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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024

Opinion No. 26/2024 concerning Saud bin Mohammed bin Ali al-Faraj (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 10 January 2024 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Saud bin Mohammed bin Ali al-Faraj. The Government replied to the communication on 29 February 2024. 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

* Miriam Estrada Castillo did not participate in the discussion of the case.

¹ A/HRC/36/38.

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. Saud bin Mohammed bin Ali al-Faraj, born in 1980, is a Saudi Arabian businessman. He usually resides in Al-Awamiyah, Saudi Arabia.

(i) Context

5. In June and July 2017, two institutions – the public prosecution service and the Presidency of State Security – were created in Saudi Arabia. Both are under the direct control of the King.

6. The creation of the Presidency of State Security has allowed the Government to centralize all activities related to State security. The decree that created the Presidency of State Security placed the General Directorate of Investigation and all other security institutions under the direct authority of the Presidency, which itself directly reports to the King.

7. The public prosecution service was also brought under the direct control of the King, replacing the institutions that were previously under the control of the Minister of the Interior. Allegedly, this has enabled the King and the Crown Prince to consolidate their authority over these institutions while providing greater direction for and oversight over the operations of the institutions.

8. The establishment of the two institutions has allowed the authorities to arrest individuals, including peaceful dissidents and human rights defenders, deemed to be a threat to or critical of the Crown Prince's policies. In those cases, individuals, once arrested, are scheduled to appear before the Specialized Criminal Court. The Court was established in 2008 to try crimes of terrorism exclusively. Since then, it has been influenced by the executive branch, rendering it a tool for prosecuting critics on false terrorism charges.

(ii) Arrest and detention

9. In 2011 and 2012, Mr. Al-Faraj participated in demonstrations against the treatment of the Shia minority in Qatif. He also attended the funerals of individuals allegedly killed by government forces during those protests.

10. In early November 2019, Mr. Al-Faraj was requested to collaborate with the government authorities. However, he politely refused the request.

11. Two weeks later, government forces raided one of Mr. Al-Faraj's company's warehouses and confiscated construction equipment.

12. At around 3 a.m. on 2 December 2019, Mr. Al-Faraj and his family were returning home. When they arrived in their neighbourhood, they saw tanks posted in their street. All of the doors of their home were shot at, and the house was searched. The investigative authorities who conducted the search wrote a report stating that they had found explosives and heavy weaponry in the house, but the statements were not corroborated with material evidence.

13. Mr. Al-Faraj and his family went to one of his company's warehouses on Dweij street. A few hours later, the warehouse was raided by security forces, and Mr. Al-Faraj was brutally beaten and arrested. The squad that arrested him did not present an arrest warrant and did not tell him the reasons for his arrest.

14. Mr. Al-Faraj was blindfolded and put in a car. The squad stopped at the closest "investigation centre". There, unidentified individuals forced Mr. Al-Faraj to press his fingerprints on a piece of paper, but did not disclose what was written on the paper.

15. The squad transferred him immediately to the general prison in Dammam where he was handed over to a person introduced as an investigator for the case. Outside of the prison,

the investigator removed Mr. Al-Faraj's blindfold and told him to look inside the vehicle next to him; Mr. Al-Faraj saw a relative in the vehicle. The investigator then told Mr. Al-Faraj that they had arrested the relative, and that if he wanted to protect her, he would have to comply with everything asked of him.

16. The next day, the same investigator instructed Mr. Al-Faraj to write a false confession. However, Mr. Al-Faraj refused and was therefore subjected to severe acts of torture. This led to his transfer, in a wheelchair, from the investigation area to the prison hospital. The torture was documented by the investigators in audio and video recordings.

17. Once he had recovered, Mr. Al-Faraj was subjected to even worse torture. He was stripped of his clothing and sexually harassed by the investigators, which led to another transfer to the prison hospital. While there, the case investigator threatened that the relative of Mr. Al-Faraj who had been detained would be subjected to collective sexual abuse if he did not write the forced confession.

18. Mr. Al-Faraj agreed, but he wrote between the lines that his confession was not true. As a result, the investigators beat him again, which led him to be taken to the prison hospital again. Consequently, he wrote the confession as demanded.

19. Mr. Al-Faraj submitted three oral complaints, alleging torture and abuse by investigators, to a member of the public prosecution service – one on 7 December 2020, one on 24 August 2021 and one 20 December 2021. He insisted, to no avail, that the prosecutor provide him with proof that the complaints had been duly filed.

20. Mr. Al-Faraj was kept in solitary confinement from the date of his arrest on 2 December 2019 until 8 August 2021 and was deprived of any contact with his family and friends. Therefore, he was detained incommunicado. On 7 June 2020, a relative sent a letter to the Crown Prince, the Ministry of Justice and the parliament stating that he had not heard from Mr. Al-Faraj since the arrest.

21. During his solitary confinement, Mr. Al-Faraj was allowed only one call to his family, on 14 May 2021, which lasted a few minutes and during which he learned that the relative had been released.

22. Once Mr. Al-Faraj was taken out of solitary confinement, he was allowed to communicate with his family. The prison administration placed him in a cell without any Arabic-speaking cellmates and refused to transfer him to a cell with men who spoke his language.

23. On 22 June 2021, he was transferred to another prison, without prior notification. A few days later, he was brought, for the first time, before a judge and a prosecutor, who listed the charges against him without the presence of a lawyer.

24. Mr. Al-Faraj was charged with the following: joining a terrorist organization led by terrorist organizations outside Saudi Arabia; aiming to carry out terrorist acts inside Saudi Arabia in order to destabilize security and spread chaos, unrest, and shedding "infallible blood"; receiving training on military weapons and explosives, on methods of manufacturing them and on martial arts inside a third country; creating a terrorist entity inside Saudi Arabia, aimed at killing security personnel and destabilizing the country's security and stability and assuming its leadership, and providing shelter, medicine, weapons and explosives for the members of the terrorist cell; recruiting a number of terrorists to work for the cell; manufacturing weapons and explosives and using them to target members of security forces, their vehicles and security headquarters; sending a number of terrorists who had joined the terrorist cell to a third country to receive military training; escaping from his home during a raid and hiding in an abandoned house, and recruiting a number of terrorists to join the cell and to smuggle him out of Saudi Arabia; monitoring, planning, and controlling roads to target members of security forces, checkpoints and security vehicles, and monitoring security movements in Qatif Governorate to provide terrorists with information to help them escape from members of security forces; targeting armored vehicles of the security forces stationed in Al-Awamiyah and firing explosive shells, one of which killed a member of the security forces and led to casualties among citizens and residents and the destruction of public and private property; possessing heavy weaponry; falsifying national identity cards; and calling for, participating in, promoting and inciting sit-ins, demonstrations, gatherings and marches

in Qatif Governorate, affecting the stability of Saudi Arabia and intended to sow division and destabilize the security situation. The charges were filed pursuant to the counter-terrorism and financing of terrorism act, the Explosives and Firecrackers Act, the Weapons and Ammunition Act, the act on anti-forgery offences and the anti-cybercrime act.

