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**Human Rights Council**

**Working Group on Arbitrary Detention**

 Opinions adopted by the Working Group on Arbitrary Detention at its ninety-seventh session,
28 August–1 September 2023

 Opinion No. 56/2023 concerning Salman Fahed Alodah and Khaled Alodah (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]](#footnote-2) on 2 March 2023 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Salman Fahed Alodah and Khaled Alodah. The Government has replied to the communication. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

 (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

 (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

 (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

 (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

 (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

 1. Submissions

 (a) Communication from the source

4. Salman Fahed Alodah[[2]](#footnote-3) is a Saudi citizen who was born in February 1957. He usually resides in the Al-Falah neighbourhood in Riyadh.

5. Khaled Alodah, a Saudi citizen, is an academic who was born on 1 January 1964. He usually resides in Buraydah, Al-Qassim, Saudi Arabia.

6. According to the source, Mr. Salman Alodah is one of contemporary Islam’s most renowned and celebrated religious thinkers and philosophers, who peacefully advocates for civil rights and liberties. Since the 1990s, as a member of the “Islamic Awakening” movement (Al-Sahwa al-Islamiyya), he has pioneered the religious-based promotion of democracy and human rights in Saudi Arabia.

7. His nonconformist positions have reportedly been met with increasing repression from the authorities. In 1993, he was allegedly fired from his position at the College of Sharia in retaliation for his lectures on democratic accountability and human rights. In September 1994, he was arrested with other religious scholars and detained in Riyadh’s Al-Haer Prison for five years, without any legal proceedings. In 2011, his progressive show on the MBC channel was taken off the air after he publicly supported democratic change in Egypt. In 2011, he was one of the main proponents of two major petitions calling for democratic reforms. In retaliation, the Ministry of the Interior reportedly banned him from travelling outside Saudi Arabia.

8. Despite reprisals, Mr. Salman Alodah continued to publicly call for democratic accountability and the release of prisoners of conscience.

9. The source notes that since Crown Prince Mohammed bin Salman Al Saud took power in June 2017, there have been several coordinated crackdowns on dissent. Reportedly, since Mr. Salman Alodah’s arrest in September 2017, the retaliation against him has taken a particularly severe form, showing the authorities’ intention to silence him permanently.

 (i) Arrest and deprivation of liberty of Salman Alodah

10. On 7 September 2017, Mr. Salman Alodah was reportedly arrested in his home in Riyadh in the early morning by two plain-clothed individuals who identified themselves as “State security agents”. According to the source, they took him to an undisclosed location without any warrant or explanation. Persons associated with him tried, in vain, to contact the authorities to enquire about his fate and whereabouts, and publicized the arrest on Twitter. Mr. Salman Alodah was reportedly ordered to publish a tweet expressing his support for the Crown Prince and for his policy towards Qatar, which he refused to do.[[3]](#footnote-4)

11. On 12 September 2017, Mr. Khaled Alodah was reportedly arrested as punishment for his public denunciation of his brother’s arrest. The source notes that consequently, the family refrained from seeking further domestic remedies, fearing further arrests. Shortly afterwards, authorities imposed a travel ban on 17 family members in the country and a family member abroad was denied consular services.

12. On 12 September 2017, the State Security Prosecution allegedly issued a press release claiming to have discovered an “intelligence cell conspiring with a foreign government”, and other intellectuals, activists, scholars, poets and public figures were arrested.

13. The case of Mr. Salman Alodah was submitted to the Working Group on Enforced or Involuntary Disappearances, which transmitted a communication to the Government on 9 October 2017. In its reply of 26 December 2017, the Government confirmed the detention, without providing the date of arrest. This was the first official acknowledgement of his detention by the authorities.

14. On 13 February 2018, after more than five months in detention, Mr. Salman Alodah was reportedly allowed his first family visit. Since then, long periods of incommunicado detention have kept him outside the protection of the law.

15. The source reports that since his arrest, Mr. Salman Alodah has been subjected to torture and ill-treatment, including several years of solitary confinement, sensory deprivation and other forms of physical and psychological torture.

16. The authorities allegedly made it clear that these actions constituted punishment for his refusal to publicly support the Crown Prince’s regional and domestic policies. The source notes that the authorities detaining him, the General Directorate of Investigation (Mabahith), are under the direct control of the Crown Prince.

17. From September 2017 to September 2018, Mr. Salman Alodah was allegedly subjected to continuous solitary confinement in a small cell without natural light, to continuous blindfolding, shackling, handcuffing and sleep deprivation, to interrogation for several days and nights, and to repeated beatings. He allegedly was violently thrown against walls, was deprived of access to a bathroom, to food, to sleep and to medical care, and was thrown food in a plastic bag while shackled, thus forcing him to eat directly from the plastic bag. He reportedly continues to be subjected to such acts to “break” him and force him to abandon his beliefs and advocacy.

18. The source recalls that the United Nations human rights mechanisms have expressed deep concern at the numerous reports of torture and ill-treatment in detention centres in Saudi Arabia, particularly in branches of the Mabahith of the Ministry of the Interior and in Mabahith detention centres.[[4]](#footnote-5)

19. Reportedly, as the detaining authorities have intensified their use of torture and solitary confinement, Mr. Salman Alodah’s physical and mental health have significantly deteriorated, impairing his vision and hearing. He is reportedly being denied adequate care and is at risk of complete blindness and deafness. He also presents signs of cognitive decline, with an inability to comprehend his environment, and mental fogginess. The source notes that on 18 November 2020, during the last hearing before the Specialized Criminal Court, he appeared significantly emaciated and disoriented and completely aloof. He could not hear what was being said by the court or comprehend the proceedings.

20. Allegedly, he was only informed of the charges against him on 4 September 2018, during his first hearing at the Specialized Criminal Court, during which the death penalty was requested. None of the 37 charges brought by the Public Prosecutor referred to specific acts of violence or incitement to violence.

21. Throughout his detention, he has allegedly been denied legal counsel and he has been unable to challenge his detention or prepare his defence effectively.

22. The source notes that the Office of the United Nations High Commissioner for Human Rights has expressed its concerns at the use of anti-terrorism laws[[5]](#footnote-6) to prosecute clerics and sentence them to death.[[6]](#footnote-7)

23. The source argues that Mr. Salman Alodah is detained in conditions that are intentionally posing immense risks to his physical and mental integrity, which can only be interpreted as a “slow-motion execution”.

