torture or degrading treatment; article 36 of the Code, which stipulates that arrested persons must be treated in a manner that preserves their dignity, that they shall not be harmed physically or mentally, and that they must be informed of the reasons for their detention; article 28 of the Prison and Detention Act, which stipulates that prisoners or detainees may not be subjected to any type of assault and that disciplinary action shall be taken against civilian or military personnel who commit such acts, without prejudice to any criminal penalty they may incur; and article 2 (8) of Royal Decree No. 43. (1377) of 1958, which prohibits ill-treatment, coercion, torture and other denials of personal liberties by public officials.

44. The Government also mentions the existence of the Human Rights Commission as an agency that strengthens the observance of human rights of detained persons and prisoners, by conducting visits to prisons and detention centres at any time, without permission from the competent authority, and receives and verifies complaints relating to human rights by taking legal action as appropriate.

45. Further rebutting the allegations from the source, the Government emphasizes that Ms. Al-Ghamdi and Mr. Al-Ghamdi were informed of the reasons for their arrest and of the charges against them, as well as of their rights, including the right to seek the assistance of a lawyer or an agent in the investigation and trial stages. They were thus not deprived of the protection of the law; this right is protected by the law. Their case files were referred to the competent court which charged them initially.

46. The Government denies that Ms. Al-Ghamdi and Mr. Al-Ghamdi were subjected to enforced or involuntary disappearance, as they were detained in a known and designated place. The Government notes that a communication was received in the past from the Working Group on Enforced or Involuntary Disappearances regarding Ms. Al-Ghamdi and Mr. Al-Ghamdi, and that, in its response, it specified the location of their detention at the time. The Government submits that, following the Working Group's reference to its response at its 116th session, held from 10 to 14 September 2018, it did not receive any further communication relating to the issue. The legislation of Saudi Arabia provides the requisite human rights protection against enforced disappearance and prohibits all orders or instructions that direct, authorize or encourage enforced disappearance. In the light of the foregoing, the Government maintains that there was no violation against Ms. Al-Ghamdi and Mr. Al-Ghamdi under category I.

47. The Government dismisses as incorrect the allegation made by the source that the arrest and detention of Ms. Al-Ghamdi and Mr. Al-Ghamdi were a reprisal for the activities of a family member living abroad because, as it has already been shown, their arrest was based on charges of committing a number of terrorism-related offences, including supporting a terrorist entity, and financing and participating in the financing of terrorism and terrorist acts. The Government thus denies that the detention of Ms. Al-Ghamdi and Mr. Al-Ghamdi was a violation under category II.

48. The Government claims that, during the legal proceedings against Ms. Al-Ghamdi and Mr. Al-Ghamdi, including the prosecution, trial and enforcement of the court's judgment, the respective competent authorities ensured that the measures taken in their case were based on the legal provisions in force in Saudi Arabia, and that they were consistent with international standards of fair trial and with the human rights conventions to which the Government has acceded. The Government thus maintains that there was no violation, in its view, of Ms. Al-Ghamdi and Mr. Al-Ghamdi's rights under category III.

49. In response to the Working Group's call upon the Government to ensure the physical and mental safety of Ms. Al-Ghamdi and Mr. Al-Ghamdi in the context of the global COVID-

19 pandemic and in accordance with the recommendations of the World Health Organization for addressing COVID-19 in places of detention, the Government points out that Saudi Arabia was one of the first countries to take many measures and procedures to address the outbreak of COVID-19 in prisons and detention centres. Preventive measures and precautions were also applied in prisons to prevent the spread of COVID-19, in accordance with the protocols and guidelines adopted by the Ministry of Health for dealing with the pandemic. Furthermore, the majority of detainees and prisoners were given COVID-19 vaccines under the supervision of competent medical staff, in accordance with the guidelines of the Ministry of Health.

50. In concluding its response, the Government reminded 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 2/5 of 18 June 2007, in particular, the requirement that mandate holders should carry out their mandate with full respect for the national legislation and regulations of the country in which they are carrying out their mission, give due consideration to the information provided on the case, assess all information, in particular allegations from sources to thematic mandate holders, and ensure that communications on the case are not manifestly unfounded or politically motivated.

*Additional comments from the source*

51. The Government's response was submitted to the source for additional comments, which were provided on 8 February 2023.