25. Mr. Al-Faraj was brought back to Dammam prison after being presented before the prosecutor and the judge.

26. On 3 October and 17 November 2021, Mr. Al-Faraj was brought before an unidentified judicial authority; he was not provided with a lawyer for the sessions. He explained the conditions of his arrest and torture. He also submitted a written statement to that judicial authority, maintaining his innocence and detailing the treatment he had endured, and requested that the statement be included in his case file; it was not included.

27. The prison did not approve Mr. Al-Faraj's legal representative until 22 December 2021, although the Specialized Criminal Court had appointed the lawyer to Mr. Al-Faraj six months prior. Furthermore, the only time the lawyer was allowed to visit Mr. Al-Faraj in prison was on 27 January 2022. Since then, Mr. Al-Faraj has been deprived of any contact with his lawyer.

28. On 3 November 2022, the Specialized Criminal Court sentenced Mr. Al-Faraj to death. During the trial, he appeared before the Court and reported everything that had happened to him, including that his relative had been arrested in order to blackmail him. Moreover, Mr. Al-Faraj stated that the relative had been forced to write a statement incriminating him. The relative was told that, if the statement was not written, another relative would be arrested. Mr. Al-Faraj stated to the Court that he had been subjected to torture, and notified the Court about the existence of videos of his torture and his health complications owing to the torture. He mentioned the three complaints he had made to the public prosecutor regarding his torture and asked the prosecutor to whom he had communicated the complaints verbally to testify during the trial, but the prosecutor refused.

29. The authorities presented as evidence against Mr. Al-Faraj reports from investigators regarding searches on his "farm", which stated that explosives and heavy weaponry had been found there. Mr. Al-Faraj stated during the trial that he did not own a farm and that the reports were not valid.

30. Mr. Al-Faraj requested that the Court allow the audio and video documentation from Dammam prison to be presented in order to prove the physical torture he had been subjected to, and the medical reports from the prison's hospital, in order to prove that he had been transferred there because of the torture. He also requested that the Court invalidate the forced confession, and the reports of the investigators, as they did not reflect the truth. However, the Court judges did not consider Mr. Al-Faraj's defence arguments and based their decision on his forced confession and the reports on the house and farm searches. The judges stated that Mr. Al-Faraj's guilt was partially proved by his wish to invalidate the confession.

31. On 6 December 2022, Mr. Al-Faraj's lawyer filed an appeal before the Specialized Criminal Court of Appeal. The appeal proceedings took place before that Court on 31 January 2023. Mr. Al-Faraj again described everything that had happened to him. However, the judges of the Specialized Criminal Court of Appeal did not consider any of his claims and upheld the death penalty.

32. Mr. Al-Faraj's case has been pending with the Supreme Court since 15 March 2023, and he is still currently being held in Dammam prison.

33. Mr. Al-Faraj wrote six letters to the judges of the Specialized Criminal Court and the Specialized Criminal Court of Appeal, dated 17 November 2021, 13 March 2022, 30 May 2022, 7 September 2022, 9 October 2022 and 6 December 2022. In the letters, he explained his situation, maintained his innocence and asked the judges of the two courts to show mercy. He also sent a letter to the Human Rights Commission of Saudi Arabia. The letters remain unanswered.

(iii) Legal analysis

34. The source argues that the arrest and detention of Mr. Al-Faraj are arbitrary under categories I, II, III and V of the Working Group.

a. Category I

35. Mr. Al-Faraj was arrested by armed State forces on 2 December 2019 without an arrest warrant and without being informed of the reasons for his arrest.

36. The Working Group has stated that it is not sufficient for there to be a law authorizing the arrest. Authorities must invoke that legal basis and apply it to the circumstances through an arrest warrant.²

37. Even if the Government alleges that Mr. Al-Faraj was presented with an arrest warrant, the Presidency of State Security – the issuing authority – lacks the independence and oversight necessary to issue such warrants. The Working Group has found that certain State bodies in Saudi Arabia, including agencies run by the Ministry of the Interior or the General Directorate of Investigation, do not meet this requirement.³

38. The Government undertook some restructuring in 2017, creating the Presidency of State Security. It is the sole issuing authority of arrest warrants for individuals suspected of terrorism crimes. Similar to the body that was responsible for State security prior to the restructuring, the Presidency of State Security lacks any judicial oversight and has been routinely used as a tool to repress rights and freedoms and censure dissent.

39. The Working Group has found that many of the investigative duties that used to be the responsibility of the Ministry of the Interior have simply changed hands and now fall under the public prosecution service and the Presidency of State Security, both reporting directly to the King.⁴ Thus, the Presidency of State Security lacks the competence, impartiality and judicial oversight necessary to issue arrest warrants.

40. After his arrest on 2 December 2019, Mr. Al-Faraj was placed in solitary confinement until 8 August 2021. During that time, he was not allowed to communicate with an attorney or his family. The only exception was one brief phone call to his family on 14 May 2021.

41. Mr. Al-Faraj was put in a situation amounting to incommunicado detention. This, in turn, violated his right to challenge the lawfulness of his detention before a court under article 8 of the Universal Declaration of Human Rights.⁵

42. As Mr. Al-Faraj was never allowed to challenge the legality of his detention before a court, there is a violation of his right to habeas corpus, rendering his detention arbitrary.⁶

43. Under Saudi law, there is no right to submit complaints directly to judicial authorities or to challenge the legality of an individual's detention before a court of law.