 (ii) Arrest and deprivation of liberty of Khaled Alodah

24. According to the source, after announcing in a tweet the arrest of his brother, Mr. Khaled Alodah was arrested on 12 September 2017 by a group of soldiers and was taken to an unknown location. Reportedly, he was only informed of the charges against him on the first day of his trial in October 2018, when he was presented handcuffed and without legal assistance before the Specialized Criminal Court for his first hearing, held in camera.

25. The source argues that since his arrest, Mr. Khaled Alodah has been deprived of legal counsel and unable to challenge his detention or prepare for his defence. Reportedly, he suffers from diabetes and high blood pressure, for which he has been denied medication, causing his condition to deteriorate. He has also reportedly been subjected to severe torture and been held incommunicado and in solitary confinement for long periods. As a result, he developed a heart condition which led to him being urgently hospitalized. Upon his return to prison, he was denied adequate medical care and was placed in solitary confinement for extended periods of time.

26. In October 2018, he was prosecuted before the Specialized Criminal Court on charges such as “sympathizing with his brother”, “mixing private and public business” and “seeking to employ the arrest of his brother to stir up discord and destabilize security”.

27. On 17 November 2020, after almost four years of pretrial detention, he was reportedly sentenced to five years’ imprisonment, followed by a five-year travel ban. Although his detention was supposed to end in July 2022, the court of appeal extended his sentence to eight years’ imprisonment.

 (iii) Legal analysis

28. The source argues that the two individuals’ deprivation of liberty is arbitrary under categories I, II, III and V.

 a. Category I

29. The source reports that neither Mr. Salman Alodah nor Mr. Khaled Alodah were shown an arrest warrant or had the reasons for their arrest explained to them at the time of their arrest. They were not given access to a lawyer and were only informed of the charges against them in September and October 2018 respectively.

30. Furthermore, following their respective arrests, Mr. Salman Alodah and Mr. Khaled Alodah were reportedly subjected to enforced disappearance until 26 December 2017, when the Government officially confirmed their detention to the Working Group on Enforced or Involuntary Disappearances. Reportedly, the Government’s reply to the Working Group constituted the first official recognition of the two individuals’ detention, but failed to provide their dates of arrest in order to conceal the periods of enforced disappearance. Since then, the authorities have reportedly continued to hold the two individuals outside the protection of the law in secret and incommunicado detention for long periods, and have denied them legal counsel throughout their detention.

31. The source thus argues that they were denied their right to be informed of the charges against them promptly and to challenge the legality of their detention before an independent judicial authority, contrary to articles 3, 8, 9 and 10 of the Universal Declaration of Human Rights and principles 10, 32 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[[7]](#footnote-8)

32. Furthermore, the source submits that the arresting authority, the Mabahith, does not constitute a judicial or other authority under the law as provided under principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Therefore, the source argues that their arrests are arbitrary and lack legal basis.

33. The source submits that according to the Government’s response to communication SAU 14/2018,[[8]](#footnote-9) both individuals were arrested on the basis of arrest warrants issued by the competent authority, pursuant to article 5 of the Counter-terrorism and Financing of Terrorism Act and article 6 (1) of the Repression of Cybercrime Act, and also to article 2 (d) of the Anti-Money Laundering Act of 2003 in regard to Mr. Salman Alodah. According to the source, none of these legal grounds comply with the customary principle of *nulla poena sine lege* under article 11 (2) of the Universal Declaration of Human Rights.[[9]](#footnote-10)

34. The source recalls that vaguely and broadly worded provisions, such as those in the Repression of Cybercrime Act and the 2017 counter-terrorism law, violate due process of law. It adds that detention pursuant to a law that is inconsistent with international human rights law lacks legal basis and is therefore arbitrary.[[10]](#footnote-11) The source also recalls that detention under the lèse-majesté provisions in article 6 (1) of the Repression of Cybercrime Act violates international law and lacks legal basis as such.[[11]](#footnote-12) Furthermore, the source notes that the Anti-Money Laundering Act of 2003 is based on the definition of terrorism in Saudi law criticized by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for its overbroadness.[[12]](#footnote-13)

35. Regarding Mr. Salman Alodah, the Anti-Money Laundering Act was allegedly used to prosecute the alleged funding of acts such as “calling into question the fundamentals of the Islamic religion on which the country is based”, “contact or correspondence with any groups, currents of thought or individuals hostile to the Kingdom”, “seeking to shake the social fabric or national cohesion, or calling, participating in, promoting or inciting sit-ins, protests, meetings or group statements in any form” and harming “the unity or stability of the Kingdom by any means”.[[13]](#footnote-14) Reportedly, the only charge referring to the funding of activities, brought against him under the Anti-Money Laundering Act, was “funding the Renaissance Forum, a public workshop organized by academics and youth in Bahrain, Kuwait and Qatar about civil society, religion and other topics”. The source argues that these laws should be considered as criminalizing lèse-majesté and in violation of rights such as freedom of expression and of conscience.

36. The source thus considers the detention of the two individuals void of legal basis and arbitrary under category I.

 b. Category II

37. The source submits that both individuals are being detained in reprisal for the peaceful exercise of their freedom of opinion and expression, conscience and religion. It submits that the two individuals were arrested amidst major power struggles for succession in the royal family, regional tensions and major crackdowns on freedom of expression.[[14]](#footnote-15)

38. The source argues that the charges brought against Mr. Salman Alodah directly refer to his peaceful exercise of his freedom of opinion, expression, association, conscience and belief, and his human rights advocacy. It notes that the death penalty was requested against Mr. Salman Alodah on the basis of 37 charges, none of which refers to acts of or calls for violence. All of the charges reportedly refer to his peaceful advocacy for democracy and human rights, in terms such as “calling for and inciting revolution in Saudi Arabia and support for the revolutions in other Arab countries”, “swaying public opinion, inciting sedition, and goading society and the families of prisoners by demanding the release of prisoners on media platforms” and “condoning the sit-ins organized by families of detainees, an event that took place in Buraydah in 2011”. His support for Saudi female human rights defenders is prosecuted under the charge of “stirring public emotions by announcing the names of women arrested for social media posts and praising them”.

39. Other charges allegedly refer to his criticism of the Government, such as “calling for change in the Saudi Government”, “incitement against the State and its institutions by joining a group of activists who are against the Saudi leadership”, “receiving text messages that reflect antagonism against the Kingdom and are critical of its policies”, “describing the Kingdom’s authorities as tyrannical”, “expressing cynicism and sarcasm about the Government’s achievements” and “urging the public not to work for the General Directorate of Investigation”.

