
Advance Edited Version

Distr.: General

8 June 2023

Original: English

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. 26/2023 concerning Safar bin Abdulrahman al-Hawali (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,¹ on 22 July 2022 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Safar bin Abdulrahman al-Hawali. The Government submitted a late response on 8 February 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).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Safar bin Abdulrahman al-Hawali is a 70-year-old professor. He usually resides in Mecca, Saudi Arabia. He has been an outspoken and peaceful critic of the ruling leaders of Saudi Arabia.

a. Background

5. According to the information received, Mr. Al-Hawali is a religious scholar and a leader of the movement Saudi al-Sahwa al-Islamiyya (which can be translated as “Islamic awakening”), also known as Sahwa. This religious and political movement gathers multiple groups advocating, inter alia, against Western presence and influence in the country. Supporters of this movement have openly criticized members of the royal family over regional and international policies and called for democratic reforms. Mr. Al-Hawali was reportedly detained without charge from 1994 to 1999 for having publicly opposed his Government and the establishment of military bases belonging to the United States of America in the Gulf peninsula.

6. The source claims that the Sahwa movement has been specifically targeted. Hundreds of public figures – including scholars, academics and human rights activists – have allegedly been arrested solely because they voiced criticism of their Government’s policies.

b. Arrest

7. According to the information received, on 12 July 2018, State security forces raided Mr. Al-Hawali’s house, in the village of Hawala, 70 km south-east of the city of Al-Bahah. After searching the place and confiscating every electronic device there, Mr. Al-Hawali and a member of his family were blindfolded and taken away to an unknown location. The State security forces brought an ambulance along with them for the arrest, knowing that Mr. Al-Hawali’s health was extremely fragile. On the same day, another member of Mr. Al-Hawali’s family was also arrested by State security forces.

8. The source reports that, on the evening of 11 July 2018, two of Mr. Al-Hawali’s relatives were arrested in Al-Bahah. Heavily armed State security forces apprehended them and took them to an unknown location. On the evening of 12 July 2018, another member of the family was arrested.

9. The source claims that these arrests are a direct consequence of Mr. Al-Hawali’s criticism of the Saudi Arabian authorities’ domestic and international policies. More precisely, the arrest was in retaliation for the publication of his book, which had been released just a few weeks earlier.

c. Enforced disappearance and denial of habeas corpus

10. According to the source, following his arrest, Mr. Al-Hawali was detained incommunicado and in an undisclosed location for two months. During this period, his family was not informed about his fate or the reason for his arrest, a situation which allegedly amounted to enforced disappearance.

11. On 24 July 2018, following an urgent appeal, the Working Group on Enforced or Involuntary Disappearances reportedly transmitted the case to the Government of Saudi Arabia, requiring it to carry out appropriate investigations to clarify the fate and whereabouts of Mr. Al-Hawali and protect his fundamental rights.

12. On 17 September 2018, the Government reportedly answered the allegations, affirming that Mr. Al-Hawali was detained at the prison of the General Directorate of Investigation in the Governorate of Jeddah. He was under investigation, supposedly for behaviour falling under the Counter-terrorism and Financing of Terrorism Act. In October 2019, Mr. Al-Hawali was transferred to the Al-Hayr prison in Riyadh.

13. Despite the fact Mr. Al-Hawali has been detained for over four years, he has never been brought before a judge and has not been officially charged. It is alleged that the

authorities attempted to assign a lawyer to represent him, but that he refused. As a consequence, he remains detained without legal assistance.

d. Conditions of detention

14. Since his arrest, Mr. Al-Hawali has reportedly had very few opportunities to be in contact with his family. Because of the facial paralysis resulting from a cerebral haemorrhage that he suffered, he is unable to communicate over the telephone. The source argues that the authorities have taken no measures to facilitate the communication of Mr. Al-Hawali with his family and legal counsel.

15. According to the source, the last time that his family was able to visit him was in February 2020; since then, visits have been arbitrarily denied.

16. In addition, the source reports that Mr. Al-Hawali is a person with disabilities. He has a fractured pelvis and has previously suffered a brain haemorrhage. As a result, he has facial paralysis and his lower body movements are compromised.

17. According to article 1 of the Convention on the Rights of Persons with Disabilities, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

18. Mr. Al-Hawali's poor physical functioning and his facial paralysis can be characterized as a disability, as they have a substantial and long-term negative effect on his ability to carry out normal day-to-day activities. Mr. Al-Hawali faces several limitations, as simple movements cause pain or discomfort, and it is extremely difficult for him to chew and to speak distinctly. As family visits have allegedly been denied, the impossibility of speaking over the telephone due to his disability has become a barrier to Mr. Al-Hawali's accessibility rights.

19. Furthermore, the source claims that Mr. Al-Hawali's state of health and disability have worsened considerably due to the poor conditions in which he has been detained and to the denial of appropriate medical care, in alleged violation of article 10 of the Convention on the Rights of Persons with Disabilities.

20. The source reports that the Committee against Torture has raised the issue of the situation in overcrowded places of detention in Saudi Arabia, expressing its concerns regarding sanitation, food quality and health services, which are usually poor and not available to all detainees. The source fears for Mr. Al-Hawali's life, due to his condition and lack of proper treatment.

e. Reprisals

21. The source claims that Mr. Al-Hawali's relatives have been arrested as a form of collective punishment and in an attempt to silence and threaten his entire family. These arrests have allegedly been carried out in order to pressure the family into not voicing public criticism of the arbitrary arrest of Mr. Al-Hawali.