44. After Mr. Al-Faraj's arrest, he was not promptly taken before a judicial authority and was not given the opportunity to challenge his detention. He appeared before a judge for the first time in June 2021, a year and a half after his arrest.

45. The source concludes that Mr. Al-Faraj's detention was in violation of articles 3 and 9 of the Universal Declaration of Human Rights, and principles 11, 32 (1) and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

46. Mr. Al-Faraj was charged and sentenced on the basis of several articles in the 2017 counter-terrorism and financing of terrorism act and the 2006 anti-cybercrime act. The vague

² See, e.g., opinion No. 9/2018.

³ Opinion No. 62/2022.

⁴ Opinion No. 71/2019.

⁵ See opinion No. 79/2017.

⁶ A/HRC/30/37, para. 2.

and overly broad provisions in those laws lack legal certainty and make it impossible to invoke any legal basis to justify Mr. Al-Faraj's deprivation of liberty.⁷

47. The counter-terrorism law contains, in its article 1, a definition of "terrorist crime" that is broad and vague and enables the criminalization of a wide spectrum of acts of peaceful expression and opinion, according to United Nations experts.⁸ The same concerns apply to other provisions of the law invoked against Mr. Al-Faraj that stem from the imprecise definition under article 1.

48. The Working Group has expressed its concern about anti-terrorism laws in Saudi Arabia⁹ and the broad and vague definition of cybercrime within the anti-cybercrime law.¹⁰

49. Saudi Arabia does not have a written penal code and charges are determined in an overly discretionary manner.

50. The source concludes that the above-mentioned provisions lack legal certainty and are contrary to articles 9 and 11 (2) of the Universal Declaration of Human Rights.

b. Category II

51. The source argues that Mr. Al-Faraj's detention is arbitrary under category II, as it results from the exercise of his right to freedom of conscience and of expression.

52. In November 2019, Mr. Al-Faraj received a request from Government authorities, which he politely refused. He was arrested, detained and sentenced following his refusal to comply with orders of the government authorities. There is no other reason for Mr. Al-Faraj's arrest, as there is no credible evidence that shows that he ever took part in any terrorist activity or owned any type of weapon or explosive, as claimed by the authorities. Mr. Al-Faraj's deprivation of liberty thus results from his right to freedom of conscience.

53. Mr. Al-Faraj was charged for participating in protests against the State's treatment of the Shia minority and attending funerals of individuals killed by State authorities. While the right to freedom of expression is not an absolute right and can be limited pursuant to article 29 (2) of the Universal Declaration of Human Rights, participating in protests to express discontent with the State's actions against Shia minorities and chanting anti-State slogans cannot reasonably be considered as posing threats to morality and public order. There is no evidence of any violence or incitement to violence associated with Mr. Al-Faraj's acts, which is further evidence that the permissible restriction of the right clearly has not been met.

54. Mr. Al-Faraj has been charged under counter-terrorism laws and recalls that the Working Group has expressed its concern regarding the provisions of that legislation.¹¹

55. The source concludes that Mr. Al-Faraj's detention is arbitrary and falls within category II, in violation of articles 18, 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights.

c. Category III

56. The source argues that Mr. Al-Faraj's detention is arbitrary under category III.

57. Since his arrest on 2 December 2019, Mr. Al-Faraj has not been granted appropriate legal counsel. His lawyer was approved by the prison administration only on 22 December 2021, and allowed to visit him once, on 27 January 2022, more than two years after the arrest. Thus, Mr. Al-Faraj's access to legal counsel was unlawfully restricted. Mr. Al-Faraj was brought before a judge and a prosecutor in June 2021, and also before a "judicial authority" on 3 October 2021 and 17 November 2021. However, none of these hearings took place in

⁷ See also opinion No. 71/2019.

⁸ See communication SAU 12/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25726>. See also CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1.

⁹ See, e.g., opinion No. 10/2018.

¹⁰ See, e.g., opinion No. 71/2019.

¹¹ See, e.g., opinion No. 92/2020.

the presence of a lawyer. The Government has failed to respect Mr. Al-Faraj's right to legal assistance at all times, in violation of articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, which substantially undermined and compromised his ability to defend himself.

58. Mr. Al-Faraj was placed in solitary confinement for 21 months, contrary to rules 43 (1) (b) and 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

59. Mr. Al-Faraj claimed during his trial and in his letters to various authorities that he had been subjected to torture and that his confessions had been extracted under duress. None of his claims were investigated or followed up. The Working Group has stated that, if persons allege that their confessions were coerced it is for the judiciary to establish that they were not obtained through the application of pressure of any kind.¹² Most of the evidence mentioned in the verdict is based on Mr. Al-Faraj's forced confession. Any conviction based on confessions obtained under torture constitutes a serious violation of the right to a fair trial. The source concludes that this is contrary to principles 1, 6, 21 and 22 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, article 5 of the Universal Declaration of Human Rights, and articles 2, 15 and 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

60. The Specialized Criminal Court and the Specialized Criminal Court of Appeal are not competent to provide a fair trial in accordance with international standards and cannot be considered as independent and impartial tribunals. While the Specialized Criminal Court initially focused on allegations of political violence linked to Al-Qaida, that started to change in 2010 and the Court has been increasingly used for the prosecution of human rights defenders and political activists.

61. The Committee against Torture has expressed its concerns about the Specialized Criminal Court, noting that it has repeatedly refused to act on torture claims made by defendants facing terrorism charges.¹³ The Working Group has found that the Court cannot be considered an independent and impartial tribunal.¹⁴ The Court has suffered from undue influence from the executive branch. Judges are appointed by the Supreme Judicial Council, comprised of members appointed by the King, including the director of the public prosecution service.

62. The source concludes that Mr. Al-Faraj's trial before the Specialized Criminal Court and the Specialized Criminal Court of Appeal was not before independent courts, in violation of article 10 of the Universal Declaration of Human Rights.

d. Category V

63. The source submits that Mr. Al-Faraj is part of the Shia minority in Saudi Arabia, and that his deprivation of liberty and the death penalty imposed on him constitute discrimination, rendering his detention arbitrary under category V.

64. Sharqiyah is known to be home to the largest population of Shias in the country. In 2011, amid the wave of protests that took place across many Arab countries, activists from the Shia minority in Sharqiyah organized demonstrations against the Government's discriminatory policies. Demonstrations began in February 2011, in Al-Awamiyah, with individuals protesting the detention without charge of three individuals who had called for Shia minority's rights to be respected.