40. Furthermore, some charges related to his advocacy for peace in the region, such as “interfering in the affairs of a neighbouring country”, “objecting to the boycott of Qatar”, “funding the Renaissance Forum, a public workshop organized by academics and youth in Bahrain, Kuwait and Qatar about civil society, religion and other topics” and “publicly objecting on the radio to the Kingdom’s granting of exile in 2011 to the former Tunisian President”.

41. The source notes that Mr. Salman Alodah is an influential religious figure who has urged greater respect for human rights within sharia and who advocates for human rights as a religious scholar and as a human rights activist.

42. The source notes that the official Islamic doctrine of the State, Wahhabism, governs all political and social policies, emphasizes obedience to the ruler, and considers criticizing the ruler a religious offence. The source submits that targeting dissenting religious figures is a well-established practice in Saudi Arabia, particularly on the basis of the Counter-terrorism and Financing of Terrorism Act, which carries the death penalty.[[15]](#footnote-16)

43. The source contends that Mr. Salman Alodah’s criticism of royal power is seen as a political and religious transgression, as illustrated by charges such as “inducing corruption on earth”, “joining groups and religious unions that go against the traditions of the country’s recognized scholars” and “joining the European Council for Fatwa and Research”. According to the source, the imprisonment of a religious authority such as Mr. Salman Alodah is aimed at silencing an entire movement within global Islamic legal thought that is supporting human rights and democratic participation in Islamic law.

44. The source argues that Mr. Salman Alodah was arrested, tortured, denied medical care and threatened with the death penalty to force him to publicly renounce his religious views and to adopt and promote Wahhabism, as required by religious scholars in Saudi Arabia.

45. Similarly, the source argues that the charges brought against Mr. Khaled Alodah directly refer to the peaceful exercise of his freedom of opinion, expression and belief. The charges of “seeking to employ the arrest of his brother in order to stir up discord and destabilize security” allegedly refer to his public denunciation of his brother’s enforced disappearance. His sentence was reportedly extended on appeal in reprisal for having challenged the decision of the Specialized Criminal Court and of the royal authority that it represents.

46. The source concludes that the two individuals were arrested for exercising their rights guaranteed by articles 7, 18, 19, 20 and 21 of the Universal Declaration of Human Rights.

 c. Category III

47. The source argues that the violations of the two individuals’ fair trial rights are of such gravity as to render their detention arbitrary. It recalls that when a deprivation of liberty is arbitrary under category II, no trial should take place.

48. It notes that Mr. Salman Alodah’s death penalty trial has been on hold since the last hearing, of November 2020, and that Mr. Khaled Alodah was sentenced to five years’ imprisonment without any adversarial proceedings in a camera trial. On appeal, his sentence was reportedly extended as further punishment for challenging the decision of the Specialized Criminal Court, and by extension the royal authority.

49. The source submits that the individuals were not informed of the charges against them before trial. As indicated in the State’s reply to communication SAU 14/2018, they were only informed of the charges when they appeared at their first court session.

50. Furthermore, the source contends that both individuals were denied access to a lawyer during their pretrial detention, their hearings were held mostly *in camera*, and they were denied legal representation of their own choosing during trial, contrary to articles 10 and 11 (1) of the Universal Declaration of Human Rights, principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and 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. They were both allegedly interrogated and tortured to punish them for their opinions and to force them to publicly deny such opinions and sign unknown documents.

51. The source submits that the State’s reply to communication SAU 14/2018 mentions Mr. Salman Alodah’s appearance at his first court session but makes no mention of him being assisted by a lawyer. It was not until the next session that the State mentioned the presence of a lawyer, who had not been chosen by the defendant or given access to the defendant or to the prosecution’s files. The source refers to concluding observations of the Committee against Torture on Saudi Arabia, in which the Committee expressed concern regarding detainees’ access to legal representation.[[16]](#footnote-17) Furthermore, the source argues that communication between lawyers and clients is not confidential, rendering legal assistance ineffective, particularly in the context of reprisals against lawyers. It submits that in matters related to “lèse-majesté”, and particularly when individuals are prosecuted by the Specialized Criminal Court under the anti-terrorism law, the right to legal assistance has been emptied of its substance.

52. The source further submits that both individuals were tried before the Specialized Criminal Court, which is insufficiently independent of the Ministry of the Interior and does not comply with the requirement of an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights.[[17]](#footnote-18) The source notes that the Specialized Criminal Court is a court of exception with jurisdiction over terrorism cases and is composed of judges appointed by the Ministry of the Interior.[[18]](#footnote-19) It submits that institutional reforms implemented since 2017 have aggravated the situation by placing the Ministry’s investigatory powers under the authority of the Public Prosecution Service and the State Security Presidency, both of which report directly to the King.[[19]](#footnote-20) As a result, in lèse-majesté cases such as this one, the King and the Crown Prince by extension are reportedly both judge of and party to the trial, contrary to the principle of equality of arms and the rights of the defence. Allegedly, the request for the death penalty in the case of Mr. Salman Alodah on charges that do not refer to any act of violence demonstrates the political nature of his trial. The source adds that his trial has been ongoing for more than four years, in violation of his right to be tried within a reasonable time or to release pending trial. It argues that the authorities’ behaviour illustrates their intention to keep Mr. Salman Alodah in indefinite detention.

53. The source notes the particularly cruel manner in which Mr. Salman Alodah continues to be treated, as he is effectively being left to die in detention, without a reasonable prospect of justice. According to the source, his detention conditions and the systematic denial of vital medical care are putting his life in immediate danger. The source notes that as a person with disabilities, Mr. Salman Alodah is entitled to benefit from specific measures,[[20]](#footnote-21) none of which have been taken by the authorities.

 d. Category V

54. The source argues that Mr. Salman Alodah is being subjected to multiple and intersecting forms of discrimination. Reportedly, his criticism of royal power is considered as both a political and a religious transgression, criminalized under the Counter-terrorism and Financing of Terrorism Act. The source recalls that the law’s broad definition of terrorism includes such acts as calling into question the fundamentals of Islam, or describing explicitly or implicitly the King or the Crown Prince as an infidel, or challenging either of them in their religion.[[21]](#footnote-22) The source emphasizes that misuse of academic or social status or media influence is considered as an aggravating factor and attracts a sentence of a minimum of 15 years’ imprisonment.[[22]](#footnote-23)

55. The source argues that such dispositions are inherently discriminatory towards religious scholars such as Mr. Salman Alodah, who are expected to support and propagate official religious doctrine instead of questioning it. It notes that the wording of the charge of joining groups and religious unions that go against the traditions of the country’s recognized scholars demonstrates such discrimination.