52. The source notes that the Government's response on the merits merely consists of successive general statements about the legislation of Saudi Arabia, which fail to provide any concrete and detailed information on the current situation of Ms Al-Ghamdi and Mr. Al-Ghamdi and on measures taken to ensure their equal and effective access to justice.

53. With regard to the enforced disappearance and incommunicado detention of the two individuals, the Government alleges that neither Ms Al-Ghamdi nor Mr. Al-Ghamdi were held in secret detention. To support that claim, the Government refers to its cooperation with the Working Group on Enforced and Involuntary Disappearances. The source submits that the Government has mistakenly conflated the act of responding to the Working Group on Enforced and Involuntary Disappearances and fulfilment of its international obligations.

54. With regard to the practice of torture in detention, the source submits that, despite the Government's statement that all its legislative provisions prohibit ill-treatment and torture of detainees and prisoners, the legislation is far from implemented in practice. Several special procedure mandate holders and United Nations bodies have highlighted the use of torture in detention in the country.

55. Furthermore, and contrary to the Government's response, allegations of torture are rarely, if ever, impartially investigated in Saudi Arabia. The Committee against Torture recommended that the State party conduct impartial investigations into all allegations of torture.<sup>2</sup> However, the State institutions responsible for these investigations are independent only in theory; they are actually under the direct authority of the executive. Thus, the structure of the institutions also contributes to a climate of impunity that encourages the practice of torture.

56. The source recalls that several United Nations human rights mechanisms have consistently raised concerns about systematic violations of procedural rights, in particular of individuals, such as Ms. Al-Ghamdi and Mr. Al-Ghamdi, who are arrested under the Counter-terrorism and Financing of Terrorism Act.

57. The source highlights that Ms. Al-Ghamdi and Mr. Al-Ghamdi's case falls into a well-defined and widely recognized pattern of arbitrary arrests and detention of political opponents under the Counter-terrorism and Financing of Terrorism Act, which fails to uphold any standard of lawfulness.

<sup>2</sup> CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 8.

58. This is the case with Ms. Al-Ghamdi and Mr. Al-Ghamdi, as illustrated by the response of the Government to the communication of the Working Group on Enforced and Involuntary Disappearances, which merely states that they were “under investigation”, for having supposedly committed acts criminalized under the Counter-terrorism and Financing of Terrorism Act – without specifying the nature of the charges.

59. The source submits that it is even more concerning that the Government makes general statements regarding the rights of Ms. Al-Ghamdi and Mr. Al-Ghamdi to legal assistance and to receive visits. The Government mentions the right to legal counsel and the alleged appointment “of a number of legal representatives to defend them”, but does not provide any concrete information about the legal counsel’s request to visit them.

60. Furthermore, the Government summarizes different stages of the judicial procedure (first instance, appeal and cassation) relating to the conviction of Ms. Al-Ghamdi and Mr. Al-Ghamdi. The Government claims that, although they were informed of their right to contest the decision of the Appeal Court, they decided not to.

61. The Government claims that it was Ms. Al-Ghamdi and Mr. Al-Ghamdi’s free choice not to appeal for cassation. However, the source notes that the harsh penalties handed down on appeal or cassation are aimed at depriving victims of the right to appeal, and are part of a systematic policy intended to give United Nations human rights experts the impression that the decisions rendered are fair.

62. The source also notes that Ms. Al-Ghamdi’s first sentence was increased on appeal by the judge who refused to consider her statement about being subjected to torture to extract confessions, despite her insistence. Indeed, upon receiving copies of the judgments handed down by the Appeal Court, Ms. Al-Ghamdi and Mr. Al-Ghamdi were surprised to learn that the Appeal Court had increased their sentences to 16 years and 14 years, respectively.

63. The source further notes that, in its response, the Government does not provide any information or reason regarding the increase in Ms. Al-Ghamdi and Mr. Al-Ghamdi’s sentences on appeal. It merely points out that neither of them objected to the decision. However, the source claims that it is clear that they did not object to the increased sentences owing to fear of being condemned to life imprisonment.

64. Lastly, the source notes that, in recent years, judges in the Appeal Court have systematically doubled or tripled the sentences handed down in the first instance in all cases with political connotations or allegedly linked to terrorism.