65. The Government responded to the protests with repressive measures, mainly against the Shia individuals suspected of taking part. Hundreds of individuals were arrested and

¹² Opinion No. 78/2019.

¹³ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17.

¹⁴ See, e.g., opinions No. 22/2019 and No. 26/2019.

detained in relation to the protests, and many were subjected to torture or travel bans or dismissed from their employment.

66. Saudi Arabia has a long history of discrimination against the Shia religious minority in Sharqiyah, particularly evident following the protest movement in 2011. The source recalls the Working Group's jurisprudence¹⁵ and the concerns expressed by the Committee on the Elimination of Racial Discrimination¹⁶ in that regard.

67. In March 2014, a decree issued by the Ministry of the Interior expanded the list of activities considered terrorist crimes under the counter-terrorism and financing of terrorism act to include calling for atheist thought and questioning the fundamental principles of Islam.

68. The source concludes that Mr. Al-Faraj's arrest, detention and death sentence are part of a pattern of discrimination against members of the Shia minority, rendering his detention arbitrary under category V.

(b) Response from the Government

69. On 10 January 2024, the Working Group transmitted the allegations from the source to the Government of Saudi Arabia under its regular communication procedure, requesting a reply by 11 March 2024. On 29 February 2024, the Government submitted its reply.

70. The Government states that Mr. Al-Faraj was arrested on 5 Rabi' II A.H. 1441 (2 December A.D. 2019), pursuant to a valid warrant issued by a competent and independent authority. He was immediately informed – on the day he was apprehended – of the reasons for his arrest and detention. He was then charged and convicted for terrorist crimes under the counter-terrorism and financing of terrorism act. The crimes he was charged with included murdering a security officer by targeting security vehicles with explosive firearms; attempted murder; firing weapons and guided projectiles at security personnel and their vehicles with the intent to kill; throwing explosive grenades and firing at security headquarters and checkpoints; collaborating with terrorists in killing security personnel through the detonation of security vehicles using explosives and military projectiles; planting explosive devices; establishing an armed terrorist entity under his leadership within the country with the aim of killing security personnel; conducting terrorist operations to disrupt internal security; issuing orders to individuals under his command to fire explosive firearms at security personnel in Qatif, resulting in the martyrdom of several members of security forces and casualties among citizens and residents; and receiving military training on weapons, explosives manufacturing methods, combat techniques and communication devices from an armed terrorist entity outside the country.

71. The procedures and guarantees applied in Mr. Al-Faraj's case were in line with international standards for fair trial and due process. The judgments of the courts of first instance and appeal are supported by sufficient evidence. The defendant objected to the ruling and requested an appeal before the Supreme Court, under whose judicial consideration his case currently remains.

72. The death penalty is handed down for the most serious offences and within the narrowest limits and is carried out only after all judicial procedures have concluded, in line with fair trial and due process, consistent with the country's international commitments under international human rights law. The Government refers to Economic and Social Council resolution 1984/50.

73. The Government denies that the individual has been subjected to torture or any other violations. Torture is considered a serious crime in Saudi Arabia and authorities take effective measures, such as prison monitoring and judicial investigations, to prevent its commission and to punish perpetrators. In the event of acknowledged violations of detainees' rights, the Government ensures the adoption of measures intended to redress the harm endured.

¹⁵ See, e.g., opinions No. 26/2019 and No. 56/2019.

¹⁶ CERD/C/SAU/CO/4-9.

74. The measures preventing an accused person from contacting others are subject to legal restrictions. The counter-terrorism act ensures that solitary confinement is imposed only under specific exceptional circumstances defined by law and for a specified duration. This is done without violating the right to inform the accused's relatives of the detention or the right of defendants to communicate with their attorneys. Like other detainees and prisoners, Mr. Al-Faraj is entitled to visitation and continuous and periodic communication. He has had 32 visits, the latest on 10 Rajab A.H. 1445 (22 January A.D. 2024), and 647 communications, the latest on 9 Rajab A.H. 1445 (21 January A.D. 2024). He is continually allowed to meet his legal representatives for consultation at his place of detention.

75. Like other detainees and prisoners, Mr. Al-Faraj has received the medical care necessary since his arrest. He maintains good health and mental well-being, regularly undergoes consultations with specialized medical clinics where the necessary medications are provided, and undergoes routine and regular follow-up checks.

76. All laws in the country are formulated with sufficient precision and clarity, enabling individuals to regulate their conduct accordingly. The counter-terrorism and financing of terrorism act is aligned with all applicable international standards. The country reaffirms its commitment to protecting and enhancing human rights through its application of the principle of legality. Punishment is individual, and there is no crime or punishment except based on a legal text, whether religious or legal.

77. The country respects the right to freedom of opinion, expression and thought, ensuring that every individual can exercise this right, provided that there is no transgression against public order and society. This restriction is in line with relevant international standards, including article 29 (2) of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. No detainees in the country are being held for exercising their rights and freedoms. All citizens enjoy all their rights equally. They practice their religious rituals and beliefs freely, without discrimination.

78. The Human Rights Commission monitors the situation of Mr. Al-Faraj and verifies the integrity of the procedures taken in his regard. There has been no evidence indicating any violation of his rights.

79. Regarding the allegations that there is no evidence of his involvement in terrorist acts, the Government declares those allegations false and baseless. It appears to be an attempt by the source to justify the terrorist crimes committed, portraying them as the exercise of legitimate rights. The individual was apprehended only after credible evidence surfaced regarding his involvement in serious terrorist crimes, contrary to the claims that his arrest was due to his refusal to comply with government requests or orders. Moreover, no government entity in the country sought his compliance with any orders or requests, which the source did not clarify the nature of.

80. The individual's punishment for committing the terrorist crimes mentioned is not only in accordance with the country's commitment to the Universal Declaration of Human Rights, but also stems from the country's adherence to international instruments for combating terrorist crime to which it has acceded and its commitment to relevant Security Council resolutions. The Government expresses its hope that the Working Group will take into account Security Council resolutions No. 1377 (2001), No. 1566 (2004) and No. 2178 (2014).