56. The source submits that Mr. Salman Alodah is also being punished for supporting human rights.[[23]](#footnote-24) It argues that his status as a human rights defender derives both from his legal scholarship aimed at enshrining human rights in Islamic law and from his public calls for human rights-based reforms and peaceful activism.

57. Furthermore, the source reports that since his arrest, Mr. Salman Alodah has suffered several impairments, making him a person with a disability. Nevertheless, he has reportedly been denied his rights to reasonable accommodation, to equal recognition before the law, to effective access to justice on an equal basis with others and to liberty and security, in violation of articles 5, 12, 13 and 14, read alone and in conjunction with articles 1, 3, 4 and 5 (3), of the Convention on the Rights of Persons with Disabilities.

58. Finally, the source submits thatMr. Khaled Alodah’s detention is discriminatory since he was arrested for supporting his brother on Twitter, as is illustrated by the charges that were brought against him. The travel bans imposed on 17 members of the family and his harsher sentencing on appeal are allegedly aimed at silencing them collectively and amount to harassment and collective punishment both of individuals and of their relatives.

 (b) Response from the Government

59. On 5 March 2023, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure, requesting it to provide, by 1 May 2023, detailed information about the current situation of Mr. Salman Alodah and Mr. Khaled Alodah and to clarify the legal provisions justifying their continued detention.

60. On 27 April 2023, the Government replied to the allegations, alleging that the communication comprised unfounded allegations and assertions based on information that was devoid of evidence.

61. The Government notes that a communication regarding Mr. Salman Alodah is under consideration by the Committee on the Rights of Persons with Disabilities. The Committee then transmitted to the authorities a communication dated 5 March 2021, and the authorities responded to that communication and refuted its content. The Government argues that paragraph 33 (d) (ii) of the methods of work of the Working Group provides that if a communication addressed to the Working Group concerns a situation that has already been referred to another body which has the function of dealing with individual cases, such as the Human Rights Committee and other treaty bodies, the Working Group should transmit the case to that other body if the person and facts involved are the same. It thus concludes that the Working Group should refrain from considering the communication submitted by the source regarding Mr. Salman Alodah.

62. The foregoing notwithstanding, the Government responded to allegations made by the source, dismissing them as unfounded and explaining national laws and procedures.

63. The Government submits that both individuals were arrested on the basis of an arrest warrant issued by the competent authority pursuant to articles 2 and 5 of the Counter‑terrorism and Financing of Terrorism Act. Their detention orders were reportedly extended in accordance with the law. According to the Government, they were charged with terrorist offences and cybercrimes and, in addition, Mr. Salman Alodah was charged with financing terrorism.

64. According to the Government, they were informed of the grounds for their arrest and of their rights and signed a document to indicate their awareness of such rights, including access to a lawyer, in accordance with national legislation. They were charged after an investigation concluded that the evidence was sound. They were summoned to appear before the competent court, namely the Specialized Criminal Court, in accordance with article 15 of the Code of Criminal Procedure. During their first trial session, the Public Prosecutor’s charges were read out to them and they received a copy thereof. They were informed of their right to a lawyer and requested a number of legal representatives, which were granted.

65. According to the Government, the case of Mr. Salman Alodah is still under review, while Mr. Khaled Alodah was convicted of terrorist offences and cybercrimes and sentenced to imprisonment. On appeal, the court sentenced him to eight years’ imprisonment, on the basis of the Counter-terrorism and Financing of Terrorism Act and article 6 of the Repression of Cybercrime Act.

66. The Government argues that both individuals confessed freely and endorsed their confessions, and the content of the statements, records and reports, before the court. It reiterates that national laws protect the right to legal assistance and to present a defence, and argues that both individuals exercised such right.

67. The Government assures the Working Group that since the date of their arrest, both individuals have enjoyed regular visits and contact and have benefited from all the rights and guarantees enshrined in national law, which it argues is consistent with relevant international norms. The Government denies the allegations of torture, and of forcing them to publish a tweet, and submits that they are treated in a manner that preserves their dignity and guarantees all their rights, just as other detainees are. The Government affirms that national laws forbid acts of torture and penalize perpetrators. It adds that all prisons and detention facilities are monitored and inspected, and all necessary measures are taken in the event of any infringement.

68. The Government argues that all national laws are drafted in a precise and clear manner and contain no equivocal terms. It explains that the Counter-terrorism and Financing of Terrorism Act contains clear definitions of the crimes of terrorism and the financing of terrorism, consistent with international norms. Similarly, it notes that the Repression of Cybercrime Act contains a clear definition of cybercrimes, and that the Counter-terrorism and Financing of Terrorism Act requires action to be taken to combat terrorist crimes and to punish perpetrators in order to preserve the security and safety of the local and international communities. It submits that the principles of necessity and proportionality are basic criteria on which the national legislature bases its legal instruments.

69. The Government further argues that it respects and protects the right to freedom of opinion and expression for all persons unless their conduct is deemed to breach or exceed the bounds of public order or the norms applicable to society or its members, consistent with international standards, in accordance with the restrictions allowed by article 19 of the Covenant. The Government argues that both individuals were accused of terrorism offences criminalized under national law which are unrelated to their exercise of freedom of expression. It points to the statement in Security Council resolution 1566 (2004) that terrorist crimes are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

70. The Government contends that Mr. Khaled Alodah appealed the judgment against him and the appeal court handed down its judgment after examining the factual and presumptive evidence that proved that he had committed terrorist offences. It argues that the evidence included his confessions of his own free will and his endorsement of them before the court, and the fact that he enjoyed full legal capacity and was not coerced to appear before the court, as well as statements and the arrest, investigation and forensic reports.

71. The Government denies that the detention of both individuals is arbitrary. It submits that neither individual was subjected to enforced disappearance or detained in unknown or secret locations. It contends that they were both granted regular visits and contact and that, upon receiving a communication from the Working Group on Enforced or Involuntary Disappearances concerning both individuals, the Government informed the Working Group that Mr. Salman Alodah was detained in the Mabahith prison in Riyadh and Mr. Khaled Alodah in the Mabahith prison in Al-Qassim. It states that both individuals were allowed to challenge the legality of their detention.