### **Discussion**

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

66. In determining whether Ms. Al-Ghamdi and Mr. Al-Ghamdi’s detention was 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 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.<sup>3</sup>

67. The source submits that the detention of Ms. Al-Ghamdi and Mr. Al-Ghamdi is arbitrary under categories I, II and III. The Working Group will consider these allegations in turn.

#### *Category I*

68. The Working Group has previously stated that, 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 the legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant or arrest order (or equivalent document).<sup>4</sup> The reasons for the

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<sup>3</sup> A/HRC/19/57, para. 68.

<sup>4</sup> Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.



arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>5</sup> The Working Group notes that Ms. Al-Ghamdi and Mr. Al-Ghamdi were not arrested in flagrante delicto, in which case the opportunity to obtain a warrant would not be typically available.

69. The source submits that Ms. Al-Ghamdi and Mr. Al-Ghamdi were arrested without arrest warrants and without being informed of the reasons for their arrest or their rights. The Government claims that they were arrested pursuant to arrest warrants issued by the competent authority, in accordance with articles 2 and 5 of the counter-terrorism law, and that they were detained in accordance with the law. The Government also claims that they were informed of the grounds for their arrest, in accordance with article 36 (1) of the Code of Criminal Procedure.

70. The Working Group observes that, while the Government claims that Ms. Al-Ghamdi and Mr. Al-Ghamdi were arrested pursuant to arrest warrants issued by the competent authority, it has not provided information as to when the arrest warrants were presented to them. Furthermore, the Government has not provided any specific information or documentation to support its claim that Ms. Al-Ghamdi and Mr. Al-Ghamdi were informed of the reasons for their arrest.

71. In the absence of evidence to the contrary, the Working Group considers that the source has presented a prima facie case that, at the time of their arrest, Ms. Al-Ghamdi and Mr. Al-Ghamdi were not presented with arrest warrants or promptly informed of the reasons for their arrest. The Working Group thus finds that the authorities contravened article 9 of the Universal Declaration of Human Rights as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

72. The source alleges, and the Government does not refute, that Ms. Al-Ghamdi and Mr. Al-Ghamdi were held in detention without being presented before a judicial authority and without being charged or informed of the charges against them from March 2018 until early July 2019 – that is, more than 15 months after their arrest. The Working Group notes that Ms. Al-Ghamdi and Mr. Al-Ghamdi were not brought promptly before a judge – that is, within 48 hours of their arrest, barring absolutely exceptional circumstances, which must be justified, in line with international standards and as reiterated in the Working Group's jurisprudence.<sup>6</sup> The Working Group also notes that Ms. Al-Ghamdi and Mr. Al-Ghamdi were not afforded the right to bring proceedings before a court for it to decide without delay about the lawfulness of their detention, in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.<sup>7</sup> Furthermore, bearing in mind that pretrial detention should be the exception rather than the rule, the Working Group considers that the detention of Ms. Al-Ghamdi and Mr. Al-Ghamdi following their arrest lacked a legal basis, as it was not based on an individualized determination that detention was reasonable and necessary, taking into account all the circumstances that would render it unnecessary.<sup>8</sup>

73. The Government submits that Ms. Al-Ghamdi and Mr. Al-Ghamdi were arrested pursuant to the Counter-terrorism and Financing of Terrorism Act. The Government does not contest the source's submission that the individuals were arrested and detained for 15 months without being presented before a judicial authority and without being charged or informed of the charges against them. Moreover, the Government does not provide an explanation on its use of the Counter-terrorism and Financing of Terrorism Act to arrest and detain individuals.

<sup>5</sup> Opinions No. 30/2017, paras. 58 and 59; No. 30/2018, para. 38; No. 85/2021, para. 69; and No. 79/2022, para. 58.

<sup>6</sup> Opinions No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 30/2019, para. 30; and No. 34/2021, para. 72.

<sup>7</sup> Opinions No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

<sup>8</sup> [A/HRC/19/57](#), paras. 48–58.

74. The Working Group has stated in its jurisprudence that, vaguely and broadly worded provisions, such as the Anti-cybercrime Law and the 2017 Anti-terrorism Law, which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.<sup>9</sup> The Working Group reiterates that the lack of procedural safeguards in law contributes to prolonged detention, violations of the presumption of innocence and delayed trials, in contravention of article 9 of the Universal Declaration of Human Rights, as well as of principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

75. The source alleges that, after their arrest, both Ms. Al-Ghamdi and Mr. Al-Ghamdi were held in secret detention for three months. Their family members approached various authorities, including the Ministry of the Interior, all of which denied that they were in detention. Ms. Al-Ghamdi and Mr. Al-Ghamdi were thus in a situation of enforced disappearance during this period.