81. On the day he was arrested, Mr. Al-Faraj was immediately informed of his legal rights. He had the right to inform someone of his arrest. His acknowledgment of this was obtained through his signature. He engaged six legal representatives, three at his expense and three at the State's expense, chosen by him on the basis of his request to the court, under articles 1, 4 and 139 of the Code of Criminal Procedure. His legal representatives were able to visit him to discuss legal matters and provide legal advice.

82. The court examined all the evidence presented against him, adhering to the country's international commitments, evaluating the evidence and facts and the crimes he was accused of in a fair and individual manner. The judge based the judgment on the defendant's confessions and the evidence presented against him.

83. The case was considered by an independent and impartial court, namely the Specialized Criminal Court. The court was established by a decision of the Supreme Judicial

Council, which has the authority to establish courts and determine their territorial and jurisdictional competence. The judicial procedures of the Specialized Criminal Court are the same as those applied in other criminal courts pursuant to the act on the judiciary, the Code of Criminal Procedure and the act on Sharia proceedings. Judges are appointed by royal decree based on decisions issued by the Supreme Judicial Council, in accordance with article 47 of the 2007 act on the judiciary.

84. The Government rejects the claims that the defendant was apprehended on the basis of his belonging to the Shia minority and reiterates that he committed several terrorist crimes.

85. The individual enjoys good health and his mental state is sound. All detainees in the country's prisons receive medical care, and regular check-ups at specialized medical clinics. Essential medications are prescribed for them.

86. Lastly, the Government reminds the Working Group to fully adhere to its working methods and the Code of Conduct for Special Procedure Mandate Holders of the Human Rights Council, in particular articles 6 (a)–(c), 9 (a), (d) and (e), 12 (a) and (b) and 13 (a) and (b).

(c) Further submissions from the source

87. The source submits that the Government, in its response, merely denied the allegations, while failing to demonstrate that Mr. Al-Faraj has been afforded any procedural guarantees. Simply listing relevant laws does not demonstrate their proper application.

88. The Government did not provide any information about the evidence upon which the public prosecution service had based the indictment against him; it also failed to disprove the allegation that Mr. Al-Faraj was subjected to physical and psychological torture to extort confessions.

89. The Government confirms that during the hearing before the Specialized Criminal Court, Mr. Al-Faraj was informed of the charges by the sitting tribunal and given a copy of the indictment issued by the public prosecution service. That was the only time the State identified the authority that informed Mr. Al-Faraj of his charges. It is therefore fair to assume that it was the first time he learned of the charges - not upon arrest - thus confirming the allegation that he was informed of the charges only in June 2021, long after his arrest in December 2019.

90. As to the Government's claims about the role of the Human Rights Commission in guaranteeing Mr. Al-Faraj's rights, there are strong reasons to affirm that the Commission lacks the proper independence to carry out its activities efficiently.

2. Discussion

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

92. In determining whether the deprivation of liberty of Mr. Al-Faraj is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.¹⁷

(a) Category I

93. The source submits that Mr. Al-Faraj was arrested without being presented with an arrest warrant and without being informed of the reasons for this arrest. The Government states that Mr. Al-Faraj was arrested on 5 Rabi' II A.H. 1441 (2 December A.D. 2019), pursuant to a valid warrant issued by a competent and independent authority. It further adds that he was informed immediately (the day he was apprehended) of the reasons for his arrest and detention. His legal rights were explained to him, and he was asked to provide a signature

¹⁷ A/HRC/19/57, para. 68.

to acknowledge them. In an additional response, the source submits that the State's response does not specify the authority responsible for issuing the arrest warrant, the date of issue, the arresting authority and the modalities of the arrest. Therefore, the Government has not substantiated its claim that Mr. Al-Faraj was informed "immediately" of the reasons for his arrest and of the charges.

94. The Working Group has previously stated that, for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.¹⁸ This is typically done through an arrest warrant or arrest order (or equivalent document).¹⁹ The reasons for the 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.²⁰

95. In considering this issue, the Working Group observes that the Government has not clarified whether the arrest warrant was shown to Mr. Al-Faraj at the time of his arrest. In that connection, the Working Group notes the distinction between issuing an arrest warrant and showing it to a suspect before the arrest. Considering the discrepancies regarding the events reported by the parties, the Working Group must establish which version of the events it finds most credible. The Working Group observes that while the source has provided a detailed and coherent account, the Government provides limited information to confirm its version of the events and only partially responds to the allegations made by the source.

96. Considering the submissions of both parties, the Working Group finds that no warrant was presented at the time of Mr. Al-Faraj's arrest and that he was not provided with the reasons for his arrest. For those reasons, the Working Group finds that his arrest violated articles 3 and 9 of the Universal Declaration of Human Rights and 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 found in a series of recent cases relating to Saudi Arabia that an arrest warrant was not presented at the time of the arrest, further bolstering the credibility of the source's claims.²¹

97. The source submits that Mr. Al-Faraj was detained incommunicado and in solitary confinement for 21 months – from his arrest on 2 December 2019 until 8 August 2021. The Government emphasizes that its counter-terrorism act ensures that solitary confinement is imposed only under specific exceptional circumstances defined by law and for a specified duration and that Mr. Al-Faraj is entitled to visitation and has continuously had periodic communication. In its further submissions, the source notes that while the State has shared an overview of the number of visits and the date of the last visit, it has failed to provide the dates of the other visits, to specify whether those visits took place when he was in solitary confinement and to specify his detention facility.

98. Considering the source's detailed submissions, in contrast to the Government's more general response, the Working Group finds that Mr. Al-Faraj was denied his right to be visited by and to correspond with his family and to be given adequate opportunity for contact with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, in accordance with principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 (3), 58 and 68 of the Nelson Mandela Rules. Prompt and regular access to family members, and to independent medical personnel and lawyers, is an essential and necessary safeguard for

¹⁸ Opinion No. 59/2019, para. 46.

¹⁹ Opinion No. 30/2018, para. 39. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

²⁰ Human Rights Committee, general comment No. 35 (2014), para. 25. See also opinions No. 30/2017, paras. 58 and 59; and No. 85/2021, para. 69.