72. The Government further argues that national laws guarantee a fair and public trial for all accused persons before a competent and independent court. It contends that all trial sessions were held in public, and that the trial of Mr. Salman Alodah was attended by relatives, media outlets, and representatives of embassies and of the country’s Human Rights Commission. According to the Government, both individuals exercised their right to legal counsel and to present their defence. The Government submits that the Specialized Criminal Court is independent and impartial and was established pursuant to a decision of the Supreme Judicial Council to promote justice. Judges are reportedly appointed by the Council on the basis of royal orders, after obtaining endorsed certificates, fulfilling specific conditions and having advanced in the ranks of the judiciary, in accordance with the Judiciary Act. The Government adds that a royal decree of 2017 granted the Public Prosecution Service (formerly the Investigation and Public Prosecution Department) complete independence. It is directly linked to the King, and forms part of the judiciary, and nobody may interfere with its work. The Government argues that the functions of the judiciary are entirely separate from those of the executive and that the judiciary enjoys complete independence.

73. The Government contends that Mr. Salman Alodah’s case is still being tried and that the trial is being conducted within a reasonable time frame given the seriousness of the crimes and the penalties prescribed. Allegedly, he is being afforded all rights, including the right to present a defence. The Government adds that national laws prohibit prolonged detention.

74. The Government affirms that no person is detained on account of the exercise of rights or freedoms and that national laws protect the presumption of innocence and contain procedural guarantees that control the conduct of criminal proceedings and guarantee the rights of the accused.

75. The Government also reaffirms its compliance with the principle of equality, in accordance with national law. It adds that discrimination is criminalized and that treaties that it has ratified, including the International Convention on the Elimination of All Forms of Racial Discrimination, are deemed to constitute part of national legislation. It further submits that persons with disabilities are guaranteed equal and effective protection against all forms of discrimination and that appropriate steps are taken to provide them with reasonable accommodation.

76. The Government denies the allegations of reprisals or harassment against Mr. Khaled Alodah or his family. It notes that such acts are punishable under national legislation.

77. Finally, the Government details the measures that it has taken to prevent the spread of the coronavirus disease (COVID-19) pandemic in prisons and detention centres.

 (c) Additional comments from the source

78. On 17 May 2023, the source provided further comments, in which it asserted that the facts and allegations raised in the communication to the Working Group were not the same as those raised before the Committee on the Rights of Persons with Disabilities. It notes that the facts presented to the Committee on the Rights of Persons with Disabilities are specific to the State’s failure to provide Mr. Salman Alodah, as a person with disability, with reasonable accommodation in order to access justice and health care, in violation of the Convention on the Rights of Persons with Disabilities. Conversely, the facts raised before the Working Group are specific to the violations of Mr. Salman Alodah’s rights to a fair trial, including as a person with disability. Therefore, it concludes that the Working Group retains its competence to make conclusions, in line with its mandate, on the arbitrariness of Mr. Salman Alodah’s detention.

79. The source contends that the Government’s response is void of substantive and concrete evidence to support the claims that it makes or to rebut those of the source, does not relate to the specifics of the cases, and relies on a recitation of national laws and general assertions about its commitment to human rights. It recalls that mere assertions that lawful procedures have been followed are insufficient to rebut the source’s allegations.[[24]](#footnote-25)

80. The source reiterates the claims that it made in its initial submission and adds that the right to legal assistance of one’s choosing is not guaranteed by national law, particularly for cases falling under the anti-terrorism law. It contends that neither individual has been allowed to communicate with or to receive visits from their lawyer since their detention and that Mr. Salman Alodah only met his lawyer during a brief meeting at a hearing before the Specialized Criminal Court.

81. The source reiterates its concerns regarding the detention conditions of both individuals, and notes that family visits are not allowed on a regular basis and that their relatives must apply each month for a non-contact visit which is regularly denied by the authorities with no explanation.

 2. Discussion

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

83. In determining whether the detention of Mr. Salman Alodah and Mr. Khaled Alodah 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.[[25]](#footnote-26) Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source’s allegations.[[26]](#footnote-27)

84. As a preliminary matter, the Working Group notes the Government’s claim that it lacks competence to review the case concerning Mr. Salman Alodah as it is currently under consideration by the Committee on the Rights of Persons with Disabilities. The Working Group recalls that paragraph 33 (d) (ii) of its methods of work provides that if a communication addressed to it is concerned with a situation already referred to a body dealing with individual cases, the Working Group will transmit the case to that body if the person and facts involved are the same. The Working Group notes that the Committee is responsible for ensuring the implementation by States parties of the Convention on the Rights of Persons with Disabilities. As such, the Committee does not make conclusions on the arbitrary nature of a person’s detention, and the facts involved in its review are specific to violations of the rights guaranteed under the Convention on the Rights of Persons with Disabilities. Conversely, the Working Group is concerned with determining whether the detention of an individual is arbitrary, and it reviews facts submitted for its attention that are relevant to making such a determination. The Working Group thus considers that it retains competence to make conclusions specific to the question of whether Mr. Salman Alodah’s detention is arbitrary.

 (a) Category I

85. The source has argued that both individuals were arrested without being presented with an arrest warrant and without being informed of the reasons for their arrest.

86. A detention is considered arbitrary under category I if it lacks a legal basis. As previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be 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 typically[[27]](#footnote-28) done through an arrest warrant or arrest order (or equivalent document).[[28]](#footnote-29) In addition, any form of detention or imprisonment should be ordered by, or be subjected to, the effective control of a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

87. The Working Group notes that while the Government denies the source’s claims, it provides no specific information as to the circumstances of the individuals’ arrest, the dates of arrest or the warrants alleged to have existed. The Government merely claims that they were arrested pursuant to warrants issued by the competent authority and were informed of the reasons for their arrest as required by national law. The Working Group recalls that mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source’s allegations.[[29]](#footnote-30) It notes that neither individual was arrested in flagrante delicto, in which case the opportunity to obtain a warrant would typically not be available.

88. The Working Group also recalls its previous jurisprudence concerning Saudi Arabia[[30]](#footnote-31) in which it has consistently held that an arrest warrant, even assuming that it was issued by the Minister of the Interior or by delegated organs such as the Mabahith, does not meet the requirement that any form of detention or imprisonment should be ordered by, or be subject to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

89. The Working Group further notes that in its own reply, the Government states that when the two individuals appeared before the court for the first trial session, the Public Prosecutor’s charges were read out to them, and they received a copy thereof. There is no intimation anywhere in the Government’s response that the two were informed of the charges at any earlier time as is required under international law.