22. Accordingly, these reprisals had a deterrent effect on his family, who refrained from taking any action to locate him, fearing further reprisals against more of its members. The source claims that one of the few members of Mr. Al-Hawali's family who was still free was arrested and subjected to enforced disappearance immediately after referring his case to a non-governmental organization working outside Saudi Arabia.

23. The source argues that the detention of Mr. Al-Hawali is arbitrary under categories I, II, III and V.

i. Category I

24. The source argues that the detention of Mr. Al-Hawali has no legal basis, even though the Government may affirm that he was arrested on the basis of a warrant issued by a competent authority. According to the witnesses of his arrest, he was not presented with any warrant, nor was he given any reason for his arrest. In addition, the circumstances of his arrest did not give any reasonable cause for flagrante delicto.

25. The source claims that Mr. Al-Hawali's detention is not grounded in law, in violation of article 9 of the Universal Declaration of Human Rights. Furthermore, Mr. Al-Hawali was subjected to enforced disappearance for a period of two months, from 12 July to 17 September 2018. Hence, he was placed outside the protection of the law and was deprived of his legal safeguards, including his right to challenge the legality of his detention before an independent judicial authority and to be recognized as a person before the law, allegedly in violation of articles 6 and 9 of the Universal Declaration of Human Rights.

26. Moreover, after more than four years of being detained and under investigation, Mr. Al-Hawali has not yet been brought before a prosecutor and no charges have been officially brought against him. He has not been allowed to seek the assistance of legal counsel of his choice or to challenge the legality of his detention.

27. According to the source, Mr. Al-Hawali was arrested on the basis of the 2017 Counter-terrorism and Financing of Terrorism Act by State security forces. Article 4 of that law reportedly confers to the head of the State security services – who reports directly to the Prime Minister – the authority to conduct searches, investigations and seizures and undertake criminal and administrative prosecution without any independent judicial oversight. Furthermore, under article 19, on the sole basis of an assessment by the Public Prosecutor's Office, a suspect can be held in custody for up to 12 months (in renewable six-month periods) before the case is referred to a judge. This provides for prolonged custody without charge during the investigation.

28. Article 20 of the Counter-terrorism and Financing of Terrorism Act reportedly allows for suspects to be detained incommunicado, since the Public Prosecutor's Office has the power to issue an order barring contact with or visits to the accused for up to 90 days "if the investigation so warrants". This is alleged to constitute a serious violation of due process, since suspects are denied access to legal counsel. By placing individuals outside the protection of the law, incommunicado detention facilitates the practice of torture and ill-treatment, while prolonged incommunicado detention can constitute a form of torture and arbitrary detention in itself. In addition, articles 19 and 20 of the law reportedly grant the Specialized Criminal Court the power to extend the period of custody indefinitely, even for those detained incommunicado. This allegedly constitutes a violation of the right to be promptly brought before a judicial authority and to challenge the legality of the detention. Article 21 of the law further provides that the Public Prosecutor's Office has the right to forbid lawyers from communicating with their clients at any moment during the investigation, without providing any limit to this restriction.

29. The source claims that the very basis on which Mr. Al-Hawali was arrested, namely the Counter-terrorism and Financing of Terrorism Act, has effectively allowed for his detention without any charges and for him to remain "under investigation" since 12 July 2018. While the authorities have argued that Mr. Al-Hawali was arrested in accordance with the law, the source recalls that an arrest or detention may be authorized by law and nonetheless be arbitrary. The notion of "arbitrariness" must be interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. In this case, it is alleged that the law itself lacks predictability and allows for the violations reportedly suffered by Mr. Al-Hawali.

30. The source therefore argues that neither the arrest nor the detention of Mr. Al-Hawali were grounded in law, rendering his arrest and continued detention arbitrary under category I.

ii. Category II

31. The source submits that Mr. Al-Hawali's detention is a direct consequence of the exercise of his fundamental right to freedom of expression.

32. Mr. Al-Hawali is a prominent Islamic scholar and leader of the Sahwa movement, which openly criticizes the leaders ruling the country. A few weeks before his arrest, he published a book entitled *Muslims and the Western Civilization*, in which he criticized the policies of the Government of Saudi Arabia. There is no evidence that Mr. Al-Hawali behaved in a violent manner or in any way incited acts of violence. His criticism concerning

political and social issues falls within the scope of article 19 of the Universal Declaration of Human Rights.

33. In addition, Mr. Al-Hawali was questioned and interrogated by the intelligence services about his statements, both written and made in the media, his previous positions and his current beliefs.

34. Reportedly, it is not the first time that Mr. Al-Hawali has been detained arbitrarily and for a long period for his public criticism of the international policies of Saudi Arabia. From September 1994 to June 1999, during a clampdown on Islamists and religious scholars, he was allegedly detained without charge for having opposed his country's support to United States troops during the Gulf War. After his release, he was banned from public speaking and dismissed from his academic positions as a form of punishment and to prevent him from spreading his ideas.

35. According to the source, Mr. Al-Hawali was arrested along with other members of the Sahwa movement and other religious scholars and public figures who were openly criticizing government policies and decisions. On 2 January 2018, several special procedure mandate holders of the Human Rights Council deplored the continued use by Saudi Arabia of counter-terrorism and security-related laws against human rights defenders and urged the country to end the repression and release all those detained for peacefully exercising their rights.²

36. The source highlights that, similarly to the 2014 version, the 2017 Counter-terrorism and Financing of Terrorism Act lacks legal certainty and is regularly used to criminalize a wide spectrum of acts falling under the rights to freedom of opinion, expression, peaceful assembly and association, as well as the freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights.

37. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed concerns after a visit to Saudi Arabia in May 2017. The Special Rapporteur recommended that the Government bring the definition of terrorism into line with international human rights norms and refrain from using anti-terrorism and other forms of national security legislation to stifle peaceful political dissidence, criticism and non-violent protest.³

38. The source claims that the Working Group on Arbitrary Detention concurred with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism that the definition of terrorism in the 2014 Counter-terrorism and Financing of Terrorism Act failed to comply with international human rights standards of legal certainty, as any definition of terrorism should be confined to acts or threats of violence that are committed for religious, political or ideological motives, and that are aimed at putting the public or section of the public in fear or to coerce a Government or international organization to take or refrain from taking any action. Furthermore, the Working Group reportedly agreed that, contrary to basic international human rights standards, article 1 of the law had enabled the criminalization of a wide spectrum of acts of peaceful expression, which are viewed by the authorities as endangering national unity or undermining the reputation or position of the State.⁴

39. According to the information received, Saudi Arabia failed to implement those recommendations in its 2017 revision of the Counter-terrorism and Financing of Terrorism Act. The definition of terrorism still includes a long list of material acts and intentions that can be considered terrorist in nature. Article 1 criminalizes non-violent acts, including disturbing public order and obstructing the application of the Basic Law on Governance or part of its provisions, as well as those that are deemed to undermine public security and destabilize the State or endanger its national unity, all of which can be used to punish peaceful dissent. Article 30 of the law criminalizes criticism of the ruling family, punishing anyone

² Office of the United Nations High Commissioner for Human Rights, "UN experts decry Saudi Arabia's persistent use of anti-terror laws to persecute peaceful activists", 2 January 2018.

³ [A/HRC/40/52/Add.2](#), para. 20.

⁴ Opinion No. 63/2017, para. 62.

who directly or indirectly challenges the King or the Crown Prince in terms of his religion or justice with 5 to 10 years in prison.

40. Article 34 of the 2017 Counter-terrorism and Financing of Terrorism Act allegedly criminalizes a wide range of activities considered as promoting terrorism, including acquiring or obtaining – for the purpose of publication or promotion – any publication or record of any kind, including a justification or promotion of a terrorist ideology or a terrorist crime. Given that the definition of terrorism can include peaceful advocacy for regime change or criticism of the King, any support given to peaceful political dissidents or human rights activists tried under this law can therefore be prosecuted as an apology for terrorism under this provision. In addition, article 35 specifically mentions misusing academic or social status or media influence as an aggravating factor in activities regarded as promoting terrorism, and punishes them with a minimum of 15 years of imprisonment.

41. According to the source, article 44 of the 2017 Counter-terrorism and Financing of Terrorism Act extends the criminalization of acts that may fall under the right to freedom of expression by stating that anyone who broadcasts or publishes by any means news, statements, false or malicious propaganda, or the like, for the purpose of carrying out a terrorist offence shall be punished by imprisonment for a term not exceeding five years and not less than one year. These provisions allegedly might be used against anyone who advocates for political change or criticizes the King or the Crown Prince.

42. In the light of the above, the source claims that Mr. Al-Hawali's deprivation of liberty is a reprisal against the exercise of his right to freedom of expression and a way of silencing his dissenting voice and should be characterized as arbitrary under category II.

iii. Category III

43. The source submits that, given the severity of the violations of Mr. Al-Hawali's fundamental guarantees since his arrest, any trial that may follow should be considered *prima facie* as unfair.

44. According to the source, the search of Mr. Al-Hawali's house and the subsequent arrests of his relatives were executed by State security forces without a warrant. As such, they allegedly violate principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, Mr. Al-Hawali's detention allegedly contravenes article 14 (1) of the Convention on the Rights of Persons with Disabilities.

45. Mr. Al-Hawali was subjected to enforced disappearance for two months. In this regard, enforced disappearance constitutes a *prima facie* form of arbitrary detention and constitutes a violation of a detainee's right to be considered a person before the law, in contravention of article 6 of the Universal Declaration of Human Rights. In Mr. Al-Hawali's case, it is alleged that this also violates article 12 (1) of the Convention on the Rights of Persons with Disabilities.

46. Furthermore, enforced disappearance enables torture and can constitute a form of torture in itself, in relation to both the disappeared person and their relatives. As such, Mr. Al-Hawali's and his relatives' enforced disappearances allegedly violate the obligations of Saudi Arabia under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it ratified in 1997.

47. Ever since his arrest, Mr. Al-Hawali has not been authorized to meet with a lawyer of his choice. 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 states that persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension.

48. According to the information received, Mr. Al-Hawali has been denied access to legal assistance at all stages of his detention. Moreover, in the absence of a criminal case against him, it is impossible to retain the services of a lawyer. As a result, and in the event of a trial, his right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing has not been respected. This violation is

aggravated by the fact that the authorities allegedly did not take any positive measure to facilitate Mr. Al-Hawali's communication with his family and lawyer in the light of his facial paralysis, which makes it impossible for him to speak clearly.

49. Mr. Al-Hawali has been detained for over four years without ever being presented before a prosecutor and without having been charged or informed of the charges against him. This is 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. Both stipulate that an individual detained on a criminal charge shall be brought before a judicial authority promptly after arrest, which is generally interpreted to mean 48 hours after arrest.