²¹ Opinions No. 62/2022, No. 84/2022, No. 17/2023, No. 26/2023, No. 27/2023, No. 55/2023 and No. 56/2023.

the prevention of torture and for protection against arbitrary detention and infringement of personal security.²²

99. The source further submits that Mr. Al-Faraj was denied the right to challenge the lawfulness of his detention (habeas corpus) and the right to be brought promptly before a judge. Following his arrest on 2 December 2019, Mr. Al-Faraj was reportedly brought before a judge in June 2021. In the absence of a specific government response on those allegations, the Working Group considers that Mr. Al-Faraj was denied the right to take proceedings before a court to challenge the legality of his detention, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²³ Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.²⁴ Given that Mr. Al-Faraj had no opportunity to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights was violated. The Working Group is concerned by the source's submission that there is no right to submit complaints directly to judicial authorities or to challenge the legality of an individual's detention before a court of law under Saudi law.

100. Reportedly, Mr. Al-Faraj was charged and sentenced on the basis of several articles contained in the 2017 counter-terrorism and terrorism financing act and the anti-cybercrime act. Allegedly, the vague and overly broad provisions in those laws lack legal certainty and make it impossible to invoke any legal basis to justify Mr. Al-Faraj's deprivation of liberty. The source notes that article 1 of the counter-terrorism law contains a broad and vague definition of a terrorist crime, allowing for the criminalization of a wide range of peaceful expression and opinion. The Government submits that all laws in the country are formulated with sufficient precision and clarity, enabling individuals to regulate their conduct accordingly and that the counter-terrorism and terrorism financing act is aligned with relevant international standards. The Government does not specifically comment on the lack of clarity of the anti-cybercrime law.

101. As the Working Group has previously stated, vaguely and broadly worded provisions, such as the anti-cybercrime law and the 2017 counter-terrorism law, which cannot qualify as *lex certa*, violate the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.²⁵ The Working Group reiterates this finding in relation to the application of those provisions in the case of Mr. Al-Faraj. Several special procedure mandate holders have expressed their concerns about the definition of "terrorist crime" as contained in article 1 of the counter-terrorism law, as it does not restrict the acts it criminalizes to violent acts.²⁶ Similar concerns were raised by the Committee against Torture.²⁷

102. For the above-mentioned reasons, the Working Group finds that Mr. Al-Faraj's detention does not have any legal basis and violates articles 3, 9, and 11 (2) of the Universal Declaration of Human Rights.

(b) Category II

103. Allegedly, Mr. Al-Faraj's detention is arbitrary under category II as it results from the exercise of his right to freedom of conscience and freedom of expression under articles 18 and 19 of the Universal Declaration of Human Rights. The source argues that there is no other reason for Mr. Al-Faraj's arrest, as there is no credible evidence that shows he ever took part in any terrorist activity or owned any type of weapons or explosives, as claimed by the authorities. The Government refutes the allegations and submits that the source is seeking to justify terrorist crimes by portraying them as the exercise of fundamental rights. The

²² Human Rights Committee, general comment No. 35 (2014), para. 58. See also opinion No. 84/2020, para. 70.

²³ See also opinion No. 33/2020, para. 56.

²⁴ A/HRC/30/37, para. 3.

²⁵ Opinions No. 71/2019, para. 73; and No. 30/2022, para. 80.

²⁶ See communication SAU 12/2020. See also A/HRC/40/52/Add.2, para. 17.

²⁷ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 16.

Government submits that no one is detained in Saudi Arabia for the exercise of fundamental rights.

104. The Working Group notes that article 19 of the Universal Declaration of Human Rights protects the right to freedom of expression, which includes freedom to seek, receive and impart information, and 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.²⁸ Moreover, article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of that 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. The Government emphasizes that the punishment of the individual for terrorist crimes is not only in accordance with article 29 (2), but also stems from the Government's adherence to relevant international instruments and its commitment to Security Council resolutions.

105. According to the Working Group's jurisprudence, restrictions placed on freedom of expression by way of deprivation of liberty can be justified only 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 reputation of others, or for the protection of national security, public order, public health or morals, and is proportionate to the pursued legitimate aims.²⁹ These criteria do not appear to have been met in the present case. The Working Group considers that Mr. Al-Faraj's conduct fell within the rights protected under articles 19 and 20 of the Universal Declaration of Human Rights and that he was detained for peacefully participating in protests against the State's treatment of the Shia minority.

106. Reportedly, the counter-terrorism legal framework has been used to punish the peaceful exercise of the right to freedom of opinion and expression. While the Government submits that all laws in Saudi Arabia are formulated precisely, without any ambiguity or vague terms, the Working Group recalls that the laws under which Mr. Al-Faraj was charged lack legal certainty. The Working Group considers that charges and convictions under provisions of the law that allow for the criminalization of peaceful expression, enable arbitrary interpretation and make it difficult for citizens to determine how to act to comply with the law cannot be regarded as consistent with the Universal Declaration of Human Rights.³⁰

107. The Working Group has considered a number of cases concerning deprivation of liberty under the provisions of the anti-cybercrime law.³¹ The individuals in those cases, as with Mr. Al-Faraj, were deprived of liberty for their acts of peaceful expression. Furthermore, the Working Group has previously found prosecution and imprisonment under the anti-cybercrime law and the counter-terrorism law to be arbitrary when they resulted from the legitimate exercise of fundamental human rights.³² It had also 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 terrorism financing act had failed to comply with international human rights standards of legal certainty, and 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 were viewed by the authorities as endangering national unity or undermining the reputation or position of the State.³³ The Working Group notes that those concerns have not been addressed in the counter-terrorism and terrorism financing act of 2017.

108. The source submits that Mr. Al-Faraj's detention is arbitrary because it stems from the exercise of his right to freedom of conscience, namely his refusal to comply with

²⁸ Opinion No. 8/2019, para. 55.

²⁹ E/CN.4/2006/7, para. 43. See also opinion No. 21/2017, para. 40.

³⁰ See, among others, opinion No. 26/2023.

³¹ See, e.g., opinions No. 10/2018 and No. 71/2019.

³² Opinions No. 63/2017, paras. 54–63; and No. 71/2019, para. 82.

³³ See Opinion No. 63/2017.

government orders. Noting that that freedom of thought, conscience and religion are protected under article 18 of the Universal Declaration of Human Rights,³⁴ and that Mr. Al-Faraj peacefully exercised this right, the Working Group finds a violation of article 18 of the Universal Declaration of Human Rights.