90. The Working Group thus considers that the source has presented a credible prima facie case that, at the time of their arrest, Mr. Salman Alodah and Mr. Khaled Alodah were not presented with arrest warrants or promptly informed of the reasons for their arrest, contrary to articles 3 and 9 of the Universal Declaration of Human Rights and to principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

91. The source further submits that both individuals were subjected to enforced disappearance, and that their families attempted to enquire about their whereabouts, in vain. It observes that the Government only communicated their whereabouts in its reply to the Working Group on Enforced or Involuntary Disappearances of 26 December 2017, without providing their dates of arrest, in an attempt to conceal their enforced disappearance. The Working Group on Arbitrary Detention observes that in its reply to the present communication, the Government refers to its reply to the Working Group on Enforced or Involuntary Disappearances but once again fails to provide information on the date of arrest of both individuals and does not account for their whereabouts before December 2017. Furthermore, it does not explain why, at the time of detention, the places of detention were not disclosed to the families and lawyers.

92. The Working Group on Arbitrary Detention is of the view that the Government failed to demonstrate that it notified the family of Mr. Salman Alodah and Mr. Khaled Alodah about their fate and their whereabouts for almost four months following their arrest. It thus considers that their detention following their arrest entails a wilful refusal by the authorities to disclose their fate or their whereabouts or to acknowledge their detention. The Working Group recalls that enforced disappearance constitutes a particularly aggravated form of arbitrary detention.[[31]](#footnote-32) It considers that both individuals were detained in conditions amounting to enforced disappearance and were therefore unable to challenge the legality of their detention. They were therefore denied the right to an effective remedy and to be recognized as a person before the law, in violation of articles 6 and 8 of the Universal Declaration of Human Rights. The Government’s failure to provide their families with notification of their arrest and of the location of their detention is also contrary to principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

93. Regarding the allegations relating to the vagueness and broadness of the laws on the basis of which the individuals were arrested and detained, the Working Group notes that, according to both parties, the two individuals were charged with offences under the Counter-terrorism and Financing of Terrorism Act and the Repression of Cybercrime Act, as well as the Anti-Money Laundering Act in the case of Mr. Salman Alodah. The Working Group recalls its jurisprudence that vaguely and broadly worded provisions, such as those in the Repression of Cybercrime Act and the Counter-terrorism and Financing of Terrorism Act, 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.[[32]](#footnote-33) 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 and principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Furthermore, the Working Group observes that Mr. Khaled Alodah was convicted on the basis of article 6 the Repression of Cybercrime Act. The Working Group recalls its previous jurisprudence in which it has found article 6 to be formulated in vague and broad terms, in breach of the principle of legal certainty.[[33]](#footnote-34)

94. The Working Group therefore finds that the Government failed to establish a legal basis for the arrest and detention of Mr. Salman Alodah and Mr. Khaled Alodah, rendering their detention arbitrary under category I.

 (b) Category II

95. The source submits that the detention of both individuals is arbitrary under category II. It argues that the charges against them refer to acts that fall within their right to freedom of opinion and expression. In relation to Mr. Salman Alodah, the source further argues that he was arrested, detained and tortured in order to force him to publicly renounce his religious views and to adopt and promote Wahhabism. According to the source, Mr. Salman Alodah is an influential religious figure who has urged greater respect for human rights within sharia.

96. In response, the Government asserts that the two individuals were arrested and detained for reasons unrelated to their freedom of expression but rather for offences criminalized under the Counter-terrorism and Financing of Terrorism Act and the Repression of Cybercrime Act, and also under the Anti-Money Laundering Act in the case of Mr. Salman Alodah.

97. The Working Group recalls that freedom of opinion and expression is a fundamental human right enshrined in article 19 of the Universal Declaration on Human Rights. Governments must respect, protect and fulfil the right of individuals to hold and express opinions, including those that are not in accordance with its official policy, and to think and manifest personal convictions at odds with its official ideology, under the peremptory norms (jus cogens) of customary international law.[[34]](#footnote-35)

98. The Working Group notes that while the source provides specific examples of the charges brought against both individuals, the Government does not provide any evidence of offences committed by the two individuals, despite arguing that the individuals were prosecuted on the basis of evidence supporting the criminal charges.

99. The Working Group recalls that article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations on the exercise of this right must be for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Restrictions placed on freedom of expression can only be justified when it is shown that the deprivation of liberty has a legal basis in national law, does not violate international law and is necessary to ensure respect for the rights or reputations of others, or for the protection of national security, public order, public health or morals, and is proportionate to the pursued legitimate aims.[[35]](#footnote-36) While the Government mentions that restrictions to the right to freedom of expression are allowed, it does not present any specific explanation of how these restrictions applied in the present case.

100. The Working Group thus considers that the conduct of Mr. Salman Alodah and Mr. Khaled Alodah fell within their right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights, and that they were detained for exercising these rights. In relation to Mr. Salman Alodah, the Working Group has previously noted that criticism of the Saudi religious establishment is not only protected by the right to freedom of expression but also by the freedom to manifest one’s religion, under article 18 of the Universal Declaration of Human Rights.[[36]](#footnote-37) The Working Group thus concludes that Mr. Salman Alodah was also detained for having exercised his right under article 18 of the Universal Declaration of Human Rights.

101. The Working Group thus concludes that their detention is arbitrary under category II.

 (c) Category III

102. Given its finding that the detention of both individuals is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, as noted by the Government, the trial of Mr. Salman Alodah is ongoing, and Mr. Khaled Alodah was sentenced on 17 November 2020 to five years’ imprisonment, which was increased to eight years on appeal.

103. The source has submitted that following their arrests on 7 and 12 September 2017 respectively, Mr. Salman Alodah and Mr. Khaled Alodah were both denied access to a lawyer during their pretrial detention, and their right to legal assistance of their own choosing during trial. Furthermore, they were reportedly not able to meet with or communicate with their lawyers privately. In its response, the Government affirms that both individuals were informed of their right to seek legal assistance during the investigation and trial stages. The Government does not, however, provide information as to the effectiveness thereof, in the light of the allegations that the two individuals were enforcedly disappeared, nor does it specifically deny the source’s claim regarding the lack of confidentiality of meetings with their lawyers.

104. 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 provide 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 must be promptly informed of this right upon apprehension.[[37]](#footnote-38) This right entitles persons detained to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information.[[38]](#footnote-39) Access to legal counsel should not be unlawfully or unreasonably restricted, and principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that communication with counsel should not be denied for more than a matter of days. Accused persons must be able to meet with their counsel in private conditions that fully respect the confidentiality of their communication.

105. Noting its finding above that both individuals were subjected to enforced disappearance for more than four months following their arrest, and the lack of any detailed information from the Government to rebut the source’s specific allegations, the Working Group considers the source’s allegations credible and finds that the denial of legal counsel violated the two individuals’ right to legal assistance as part of their right to a fair trial under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group is particularly concerned that Mr. Salman Alodah has been unable to access effective legal representation despite the death penalty requested in his case.