76. The Government denies that Ms. Al-Ghamdi and Mr. Al-Ghamdi were subjected to enforced or involuntary disappearance, as they were detained in a known and designated place. The Government supports its assertion with reference to its response to a communication that it received from the Working Group on Enforced or Involuntary Disappearances, in which it specified the location of their detention. The Government stressed that its laws provide the requisite human rights protection against enforced disappearances.

77. The Working Group notes that the Government has denied that Ms. Al-Ghamdi and Mr. Al-Ghamdi were subjected to enforced disappearance. It also notes the Government's reference to national legislation and its response to the Working Group on Enforced and Involuntary Disappearances. However, in the absence of specific evidence to the contrary, the Working Group is of the view that the Government failed to demonstrate that it had notified the family of Ms. Al-Ghamdi and Mr. Al-Ghamdi of their fate and whereabouts during the three months following their arrest.

78. For these reasons, the Working Group considers that the deprivation of liberty of Ms. Al-Ghamdi and Mr. Al-Ghamdi during the first three months following their arrest entails wilful refusal on the part of the authorities to disclose their fate or whereabouts or to acknowledge their detention. Their deprivation of liberty thus lacks a valid legal basis and is inherently arbitrary, as it placed them outside the protection of the law. The Working Group recalls that enforced disappearance constitutes a particularly aggravated form of arbitrary detention, in violation of articles 6 and 8 of the Universal Declaration of Human Rights.<sup>10</sup> The Government's failure to provide their families with notification of their arrest and the location of their detention was also a violation of principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

79. For the reasons set out above, the Working Group thus finds that the Government failed to establish a legal basis for the arrest and detention of Ms. Al-Ghamdi and Mr. Al-Ghamdi, rendering their deprivation of liberty arbitrary under category I.

#### *Category II*

80. The source submits that Ms. Al-Ghamdi and Mr. Al-Ghamdi's deprivation of liberty results from the exercise by their family member, who is living abroad, of the rights and freedoms guaranteed by articles 7, 14, 18 and 19 of the Universal Declaration of Human Rights. The Working Group will consider these allegations under category V.

#### *Category III*

81. The source claims that Ms. Al-Ghamdi and Mr. Al-Ghamdi's deprivation of liberty falls within category III, as there was total or partial non-observance of the international norms relating to the right to a fair trial, the gravity of which gives their deprivation of liberty an arbitrary character.

<sup>9</sup> Opinions No. 71/2019, para. 73; and No. 30/2022, para. 80.

<sup>10</sup> Opinions No. 13/2020; and No. 34/2021.

82. According to the source, following their arrest on 26 March 2018, Ms. Al-Ghamdi and Mr. Al-Ghamdi were held in secret detention for three months. It was only in early July 2019, after 13 months of detention in Dhanban Centra Prison, that they were presented for the first time before a judicial authority and subsequently tried in a closed trial. The Working Group notes that, in its response, the Government provided general information about their arrest, detention and subsequent trial, without providing any specific information about the duration of the proceedings or any explanation for the delay.

83. In the absence of information from the Government, the Working Group considers that Ms. Al-Ghamdi and Mr. Al-Ghamdi's pretrial detention for over 15 months without an individualized judicial determination of its lawfulness undermined their presumption of innocence as guaranteed under article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The time during which Ms. Al-Ghamdi and Mr. Al-Ghamdi were deprived of their liberty before being brought before a judge is a violation of their right to be tried without undue delay, guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

84. In its submission, the source further alleges that Ms. Al-Ghamdi and Mr. Al-Ghamdi's case was tried in a closed trial, to which members of the public were denied access. In particular, the source provides evidence that Ms. Al-Ghamdi and Mr. Al-Ghamdi's family only became aware that a trial had taken place and that they had been given lengthy prison sentences after they had been allowed to visit them in Damman prison. The Working Group notes that the Government did not specifically deny holding a closed trial for this case, nor did it provide justification as to why a closed trial was necessary and proportionate.