50. Consequently, Mr. Al-Hawali is also unable to challenge the lawfulness of his detention in violation of the right to habeas corpus, inscribed in principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Habeas corpus is a self-standing human right that can be inferred from articles 8, 9 and 10 of the Universal Declaration of Human Rights.

51. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Committee against Torture have previously raised concerns about the lengthy periods of pretrial detention to which individuals charged with terrorist offences are subjected in Saudi Arabia.

52. The source claims that, under the 2017 Counter-terrorism and Financing of Terrorism Act, applicable to Mr. Al-Hawali, the Specialized Criminal Court remains the competent jurisdiction to try terrorist crimes in both the first and second degrees of jurisdiction. This court of exception suffers from a lack of independence from the Executive as its members are directly appointed by the Ministry of the Interior. The court has been found to systematically disregard fair trial guarantees. In 2016, the Committee against Torture noted reports that the Specialized Criminal Court judges repeatedly refused to act on claims made by defendants facing terrorism charges that they were subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession, in violation of the Convention against Torture.⁵

53. The source therefore submits that Mr. Al-Hawali is a victim of a violation of his rights under article 10 and 11 of the Universal Declaration of Human Rights and that his deprivation of liberty has an arbitrary character under category III.

iv. Category V

54. Mr. Al-Hawali is a prominent Islamic scholar and leader of the Sahwa movement. His political views and convictions are at the centre of the case. The source claims that there is a pattern of discrimination from the authorities towards Mr. Al-Hawali. He has been deprived of his liberty on at least two occasions. There is no explanation for this other than the fact he was targeted for exercising his right to publicly express his political and religious views and convictions.

55. The source explains that the discriminatory nature of the violations suffered by Mr. Al-Hawali can be demonstrated through the actions of the Saudi Arabian authorities towards the Sahwa movement. Firstly, other scholars from the same movement are being detained, allegedly also in an arbitrary manner. Secondly, this religious and political movement has been targeted repeatedly in the past three decades. It is considered a threat because it advocates for political reform.

56. For the source, what triggered the arrest of Mr. Al-Hawali, despite his old age and disability, was the publication, a few weeks prior, of his book, in which he criticized policies of Saudi Arabia both domestically and abroad and offered a set of recommendations. It is alleged that the behaviour of the authorities, including his arbitrary arrest and current conditions of detention, are purposefully meant to silence and punish him, individually and through the arrest of his relatives, for his political and religious opinions. Furthermore, he had been banned from public expression since his previous arrest in 1994, again to prevent him from sharing and spreading his critical opinions. The deprivation of liberty of Mr. Al-

⁵ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17.

Hawali stems directly from his peaceful criticism of the Government and his role within a reformist political and religious movement.

57. The source argues that the absence of any proactive measures by the authorities to provide Mr. Al-Hawali with access to his right to communicate with his family and lawyer constitutes a denial of his fundamental rights that is aggravated by his disability. Denied any physical visits, he is only allowed, on a sporadic basis, to call his family on the telephone. However, his facial paralysis makes it impossible for him to articulate clearly and be understood. Due to this disability, he cannot speak for himself or defend himself before the detaining authorities – or before a court of law. Under articles 4, 5, 12, 13, 14 and 15 of the Convention on the Rights of Persons with Disabilities, the authorities have a positive obligation to take necessary and appropriate measures to provide persons with disabilities deprived of their liberty the appropriate condition and accommodation so that they can enjoy their fundamental rights on an equal basis with others.

58. In its guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, the Committee on the Rights of Persons with Disabilities recalled its recommendation that all persons with disabilities who have been accused of crimes and detained in jails and institutions, without trial, be allowed to defend themselves against criminal charges and be provided with required support and accommodation to facilitate their effective participation, as well as procedural accommodations to ensure a fair trial and due process.

59. The lack of any positive steps taken by the authorities to allow Mr. Al-Hawali to communicate or defend himself as a person with disabilities amounts to a discriminatory practice that makes his detention arbitrary. While Mr. Al-Hawali's disability does not constitute the reason for his arrest, it is a reason for his continued detention as it makes it impossible for him to challenge the legality of the detention. The source therefore considers that Mr. Al-Hawali's arrest and detention result from a denial of his right to equality before the law stemming from both his religious and political opinion and his disability.

60. The source claims that, in the present case, there is a violation of articles 2 and 7 of the Universal Declaration of Human Rights, on the grounds of discrimination based on political or other opinions, giving the detention an arbitrary character under category V.

Response from the Government

61. On 22 July 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 20 September 2022, detailed information about the situation of Mr. Al-Hawali and to clarify the legal provisions justifying his 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 of Saudi Arabia to ensure the physical and mental integrity of Mr. Al-Hawali.

62. The Working Group regrets that the Government, without seeking an extension in accordance with paragraph 16 of the Working Group's methods of work, submitted a late reply on 8 February 2023. The reply cannot, therefore, be considered to have been submitted in a timely fashion.

Discussion

63. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, on the basis of all the information it has obtained, in conformity with paragraph 16 of its methods of work.

64. In determining whether Mr. Al-Hawali's detention 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 international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if

it wishes to refute the allegations.⁶ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

Category I

65. The source submits that the detention of Mr. Al-Hawali has no legal basis because it was done without him being shown any arrest warrant, despite this not being a case of flagrante delicto.

66. As indicated, the Government did not respond in a timely manner to the allegations by the source. However, in its late response, the Government stated that Mr. Al-Hawali had been arrested pursuant to an arrest warrant issued by the competent authority, in accordance with articles 2 and 5 of the Counter-terrorism and Financing of Terrorism Act. Although it stated that an arrest warrant had been issued, the Government did not indicate at what point the arrest warrant was shown to Mr. Al-Hawali.