106. The source has alleged that Mr. Salman Alodah was deprived of his liberty in September 2017 and has not yet been sentenced. In particular, the Working Group is concerned by the source’s allegations that Mr. Salman Alodah is being treated in a particularly cruel manner without any reasonable prospect of justice, and that his conditions of detention, without access to vital medical care, are putting his life in immediate danger. In response, the Government has noted that national laws provide for adequate protection against prolonged detention and that Mr. Salman Alodah’s trial is being conducted within a reasonable time frame, given the seriousness of the crimes and the gravity of the prescribed penalties.

107. The Working Group observes that Mr. Salman Alodah has been in pretrial detention for more than four years, without the Government providing any detailed or sufficient justification for such a delay. The Working Group is of the view that the delay is unjustified and in violation of his right to be tried without undue delay, guaranteed in 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.

108. Furthermore, the Working Group observes that Mr. Khaled Alodah was tried and sentenced by the Specialized Criminal Court and that Mr. Salman Alodah’s case is ongoing before that court. The Working Group has stated previously that it considers that the Specialized Criminal Court is insufficiently independent of the Ministry of the Interior[[39]](#footnote-40) and cannot be considered an independent and impartial tribunal replete with the presumption of innocence and guarantees necessary for defence. It remains of the same view in the present case and finds that the trial of Mr. Khaled Alodah and ongoing trial of Mr. Salman Alodah before this Court contravenes article 10 of the Universal Declaration of Human Rights.

109. The source further submits that Mr. Salman Alodah was subjected to grave acts of torture, including a total of several years of solitary confinement, sensory deprivation, and other forms of physical and psychological torture, which have left him with severe impairments and which caused him to appear significantly emaciated, disoriented and aloof during his last hearing before the Specialized Criminal Court. According to the source, he could not hear what the court was saying and did not seem to comprehend the proceedings. The source alleges that Mr. Khaled Alodah was also subjected to torture. In response, the Government denies these claims by affirming that national laws prohibit and criminalize the use of torture.

110. Torture or ill-treatment of detainees is not only a grave violation of human rights, but also seriously undermines the fundamental principles of a fair trial, as it can compromise the ability of detainees to defend themselves, especially in light of the right not to be compelled to testify against oneself or to confess guilt.[[40]](#footnote-41) 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, there is a violation of the right to a fair trial.[[41]](#footnote-42) 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.

111. The Working Group concludes that the violations of the right to a fair trial are of such gravity as to render the detention of both individuals arbitrary under category III.

 (d) Category V

112. The source argues that Mr. Salman Alodah was detained on discriminatory grounds, on account of his political and religious beliefs and his status as a human rights defender. It explains that as a religious scholar in a theocracy, his criticism of royal power is considered as both a political and a religious transgression, criminalized under the anti-terrorism law. It adds that his status as a human rights defender derives both from his legal scholarship aimed at enshrining human rights in Islamic law and from his public calls for human rights-based reforms and peaceful activism.

113. With regard to Mr. Khaled Alodah, the source argues that his detention is discriminatory since he was arrested in reprisal for supporting his brother on Twitter. It submits that the charges brought against him relate to his public denunciation of his brother’s arrest and that travel bans have been imposed on 17 members of the family. Taking into account also the harsher sentence imposed on him on appeal, the source argues that the measures are meant to silence the family collectively.

114. In its response, the Government states that it complied with the principle of equality and that all citizens enjoy all their rights on an equal footing and have the same duties, and practise their religious rites and beliefs freely and without discrimination. The Government argues that national laws contain no provisions or even references that discriminate against anyone, and in fact criminalize and punish discrimination. It further submits that neither Mr. Khaled Alodah nor his family have been subjected to reprisals or harassment as such acts are forbidden under national law.

115. In its discussion above, the Working Group established that Mr. Salman Alodah’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.[[42]](#footnote-43) The Working Group notes that the Government has merely provided general statements about its laws, which are insufficient to dispel the credible allegations made by the source. The Working Group therefore concludes that Mr. Salman Alodah is being detained on discriminatory grounds, that is, on the basis of his political and religious opinions and due to his status as a human rights defender.

116. Similarly, the Working Group considers that besides noting that acts of reprisal and harassment are prohibited under national law, the Government has provided no evidence of the commission by Mr. Khaled Alodah of any offence. The Working Group further notes the allegations by the source that Mr. Khaled Alodah was given an extended sentence on appeal as a form of reprisal for having challenged the decision of the Specialized Criminal Court and of the royal authority. Once again, the Government merely denies these claims arguing that such acts of reprisals are forbidden. The Working Group is thus of the view that guilt by association and discrimination by the Government on the basis of political opinion that aims at ignoring the equality of human beings are the only plausible explanations for Mr. Khaled Alodah’s arrest and detention.

117. In the light of the above, the Working Group finds that both individuals have been deprived of their liberty on discriminatory grounds, in violation of articles 2 and 7 of the Universal Declaration of Human Rights. Their detention is thus arbitrary under category V.

 (e) Concluding remarks

118. The Working Group wishes to remind the Government that all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person and that denial of medical assistance is contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular rules 18, 22, 24, 25, 27, 30 and 42, as well as principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

119. The Working Group notes that the present opinion is only one of many opinions in recent years in which it has found the Government to be in violation of its international obligations.[[43]](#footnote-44) It is concerned that this indicates a systemic problem with arbitrary detention in Saudi Arabia, which, if it continues, may amount to a serious violation of international law.[[44]](#footnote-45) The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute a crime against humanity.[[45]](#footnote-46) The Working Group has alluded to this possibility in its past cases concerning Saudi Arabia.

 3. Disposition

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

The deprivation of liberty of Salman Alodah, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 18 and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

The deprivation of liberty of Khaled Alodah, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

121. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situations of Mr. Salman Alodah and Mr. Khaled Alodah without delay and bring them into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

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

123. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of both individuals and to take appropriate measures against those responsible for the violation of their rights.

124. 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 further consideration.

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

 4. Follow-up procedure

126. 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. Salman Alodah and Mr. Khaled Alodah have been released and, if so, on what date;

 (b) Whether compensation or other reparations have been made to both individuals;

 (c) Whether an investigation has been conducted into the violation of both individuals’ 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.

127. 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.

128. 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 of any failure to take action.