109. The Working Group considers that Mr. Al-Faraj's deprivation of liberty is arbitrary, as it resulted from his exercise of the rights or freedoms guaranteed under articles 18, 19 and 20 of the Universal Declaration of Human Rights. His deprivation of liberty therefore falls within category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

(c) Category III

110. Given its finding that the deprivation of liberty of Mr. Al-Faraj is arbitrary under category II, the Working Group emphasizes that no trial should take place. However, as his trial has taken place, the Working Group will consider whether the alleged violations of the right to a fair trial and due process were sufficiently grave to give the deprivation of liberty an arbitrary character such that it falls within category III.

111. The source submits that the Government has violated Mr. Al-Faraj's right to legal assistance at all times. The Government responds that Mr. Al-Faraj was informed of this right immediately – on the day of his arrest – and of his right to notify someone of his arrest, and that he signed an acknowledgment of those rights. He engaged six legal representatives (three at his own expense and three paid for by the State) who were able to visit him in detention to provide legal advice. The source in its additional comments argues that the Government does not specify when Mr. Al-Faraj was able to meet or communicate with his lawyer for the first time and that only one lawyer was appointed to his case. The Government does not give any further information on the identity of the lawyers supposedly appointed or the date of their appointment.

112. All 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 their apprehension, and such access must be provided without delay.³⁵ The Working Group notes that Mr. Al-Faraj was deprived of access to legal counsel of his choice while detained incommunicado and in solitary confinement. Weighing the source's detailed submissions against the Government's more general response, the Working Group finds that the Government failed to respect his right to legal assistance at all times, a right that is inherent in the right to liberty and security of person and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, pursuant to articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights. This violation substantially undermined his capacity to defend himself in any subsequent judicial proceedings. The Working Group finds violations of articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Moreover, as Mr. Al-Faraj is facing the death penalty, these violations are exacerbated, because in cases involving the death penalty effective assistance by counsel at all stages of the trial is axiomatic.

113. The source claims that Mr. Al-Faraj experienced other due process and fair trial violations. His restricted access to a lawyer during his detention and interrogations and his lack of regular access to his lawyer had a detrimental impact on his ability to prepare and present a defence. The Working Group finds that Mr. Al-Faraj's right to equality of arms, to adequate time to prepare a defence and to a fair hearing under articles 10 and 11 (1) of the Universal Declaration of Human Rights were violated.

³⁴ See also opinions No. 16/2008 and No. 43/2017; A/HRC/10/21/Add.3, para. 66; A/HRC/16/47/Add.3, para. 68; A/HRC/42/39, paras. 59–64; and Human Rights Council resolutions 20/2, 24/17 and 36/18.

³⁵ 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. See also CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, paras. 14 and 15; and opinions No. 63/2017, No. 93/2017 and No. 86/2020.

114. The source provides detailed allegations of serious acts of torture perpetrated against Mr. Al-Faraj while in detention, including an instance requiring a transfer in a wheelchair to hospital when he refused to provide a false confession. Despite the specific and ongoing nature of the allegations, the Government simply asserts that he was not subjected to any form of torture. Mr. Al-Faraj claimed during his trial that he had been subjected to torture and that his confessions had been extracted under duress. He reiterated the claims in his letters to the Crown Prince and to the President and judges of the Specialized Criminal Court and attempted to submit complaints to the public prosecutor, but reportedly none of his claims were investigated. The source highlights that most of the evidence mentioned in the verdict is based on Mr. Al-Faraj's forced confession. The Working Group is gravely concerned by the allegations that threats were made to Mr. Al-Faraj that his relative, who was also a detainee, would be threatened with collective sexual abuse if Mr. Al-Faraj did not confess.

115. If persons allege their confessions were coerced, regardless of the stage of the proceedings at which the allegation is first made, it is for the judiciary to establish that the confessions were not obtained through the application of pressure of any kind.³⁶ The Government does not address the lack of investigation into allegations of torture but submits that Mr. Al-Faraj was convicted not only on his confession but on all evidence presented against him. As the Working Group has previously found, a forced confession taints the entire proceedings, regardless of whether other evidence was available to support the verdict.³⁷

116. In relation to the claim that Mr. Al-Faraj was held in solitary confinement for 21 months following his arrest, the Working Group recalls that prolonged solitary confinement in excess of 15 consecutive days is contrary to rules 43 (1) (b) and 44 of the Nelson Mandela Rules. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, whereby some of the harmful psychological effects of isolation can become irreversible,³⁸ or incommunicado detention in a secret place,³⁹ may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

117. Noting the detailed nature of the source's submission and the Government's non-specific responses, the Working Group finds that the source has presented credible allegations that could amount to torture. The use of a confession extracted through ill-treatment contravenes article 15 of the Convention against Torture and principles 1, 6 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁴⁰ The Working Group has consistently concluded in its opinions 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 that respects the equality of both parties before the judicial proceedings, this amounts to a fair trial violation.⁴¹ 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 to defend oneself, especially in the light of the right not to be compelled to testify against oneself or to confess guilt.⁴² The Working Group refers the case to the Special Rapporteur on torture.

118. The source submits that the Specialized Criminal Court and the Specialized Criminal Court of Appeal are not competent to provide a fair trial in accordance with international standards and therefore cannot be considered as independent and impartial tribunals, noting that the Specialized Criminal Court is increasingly used for the prosecution of human rights defenders and political activists. The Government asserts that the Specialized Criminal Court is an independent and competent court established by the Supreme Judicial Council, which

³⁶ Opinion No. 78/2019, para. 52.

³⁷ Opinion No. 34/2015, para. 28.

³⁸ A/66/268, para. 26. See also A/63/175, para. 56.

³⁹ A/56/156, para. 14.

⁴⁰ See also opinions No. 48/2016, para. 52; No. 3/2017, para. 33; and No. 39/2018, para. 42.

⁴¹ See, e.g., opinion No. 32/2019, para. 42.

⁴² Opinions No. 22/2019, para. 78; and No. 26/2019, para. 104.

was granted the authority to establish courts and determine their territorial and jurisdictional competence by the act on the judiciary.