67. 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 that legal basis and apply it to the circumstances of the case. This is typically⁷ done through an arrest warrant or arrest order (or equivalent document).⁸ The reasons for 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.⁹ The Working Group notes that Mr. Al-Hawali was not arrested in flagrante delicto, when the opportunity to obtain a warrant would not be typically available.

68. The issuance and exhibition of the arrest warrant ensure the exercise of effective control and an individualized assessment by a competent, independent and impartial judicial authority, this being procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group has maintained from its early years that the practice of arresting persons without showing them a warrant renders their detention arbitrary.¹⁰ Mr. Al-Hawali does not appear to have been shown an arrest warrant.

69. Even assuming the explanation given by the Government in its late reply, that is to say, that there was an arrest warrant issued by the competent authority, in accordance with articles 2 and 5 of the Counter-terrorism and Financing of Terrorism Act, such issuance of an arrest warrant would be insufficient to meet the international law standard of the requirements for an arrest warrant. Arrest on the basis of an arrest warrant envisions an obligation that goes beyond merely preparing a warrant of arrest. Such a warrant must be shown to the person to be arrested.

70. In these circumstances, the Working Group reiterates the principles it employs in its jurisprudence in dealing with evidentiary questions, namely that 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.¹¹ The Government in the present case should thus have gone further than merely establishing that it had prepared the warrant of arrest: it should have addressed the allegation by the source that a warrant was not shown to Mr. Al-Hawali at the time of his arrest.

⁶ A/HRC/19/57, para. 68.

⁷ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

⁸ Opinions No. 30/2017, paras. 58 and 59; and No. 79/2022, para. 58.

⁹ Opinion No. 85/2021, para. 69.

¹⁰ Opinions No. 93/2017, para. 44; No. 36/2018, para. 40; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 44/2019, para. 52; No. 34/2021, para. 71; and No. 84/2022, para. 79.

¹¹ A/HRC/19/57, para. 68.

71. The source alleges that Mr. Al-Hawali was not given any reason for his arrest at the time of the deprivation of his liberty and that, after more than four years of being in detention and under investigation have elapsed, no charges have been brought against him.

72. In its late response, the Government stated that Mr. Al-Hawali was informed of the charges against him in accordance with article 1/101 of the law and he acknowledged by signature that he had been informed of his legal rights, including the right to legal assistance, in accordance with article 22 of the executive decree.

73. The Working Group is of the view that the Government should have addressed the allegation rather than merely stating that it had informed Mr. Al-Hawali of the reasons for the arrest and the charges. The Government's response does not specify when Mr. Al-Hawali was informed of the charges brought against him. While discussing the role of the public prosecution, the Government does not specify when the case was filed before the competent court. It is also not clear when he was presented with a copy of the charge sheet.

74. By the Government's own information, Mr. Al-Hawali was allegedly presented to a judge on several occasions, the first of which was 18 October 2018, that is, three months and six days after the date of his arrest. This is way beyond the internationally accepted standards of a reasonable amount of time and does not meet the requirement of prompt and effective information of the charges brought against him.

75. The source alleges that, after his arrest, Mr. Al-Hawali was subjected to enforced disappearance for two months. In this regard, enforced disappearance constitutes an aggravated form of arbitrary detention and constitutes a violation of the detainee's right to be considered a person before the law, in contravention of article 6 of the Universal Declaration of Human Rights.

76. The Government denies this allegation, stating that his case files were referred to the competent court upon completion of the investigation and the filing of charges against him. His first appearance at court was on 18 October 2018, three months and six days after the date of his arrest. The Government states that his case remains under judicial review at different stages, he enjoys all his legally guaranteed rights and he was not subjected to enforced disappearance.

77. The Working Group has repeatedly asserted that judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that the detention has a legitimate basis. The deprivation of the liberty of an individual that entails a wilful refusal to disclose their fate or whereabouts or to acknowledge their detention lacks any valid legal basis under any circumstance. It is also inherently arbitrary, as it places such a person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, such persons' right to an effective remedy under article 8 of the Universal Declaration of Human Rights is violated.

78. The Working Group notes the general denial by the Government that it never detained Mr. Al-Hawali arbitrarily. In particular, the Government stressed that its laws provide adequate and necessary protection against enforced disappearances, as enforced disappearances are prohibited, all places of detention and imprisonment in the country are known and no one is placed in them except by order of the competent authority. The Government pointed to article 2 and article 37 of the Code of Criminal Procedure, which prohibits the arrest, search, detention or imprisonment of any person except in the cases stipulated by law and stipulates that arrest or imprisonment shall only take place in the locations designated for each of them and for the period determined by the competent authority. The Government stated that there are no secret or unknown places of detention in Saudi Arabia and that the person in question is currently detained in Al-Hayr General Directorate of Investigation Prison, in the city of Riyadh, which is a known and designated place of detention.

79. The Working Group notes that, in its response, the Government has not specifically denied the allegation of enforced disappearance of Mr. Al-Hawali, nor has it accounted for his whereabouts from the time he was arrested, on 12 July 2018, to the time he appeared before the judicial authorities, on 18 October 2018.

80. The Government stated that the Working Group on Enforced or Involuntary Disappearances had previously transmitted a communication regarding the alleged enforced disappearance of Mr. Al-Hawali. It was answered by the Government, and the Working Group considered the response at its 119th session, which was held from 16 to 20 September 2019, concluding that the case had been clarified.