129. 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.[[46]](#footnote-47)

[*Adopted on 1 September 2023*]

1. [A/HRC/36/38](http://undocs.org/en/A/HRC/36/38). [↑](#footnote-ref-2)
2. The name is also transliterated as Al-Awdah. [↑](#footnote-ref-3)
3. See SAU 14/2018, available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24186. [↑](#footnote-ref-4)
4. [CAT/C/SAU/Q/2/Add.1](http://undocs.org/en/CAT/C/SAU/Q/2/Add.1), para. 2. [↑](#footnote-ref-5)
5. Office of the United Nations High Commissioner for Human Rights (OHCHR), “Comment by UN High Commissioner for Human Rights Michelle Bachelet on the execution of 81 people in Saudi Arabia”, 14 March 2022, available at https://www.ohchr.org/en/statements/2022/03/comment-un-high-commissioner-human-rights-michelle-bachelet-execution-81-people. [↑](#footnote-ref-6)
6. See, for example, [A/HRC/40/52/Add.2](http://undocs.org/en/A/HRC/40/52/Add.2), para. 48. [↑](#footnote-ref-7)
7. See also opinions No. 10/2015, para. 34; No. 46/2019, para. 51; and No. 71/2019, para. 72. [↑](#footnote-ref-8)
8. See https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=34471. [↑](#footnote-ref-9)
9. Opinion No. 10/2018, para. 50. [↑](#footnote-ref-10)
10. Opinions No. 71/2019, para. 73; No. 69/2018, para. 21; No. 40/2018, para. 45; No. 43/2017, para. 34; and No. 14/2017, para. 49. [↑](#footnote-ref-11)
11. Opinion No. 71/2019, para. 7. [↑](#footnote-ref-12)
12. [A/HRC/40/52/Add.2](http://undocs.org/en/A/HRC/40/52/Add.2), para. 14. [↑](#footnote-ref-13)
13. Ibid., paras. 14–20. [↑](#footnote-ref-14)
14. OHCHR, “UN experts decry Saudi Arabia’s persistent use of anti-terror laws to persecute peaceful activists”, 2 January 2018, available at https://www.ohchr.org/en/press-releases/2018/01/un-experts-decry-saudi-arabias-persistent-use-anti-terror-laws-persecute. [↑](#footnote-ref-15)
15. [A/HRC/40/52/Add.2](http://undocs.org/en/A/HRC/40/52/Add.2), para. 29. [↑](#footnote-ref-16)
16. [CAT/C/SAU/CO/2](http://undocs.org/en/CAT/C/SAU/CO/2), para. 14. [↑](#footnote-ref-17)
17. Ibid., para. 17; and opinion No. 86/2020. [↑](#footnote-ref-18)
18. See opinion No. 86/2020. [↑](#footnote-ref-19)
19. Ibid. [↑](#footnote-ref-20)
20. [A/HRC/30/3](http://undocs.org/en/A/HRC/30/3), paras. 38–41. [↑](#footnote-ref-21)
21. [A/HRC/40/52/Add.2](http://undocs.org/en/A/HRC/40/52/Add.2), para. 15; and SAU 12/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25726>,
p. 10. [↑](#footnote-ref-22)
22. [A/HRC/40/52/Add.2](http://undocs.org/en/A/HRC/40/52/Add.2), para. 19. [↑](#footnote-ref-23)
23. Opinion No. 71/2019, para. 95. [↑](#footnote-ref-24)
24. [A/HRC/19/57](http://undocs.org/en/A/HRC/19/57), para. 68. [↑](#footnote-ref-25)
25. Ibid. [↑](#footnote-ref-26)
26. Ibid. [↑](#footnote-ref-27)
27. See, for example, opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 20/2023, para. 67. [↑](#footnote-ref-28)
28. See, for example, opinion No. 30/2017, paras. 58 and 59. [↑](#footnote-ref-29)
29. [A/HRC/19/57](http://undocs.org/en/A/HRC/19/57), para. 68. [↑](#footnote-ref-30)
30. See, for example, opinions No. 93/2017, No. 10/2018 and No. 86/2020. [↑](#footnote-ref-31)
31. Opinions No. 13/2020 and No. 34/2021. [↑](#footnote-ref-32)
32. Opinions No. 71/2019, para. 73; and No. 30/2022, para. 80. [↑](#footnote-ref-33)
33. See, for example, opinions No. 30/2022 and No. 62/2022. [↑](#footnote-ref-34)
34. Opinions No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, para. 80; and No. 76/2017, para. 62. [↑](#footnote-ref-35)
35. Opinions No. 33/2020, paras. 81 and 82; No. 30/2022, para. 88; and No. 23/2023, para. 91. [↑](#footnote-ref-36)
36. Opinion No. 71/2019, para. 81. [↑](#footnote-ref-37)
37. [A/HRC/30/37](http://undocs.org/en/A/HRC/30/37). [↑](#footnote-ref-38)
38. Ibid., principle 9, para. 12. [↑](#footnote-ref-39)
39. See, for example, opinions No. 71/2019, para. 44; No. 56/2019, para. 86; No. 26/2019, para. 102; and No. 62/2022, para. 95. [↑](#footnote-ref-40)
40. Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 27/2023, para. 101. [↑](#footnote-ref-41)
41. Opinions No. 33/2019, para. 42; No. 34/2021, para. 87; and No. 17/2023, para. 93. [↑](#footnote-ref-42)
42. Opinions No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43. [↑](#footnote-ref-43)
43. See, for example, opinions No. 6/2016, No. 7/2016, No. 41/2016, No. 42/2016, No. 54/2016, No. 60/2016, No. 30/2017, No. 78/2017, No. 83/2017, No. 26/2018, No. 27/2018, No. 47/2018, No. 63/2018, No. 82/2018, No. 87/2018, No. 21/2019, No. 29/2019, No. 41/2019, No. 42/2019, No. 65/2019, No. 77/2019, No. 6/2020, No. 14/2020, No. 80/2020, No. 45/2021, No. 79/2021, No. 83/2021, No. 23/2022, No. 34/2022, No. 53/2022, No. 60/2022, No. 12/2023, No. 20/2023 and No. 31/2023. [↑](#footnote-ref-44)
44. Opinions No. 47/2018, para. 85; and No. 14/2020, para. 74. [↑](#footnote-ref-45)
45. [A/HRC/13/42](http://undocs.org/en/A/HRC/13/42), para. 30; see also opinions No. 1/2011, para. 21; No. 51/2017, para. 57; and No. 56/2017, para. 72. [↑](#footnote-ref-46)
46. Human Rights Council resolution 51/8, paras. 6 and 9. [↑](#footnote-ref-47)