119. Noting the source's argument that the court has suffered from undue influence from the executive branch, and the argument regarding the lack of independence relating to judges' appointments, the Working Group reiterates its previous findings that the Specialized Criminal Court cannot be considered an independent and impartial tribunal,⁴³ a concern shared by the Committee against Torture.⁴⁴ The Working Group further notes the assessment of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism regarding the lack of independence of the Court.⁴⁵

120. Similarly, the Committee against Torture has noted that the Specialized Criminal Court has repeatedly refused to act on claims made by defendants facing terrorism charges who allege that they were subjected to torture or ill-treatment during interrogations.⁴⁶ This is consistent with the source's allegations regarding Mr. Al-Faraj's persistent but ultimately unsuccessful claims of torture and forced confessions. The prosecutor was obliged to investigate his complaint, in keeping with the duty of prosecutors, under guideline 12 of the Guidelines on the Role of Prosecutors, to protect human dignity and uphold human rights.⁴⁷

121. The Working Group concludes that the trial of Mr. Al-Faraj before the Specialized Criminal Court and the Specialized Criminal Court of Appeal is in violation of article 10 of the Universal Declaration of Human Rights. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

122. For the reasons above, the Working Group concludes that the breaches of the fair trial and due process rights of Mr. Al-Faraj are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III.

(d) Category V

123. The source submits that Mr. Al-Faraj is part of the Shia minority, and that his deprivation of liberty and his subsequent death sentence constitute discrimination under international law, rendering his detention arbitrary under category V. The Government rejects these claims and reiterates that Mr. Al-Faraj committed several terrorist crimes.

124. The Working Group has already established that Mr. Al-Faraj's arrest and detention resulted from the exercise of his rights under international law, falling under category II. It recalls that, when detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law based on political and other views.

125. To determine whether a deprivation of liberty is discriminatory, the Working Group considers several non-cumulative factors. These include whether the deprivation of liberty is part of a pattern of persecution against the detained person (for example, the person was targeted through multiple previous detentions); whether other people with comparable distinguishing characteristics have also been persecuted; and whether the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.⁴⁸

126. The source provides detailed submissions on the pattern of persecution and long history of discrimination against the Shia religious minority in Sharqiyah, particularly evident following the protest movement in 2011, and argues that this discrimination forms the background of Mr. Al-Faraj's arrest, trial and death sentence. The Working Group recalls

⁴³ Opinions No. 22/2019, para. 74; No. 26/2019, para. 102; No. 56/2019, para. 86; and No. 71/2019, para. 44.

⁴⁴ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17.

⁴⁵ A/HRC/40/52/Add.2, para. 47.

⁴⁶ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17.

⁴⁷ See also opinions No. 47/2017, para. 29; and No. 63/2020, para. 42.

⁴⁸ A/HRC/36/37, para. 48.

its jurisprudence on similar cases of Shia detainees who were reportedly executed.⁴⁹ The Committee on the Elimination of Racial Discrimination has expressed its concern that ethno-religious minorities in Saudi Arabia face obstacles in freely practicing their right to freedom of religion or belief and that certain ethno-religious minorities face discrimination in the legal system.⁵⁰

127. Noting the detailed and well-substantiated submission of the source, the Working Group considers that Mr. Al-Faraj's deprivation of liberty was based on his religion and therefore discriminatory. The Working Group concludes that the authorities violated articles 2 and 7 of the Universal Declaration of Human Rights. Mr. Al-Faraj's deprivation of liberty is therefore arbitrary under category V.

(e) Concluding remarks

128. While the Government asserts that Mr. Al-Faraj is in good health, the Working Group is gravely concerned that he is reportedly facing health issues caused by the severe torture alleged. It is obliged to remind the Government that all persons deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the person and that denial of medical assistance is contrary to the Nelson Mandela Rules; the Working Group refers in particular to rules 24, 25, 27, 30 and 47, and principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

129. In its 30-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in numerous cases.⁵¹ The Working Group reiterates its concern that this indicates a widespread or systemic problem of arbitrary detention in Saudi Arabia, which amounts to a serious violation of international law. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.⁵² Various United Nations entities, including the present Working Group, have raised concerns about the counter-terrorism and anti-cybercrime laws of Saudi Arabia.⁵³ The Working Group regrets that those concerns persist.

130. The Working Group welcomes the voluntary pledges made by the State pursuant to General Assembly resolution 60/251,⁵⁴ and, in particular, the expressed willingness of the Government to cooperate with the Human Rights Council and its various mechanisms, including the special procedures. In the light of this, and recalling its request for a country visit, reiterated on 24 August 2021 and 4 February 2022, the Working Group would welcome the opportunity, at the Government's earliest convenience, to conduct a visit to Saudi Arabia in order to engage with the Government in a constructive manner and to offer its assistance in addressing its serious concerns regarding instances of arbitrary deprivation of liberty.

3. Disposition

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

The deprivation of liberty of Saud bin Mohammed bin Ali al-Faraj, being in contravention of articles 2, 3, 7, 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

132. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Mr. Al-Faraj without delay and bring it into conformity

⁴⁹ See opinions No. 26/2019 and No. 56/2019.

⁵⁰ CERD/C/SAU/CO/4-9, para. 23.

⁵¹ See, e.g., decisions No. 40/1992, No. 19/1995 and No. 48/1995; and opinions No. 8/2002, No. 55/2023 and No. 56/2023.

⁵² A/HRC/13/42, para. 30. See also opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 51/2017, para. 57; and No. 56/2017, para. 72.

⁵³ See opinions No. 27/2023 and No. 56/2023; A/HRC/40/52/Add.2; and CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1.

⁵⁴ See A/75/377, annex.

with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

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

134. 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-Faraj and to take appropriate measures against those responsible for the violation of his rights.

135. The Working Group requests the Government to bring its laws, particularly the counter-terrorism and terrorism financing act, into conformity with the recommendations made in the present opinion and with the commitments made by the Government of Saudi Arabia under international human rights law.

136. 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, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture.

137. The Working Group recommends that the Government accede to the International Covenant on Civil and Political Rights.

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

4. Follow-up procedure

139. 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-Faraj has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Al-Faraj;
- (c) Whether an investigation has been conducted into the violation of Mr. Al-Faraj's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Saudi Arabia with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

140. 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.

141. 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.

142. 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.⁵⁵

⁵⁵ See Human Rights Council resolution 51/8, paras. 6 and 9.

[Adopted on 27 March 2024]

Advance edited version