81. The Working Group is of the view that the issue that the Government should have addressed was the detention during the first two months after the arrest, and not where Mr. Al-Hawali was or is being detained thereafter.

82. It is for these reasons that the Working Group concludes that the deprivation of the liberty of Mr. Al-Hawali in the first two months after his arrest involved a wilful refusal to disclose his fate or whereabouts or to acknowledge his detention. It thus lacked any valid legal basis. It was also inherently arbitrary, as it placed him outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights. The Government's failure to provide notification of the arrest and the location of detention to his family also violated principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group therefore concludes that his detention is arbitrary under category I.

Category II

83. The Working Group considers a deprivation of liberty to be arbitrary under category II when it 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.

84. The source submits that the deprivation of liberty of Mr. Al-Hawali results from the exercise of the rights or freedoms guaranteed by article 19 of the Universal Declaration of Human Rights because, as a prominent Islamic scholar and leader of the Sahwa movement, which openly criticizes the leaders ruling the country, he published a book entitled *Muslims and the Western Civilization*, in which he criticized the policies of the Government of Saudi Arabia. His criticism was related to political and social issues and therefore falls within the scope of article 19 of the Universal Declaration of Human Rights.

85. The Government denies that the arrest and detention of Mr. Al-Hawali arose from the exercise of any of his human rights, as the laws of Saudi Arabia protect freedom of opinion and expression for all persons, subject to restrictions that are consistent with relevant international standards, in particular the provisions of article 29 (2) of the Universal Declaration of Human Rights. Any person whose rights are violated may lodge a complaint in accordance with the available legal remedies. It adds that the crimes committed by Mr. Al-Hawali have nothing to do with the exercise of expression, or his beliefs, but are punishable terrorist crimes. In this regard, it recalls the provisions of Security Council resolution 1566 (2004) that terrorist offences cannot under any circumstances be justified as being of a political, philosophical, ideological, racial, ethnic, religious or any other nature.

86. The Working Group recalls that the Counter-terrorism and Financing of Terrorism Act under which Mr. Al-Hawali was charged lacks legal certainty and is regularly used to criminalize a wide spectrum of acts falling under the rights to freedom of opinion, expression, peaceful assembly and association, as well as the freedom of thought, conscience and religion, enshrined in the Universal Declaration of Human Rights. For example, article 30 of the law states that whoever describes, explicitly or implicitly, the King or the Crown Prince as infidel, or challenges him in terms of his religion or justice, shall be sentenced to prison for a term of no more than 10 years and no less than 5 years. The Working Group considers that charges and convictions under the provisions of the law that allow the criminalization of peaceful expression, enable arbitrary interpretation and make it difficult for citizens to determine how to act in order to comply with the law, cannot be regarded as consistent with the Universal Declaration of Human Rights.¹²

¹² See opinions No. 46/2011, No. 27/2012, No. 26/2013, No. 40/2016, No. 35/2018, No. 36/2018, No. 46/2018, No. 9/2019 and No. 45/2019. See also [A/HRC/41/7](#), paras. 38.73 and 38.171.

87. The Working Group recalls that it concurred with the observation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism that the 2014 Counter-terrorism and Financing of Terrorism Act failed to comply with international human rights standards of legal certainty, as any definition of terrorism should be confined to acts or threats of violence that are committed for religious, political or ideological motives and that are aimed at putting the public or section of the public in fear or to coerce a Government or international organization to take or refrain from taking any action. The Working Group also agreed that, “contrary to basic international human rights standards, article 1 of the law has enabled the criminalization of a wide spectrum of acts of peaceful expression, which are viewed by the authorities as endangering national unity or undermining the reputation or position of the State.”¹³

88. The Working Group notes that article 19 of the Universal Declaration of Human Rights provides that everyone has the right to freedom of expression; this right includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers. This right includes political discourse, commentary on public affairs, discussion of human rights, and journalism. It protects the holding and expressing of opinions, including those that are critical of or not in line with government policy.¹⁴ The Working Group considers that Mr. Al-Hawali’s conduct fell within the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and that he was detained for exercising those rights.

89. Mr. Al-Hawali’s criticism of government policy through his book concerned matters of public interest. The Working Group considers that he was detained for exercising his right to take part in the conduct of public affairs under article 21 (1) of the Universal Declaration of Human Rights.¹⁵ The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

90. In addition, according to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and to draw public attention to the observance of human rights (arts. 1 and 6 (c)).¹⁶ The source has demonstrated that Mr. Al-Hawali was detained for the exercise of his rights under that Declaration. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights.¹⁷

91. The Working Group also notes the source’s submission, which is unrefuted, that Mr. Al-Hawali was detained for a long period on a previous occasion for his public criticism of the international policies of Saudi Arabia. From September 1994 to June 1999, reportedly during a clampdown on Islamists and religious scholars, he was allegedly detained without charge for having opposed his country’s support to United States troops during the Gulf War. The Working Group thus concludes that Mr. Al-Hawali’s detention resulted from the peaceful exercise of his right to freedom of opinion and expression, as well as the right to take part in the conduct of public affairs, and was contrary to articles 7, 19 and 21 of the Universal Declaration of Human Rights. His detention is therefore arbitrary under category II.

Category III

92. The source claims that the deprivation of liberty of Mr. Al-Hawali falls within category III, as there was a total or partial non-observance of the international norms relating to the right to a fair trial that is alleged to be of such gravity as to give the deprivation of

¹³ Opinion No. 36/2017, para. 62.