85. The Working Group refers to its jurisprudence and reiterates that a trial should only be closed in exceptional circumstances and the judgment, including the essential findings, evidence and legal reasoning must be made public.<sup>11</sup> In the absence of evidence to the contrary, the Working Group finds that the Government's failure to justify the closed trial of Ms. Al-Ghamdi and Mr. Al-Ghamdi contravenes articles 10 and 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

86. The source alleges that, from the first year of Ms. Al-Ghamdi and Mr. Al-Ghamdi's detention in Dhahban prison, the family contacted several lawyers, but all refused to take the case because of its political nature and for fear of reprisals. Immediately following their transfer to Dammam prison, a family member managed to secure the services of a lawyer in preparation for a possible trial. The lawyer appointed by the family tried to consult about the criminal proceedings and asked to visit his clients in prison, but to no avail. In reaction to pressure put upon him, the lawyer decided to withdraw from the case.

87. The Government submits that Ms. Al-Ghamdi and Mr. Al-Ghamdi requested the appointment of a number of legal representatives to defend them in this case, and their request was granted.

88. However, the Working Group notes that the Government failed to address the allegations that the family was unable to engage legal representatives owing to fear of reprisals.

89. All circumstances taken into account, the Working Group considers that the Government failed at all times during their detention to respect Ms. Al-Ghamdi and Mr. Al-Ghamdi's right to legal assistance, 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 of the Universal Declaration of Human Rights as well as principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>11</sup> Opinion No. 18/2022, paras. 72 and 73.

90. The Working Group recalls that persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after apprehension, and they must be promptly informed of this right upon apprehension.<sup>12</sup> This right entitles persons deprived of liberty to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information.<sup>13</sup> Furthermore, legal counsel should be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.<sup>14</sup> By contrast, the family of Ms. Al-Ghamdi and Mr. Al-Ghamdi struggled to secure legal representation for them because the lawyers contacted were afraid of reprisals.

91. The Working Group considers that these violations substantially undermined and compromised Ms. Al-Ghamdi and Mr. Al-Ghamdi's capacity to defend themselves in the judicial proceedings. The present case is another example of legal representation being denied or limited for individuals facing serious charges in Saudi Arabia, which suggests that there is a systemic failure to provide access to counsel during criminal proceedings in the country.<sup>15</sup>

92. The source alleges that both Ms. Al-Ghamdi and Mr. Al-Ghamdi claimed that they were tortured in front of each other. They were allegedly severely beaten, punched and kicked, in particular in the face, and both had cigarettes put out on their skin. In its response, the Government did not specifically deny the occurrence of these acts except to state in general terms that torture, in all its forms, is prohibited under domestic law. In these circumstances, the Working Group considers that the source has presented a credible prima facie case that Ms. Al-Ghamdi and Mr. Al-Ghamdi were subjected to torture and ill-treatment in detention. That alleged conduct is contrary to article 5 of the Universal Declaration of Human Rights. The Working Group recalls that, according to the Committee against Torture,<sup>16</sup> the right to freedom from torture and other ill-treatment or punishment is absolute and applies in all circumstances; it may never be restricted, including in times of war or under a state of emergency. No exceptional circumstances whatsoever, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment.

93. The Working Group has consistently maintained that, when it is not possible for a person who is subjected to torture or other forms of ill-treatment or punishment to prepare an adequate defence for a trial at which the equality of both parties before the judicial proceedings is respected, this amounts to a fair trial violation.<sup>17</sup> The Working Group notes that torture or ill-treatment of detainees not only is a grave violation of human rights, but also seriously undermines the fundamental principles of a fair trial as it can compromise a person's ability to defend himself or herself, especially in the light of the right not to be compelled to testify against oneself or to confess guilt.<sup>18</sup> Given the serious allegations of torture and ill-treatment, 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.

94. For the aforementioned reasons, the Working Group concludes that the violations of the right to a fair trial are of such gravity as to render the detention of Ms. Al-Ghamdi and Mr. Al-Ghamdi arbitrary under category III.

#### *Category V*

95. The source alleges that Ms. Al-Ghamdi and Mr. Al-Ghamdi's deprivation of liberty is based on the political and human rights activity of their family member who is living

<sup>12</sup> 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, principle 9, para. 12.

<sup>13</sup> Ibid., principle 9, para. 14.

<sup>14</sup> Ibid., principle 9, para. 15; see also [A/HRC/45/16](#), paras. 50–55; and opinions No. 29/2017, No. 32/2017, No. 34/2017, No. 36/2017, No. 70/2017 and No. 66/2019.

<sup>15</sup> 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.

<sup>16</sup> Committee against Torture, general comment No. 4 (2017), para. 8.

<sup>17</sup> Opinions No. 33/2019, para. 42; and No. 34/2021, para. 87.

<sup>18</sup> Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

abroad. The latter is a political and human rights activist who was a target of the Government's suppression on dissent. After being threatened with arrest and death, he left Saudi Arabia and was granted political asylum abroad. While abroad, he continues to publicize his peaceful activism and campaigns for human rights and political reform in Saudi Arabia. According to the source, Ms. Al-Ghamdi and Mr. Al-Ghamdi's deprivation of liberty is a reprisal for the family member's activities abroad, and is also aimed at blackmailing and silencing him. The Government denies that Ms. Al-Ghamdi and Mr. Al-Ghamdi's arrest and detention were reprisals for the activities of the family member living abroad, but argues that their arrest and detention were based on charges for offences that they had committed.

96. The Working Group considers that Ms. Al-Ghamdi and Mr. Al-Ghamdi were deprived of their liberty as a result of their family member's activities abroad, which include speaking out against the Government. The Working Group reached this conclusion by taking into account the source's allegations – which were not addressed by the Government – that at the same time as Ms. Al-Ghamdi and Mr. Al-Ghamdi were arrested, another family member was also arrested and coerced into recording a video in which he denounced his relative living abroad and declared that his family had no ties with him, in exchange for Ms. Al-Ghamdi and Mr. Al-Ghamdi's freedom. However, although the video was posted by the intelligence services on social media (Facebook and Twitter), Ms. Al-Ghamdi and Mr. Al-Ghamdi were not released. Moreover, four days after their arrest, an agent of the Mabahith contacted another family member and allegedly indicated that, if anyone in their family tried to contact the relative who was living abroad, Ms. Al-Ghamdi would be sentenced and executed. These occurrences do not appear to be coincidental, but rather indicate that Ms. Al-Ghamdi and Mr. Al-Ghamdi were deprived of their liberty and convicted in retribution for their relative's exercise of the right to freedom of opinion and expression abroad.

97. The Working Group considers that Ms. Al-Ghamdi and Mr. Al-Ghamdi were detained on a discriminatory basis, namely, birth and family ties, and that their arrest and detention were reprisal for their relative's activism abroad. This appears to be a case of guilt by association.<sup>19</sup> The Working Group reaffirms that no one should be deprived of their liberty for the crimes, real or not, committed by a family member by birth or marriage, in a free, democratic society.<sup>20</sup> The Working Group thus finds that Ms. Al-Ghamdi and Mr. Al-Ghamdi were deprived of their liberty in a discriminatory manner, contrary to articles 2 and 7 of the Universal Declaration of Human Rights, and considers their detention arbitrary under category V.

### **Disposition**

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

The deprivation of liberty of Aïda al-Ghamdi and Adel al-Ghamdi, being in contravention of articles 2, 3, 5, 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, III and V.

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

100. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Al-Ghamdi and Mr. Al-Ghamdi immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

101. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Al-

<sup>19</sup> Opinions No. 33/2017, para. 98; No. 83/2017, paras. 87 and 88; and No. 65/2019, para. 85. See also opinions No. 34/2013, No. 35/2013, No. 36/2013 and No. 1/2017, para. 59.

<sup>20</sup> Opinion No. 65/2019, para. 83.

Ghamdi and Mr. Al-Ghamdi and to take appropriate measures against those responsible for the violation of their rights.

102. The Working Group requests the Government to revise its laws, particularly the Counter-terrorism and Financing of Terrorism Act, to meet the requirement of due process and fair trial, in conformity with the findings in the present opinion and with its obligations under international law.

103. 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, for appropriate action.

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

#### **Follow-up procedure**

105. 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 Ms. Al-Ghamdi and Mr. Al-Ghamdi have been unconditionally released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. Al-Ghamdi and Mr. Al-Ghamdi;

(c) Whether an investigation has been conducted into the violation of Ms. Al-Ghamdi and Mr. Al-Ghamdi'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.

106. 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.

107. 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.

108. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>21</sup>

*[Adopted on 29 March 2023]*

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<sup>21</sup> Human Rights Council resolution 51/8, paras. 6 and 9.