¹⁴ Opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.

¹⁵ See opinions No. 46/2011, No. 42/2012, No. 26/2013, No. 36/2018, No. 45/2019, No. 59/2019, No. 89/2020, No. 46/2021 and No. 71/2021.

¹⁶ See also General Assembly resolution 74/146, para. 12.

¹⁷ Opinions No. 75/2017, No. 48/2017, No. 45/2018, No. 9/2019, No. 83/2019, No. 15/2020 and No. 66/2021.

liberty an arbitrary character. The source submits that Mr. Al-Hawali was detained for over three months without being presented before a competent judicial authority and without being charged or informed of the charges against him, 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.

93. The Government maintains that the laws of Saudi Arabia guarantee a fair and public trial for all accused persons before a competent and independent court. The Saudi Arabian judiciary derives its authority and principles from sharia law, which renders justice obligatory, making it the foundation of decision-making and guaranteeing judicial independence.

94. According to the source, the search of Mr. Al-Hawali's house and the subsequent arrests of his relatives were executed by State security forces without a warrant. As such, they allegedly violate principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, Mr. Al-Hawali's detention allegedly contravenes article 14 (1) of the Convention on the Rights of Persons with Disabilities.

95. The source has alleged that Mr. Al-Hawali has been denied access to legal assistance at all stages of his detention. Moreover, in the absence of information about the criminal charges against him, it is impossible to retain the services of a lawyer. This violation is aggravated by the fact that the authorities allegedly did not take any positive measures to facilitate Mr. Al-Hawali's communication with his family and lawyer that take into account that he has facial paralysis, which makes it impossible for him to speak clearly.

96. The Working Group notes the Government's assertion that Mr. Al-Hawali was informed of his rights, including the right to seek the assistance of a lawyer or representative during the investigation and trial procedures. However, he refused to appoint a lawyer either at his own expense or at the expense of the State. He was accorded the right to defend himself within a reasonable period. His case files were referred by the Public Prosecution Service to the competent court, that is to say, as noted above, within the legal time limits and upon completion of the investigation and the filing of charges against him.

97. The Government did not, however, provide information as to his refusal to be represented by lawyers, in particular given the source's submission that he was subjected to enforced disappearance. As the source observes, the fact that no visit from legal counsel is mentioned can only confirm that Mr. Al-Hawali has not had any contact with a lawyer since his arrest, which is a period of more than four years.

98. The Working Group recalls that, under principle 9 and guideline 8 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, 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 must be promptly informed of this right upon apprehension. Access to legal counsel should not be unlawfully or unreasonably restricted. This ensures compliance with fair trial guarantees.

99. Any denial of access to a lawyer, direct or indirect, is thus a breach of articles 10 and 11 of the Universal Declaration of Human Rights, which requires that each person has access to a fair trial; this includes adequate legal protection and the right to a lawyer. Principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that communication with counsel shall not be denied for more than a matter of days. Accused persons must also be able to meet with their counsel in private conditions that fully respect the confidentiality of their communication. The right to communicate with counsel also requires that lawyers can represent their clients without restrictions, influences, pressure or under interference from any quarter.

100. Having considered the circumstances, the Working Group concludes that Mr. Al-Hawali has been denied access to lawyers since the onset of his detention, and that the Government thereby failed to respect Mr. Al-Hawali's right to legal assistance. Consequently, Mr. Al-Hawali has been unable to challenge the lawfulness of his detention, in violation of the right to habeas corpus, inscribed in principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Habeas corpus is

a self-standing human right that can be inferred from articles 8, 9 and 10 of the Universal Declaration of Human Rights. The Working Group considers that this violation substantially undermines and compromises Mr. Al-Hawali's capacity to defend himself in any subsequent trial.

101. The Working Group notes the uncontested allegation that Mr. Al-Hawali was deprived of his liberty in July 2018 and has not yet been sentenced. According to the Government's response, his case is still under judicial review. That is more than four years of pretrial detention, without the Government providing any justification for such a delay. The Working Group is of the view that the delay in this case, during which time Mr. Al-Hawali has remained deprived of his liberty, is unjustified and in violation of the 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.

102. The source submits that, under the 2017 Counter-terrorism and Financing of Terrorism Act, applicable to Mr. Al-Hawali, the Specialized Criminal Court is the competent judicial forum to try terrorist crimes in both the first and second degrees of jurisdiction. The source explains that the Court suffers from a lack of independence from the Executive as its members are directly appointed by the Ministry of the Interior.

103. The Government maintains that the Specialized Criminal Court is competent, impartial and independent and satisfies international human rights standards. The Working Group, however, recalls that, in 2016, the Committee against Torture noted reports that the Specialized Criminal Court judges repeatedly refused to act on claims made by defendants facing terrorism charges that they were subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession, in violation of the Convention against Torture.¹⁸ It also recalls its previous observation that the Specialized Criminal Court cannot be considered an independent and impartial tribunal replete with the presumption of innocence and guarantees necessary for defence.¹⁹

104. The Working Group retains its previous view that the Specialized Criminal Court cannot be considered an independent and impartial tribunal, as it comprises individuals appointed by the Ministry of the Interior. This has also been raised by the Committee against Torture.²⁰ The Working Group notes the assessment of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism that concerns regarding the lack of independence of the Court remain undiminished.²¹ The trial before the Court thus contravenes articles 10 and 11 (1) of the Universal Declaration of Human Rights.

105. Moreover, the Working Group wishes to highlight the information provided by the source that Mr. Al-Hawali is a person with disabilities, which entails that he cannot defend himself. The Government denied this claim, without further elaboration and without providing details that would support such a denial. The principle of equality of arms is enshrined in article 10 of the Universal Declaration of Human Rights, which states that everyone has the right to a fair hearing in full equality, and in article 11 (1), which states that everyone facing criminal charges should enjoy all the guarantees necessary for their defence during trial. Articles 13 and 14 of the Convention on the Rights of Persons with Disabilities also reinforce the protection of this right, as well as the obligation of the State to provide the necessary accommodation to allow persons with disabilities to enjoy access to justice on an equal basis with others. When a trial involves an individual with a disability who is deprived of his or her liberty, the detaining authorities must take positive measures to accommodate that person's situation;²² this allows for equality with the capabilities of the prosecution during the proceedings. In that regard, the International Principles and Guidelines on Access to Justice for Persons with Disabilities state that persons with disabilities are entitled to all

¹⁸ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17.

¹⁹ Opinions No. 22/2019, para. 74; No. 26/2019, para. 102; No. 56/2019, para. 86; No. 71/2019, para. 44; No. 34/2021, para. 90; and No. 62/2022, para. 95.

²⁰ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17.

²¹ A/HRC/40/52/Add.2, para. 47.

²² Opinion No. 21/2021, paras. 61–65.

substantive and procedural safeguards recognized in international law on an equal basis with others, and that States must provide the necessary accommodations to guarantee due process. In addition, persons with disabilities have the right to participate in the administration of justice on an equal basis with others. This does not seem to be the case for Mr. Al-Hawali. Not only was he not provided the necessary accommodations to guarantee due process, but he also has to face trial while deprived of his liberty. In addition, he has been subjected to incommunicado detention and deprived of access to legal counsel. Therefore, it cannot be considered that Mr. Al-Hawali has the same trial capabilities as and on an equal basis to the authorities that are prosecuting him, in violation of his right to full equality during trial.

106. The Working Group thus agrees with the source's submission that Mr. Al-Hawali is a victim of a violation of his rights under articles 10 and 11 of the Universal Declaration of Human Rights and that his deprivation of liberty has an arbitrary character under category III.

Category V

107. The source submits that Mr. Al-Hawali was arrested and detained on discriminatory grounds, namely on the basis of his political views and convictions, and that there is a pattern of discrimination by the authorities towards Mr. Al-Hawali.

108. The Government submits that Mr. Al-Hawali's arrest and detention are purely motivated by the obligation on the part of the Government to curb terrorism and to enforce the law in this regard.

109. The Working Group considers that Mr. Al-Hawali was targeted because of his peaceful activities in criticizing the State. Moreover, in the discussion above concerning category II, the Working Group established that Mr. Al-Hawali's detention resulted from the peaceful exercise of his rights under international law. When a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international human rights law on the grounds of discrimination based on political or other views.²³

110. The Working Group notes that the source's allegations of detention on discriminatory grounds, due to the expression of political opinions, are consistent with its previous findings in relation to Saudi Arabia.²⁴ In this regard, the present case seems to be part of a broader pattern of discrimination against those who are perceived as critical or opposed to the Government or to the State's policies and have used their rights to freedom of opinion and expression to voice such discontent.

111. The Working Group finds that Mr. Al-Hawali was deprived of his liberty on discriminatory grounds, that is, owing to his role within a reformist political and religious movement. His deprivation of liberty violates articles 2 and 7 of the Universal Declaration and is arbitrary under category V.

Concluding remarks

112. The Working Group is gravely concerned by the fact that Mr. Al-Hawali remains in detention over four years after his arrest, in particular as he is a person with a disability. He has reportedly been denied regular contact with his family and has had no access to legal representation since his arrest. The authorities are urged to take measures to facilitate communication between Mr. Al-Hawali and his family and legal counsel.

113. Owing to his disability, Mr. Al-Hawali is unable to speak for himself or defend himself before the detaining authorities and before a court of law. The authorities have a positive obligation under the Convention on the Rights of Persons with Disabilities to take the necessary and appropriate measures to provide persons with disabilities deprived of their

²³ Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

²⁴ Opinions No. 92/2020, No. 62/2022 and No. 84/2022.

liberty the appropriate conditions and accommodation so that they can enjoy their fundamental rights on an equal basis with others, under articles 4, 5, 12, 13, 14 and 15 of the Convention on the Rights of Persons with Disabilities.²⁵

114. The Working Group urges the Government to ensure that Mr. Al-Hawali's relatives do not suffer any reprisals for his activities or for the exercise of their own rights.

115. Lastly, the Working Group wishes to record its concern over the uncontested allegations over the harassment and reprisals against the family members of Mr. Al-Hawali, in particular the alleged arrests of family members as a form of punishment for his activities.

Disposition

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

The deprivation of liberty of Safar bin Abdulrahman al-Hawali, being in contravention of articles 2, 3, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

117. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Mr. Al-Hawali 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.

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

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

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

121. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

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

Follow-up procedure

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

- (a) Whether Mr. Al-Hawali has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Al-Hawali;
- (c) Whether an investigation has been conducted into the violation of Mr. Al-Hawali's rights and, if so, the outcome of the investigation;

²⁵ Opinion No. 21/2021, paras. 61–64.

(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.

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

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

126. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken.²⁶

[Adopted on 3 April 2023]

²⁶ Human Rights Council resolution 51/8, paras. 6 and 9.