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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 34/2021 concerning Mohammed Saleh Al Khoudary and Hani Mohammed Al Khoudary (Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 23 December 2020 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Mohammed Saleh Al Khoudary and Hani Mohammed Al Khoudary. The Government replied to the communication on 19 March 2021. The State is not a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ A/HRC/36/38.



Submissions

Communication from the source

4. Mohammed Saleh Al Khoudary is an 83-year-old Palestinian national born in 1938. He has resided in Saudi Arabia for 28 years, since 1992. He is retired, but his former occupations were as a doctor and politician. His prior work in politics involved acting as the official representative in Saudi Arabia for the Hamas de facto authority in Gaza, when he coordinated relations between the Hamas de facto authority and the Government of Saudi Arabia. His political position was known and properly registered with the Government of Saudi Arabia. He resigned from that position 10 years ago due to ill health, and has been inactive in politics since his resignation. He has maintained a good reputation while living in Saudi Arabia, and has never been arrested or detained in the past.

5. Hani Mohammed Al Khoudary is a 50-year-old Palestinian national born in 1971. He is the son of Mohammed Al Khoudary, and has also resided in Saudi Arabia since 1992. He lives with his wife and five children. He was awarded a PhD in computer science, and works as a university professor at Umm Al-Qura University. He has no political affiliations and does not engage in political activities. Like his father, he has maintained a good reputation during the entire period of his living in Saudi Arabia, and has never before been arrested or detained.

6. The source reports that in the early hours of 4 April 2019, a group of men came to the family home of Mohammed Al Khoudary in Jeddah. The men were officials from Saudi preventive security services but were dressed in civilian clothes. The men requested Mohammed Al Khoudary to come with them for a few hours to answer some questions, but said that he would be back shortly. The men did not state the reason why they needed to question him, and they said nothing about any charges or allegations against him. Given his serious medical conditions, including a recent operation for prostate cancer which required him to take regular medication, he asked to take a toiletry bag of medication with him, but was informed that he would not need medication as he would be returning home promptly. According to the source, Mohammed Al Khoudary had no choice but to go with the men, and his family was not informed where he was being taken.

7. The source reports that in the evening of 4 April 2019, Hani Al Khoudary, the son of Mohammed Al Khoudary, was also detained. He was returning home from work at Umm Al-Qura University when several men approached him and asked for directions, inviting him to walk down the street to point out their route to them. It was at that point that he was taken into custody. He was reportedly detained without charge and with no explanation of the reason for his arrest. His family members were not informed about his fate or his whereabouts. They found his parked car, but did not know why he was not at home, or where he had gone. They repeatedly called him, receiving no answer, and they started to worry as they did not know who to call to find out where he had gone.

8. According to the source, both men were detained without charge and were denied access to a lawyer and their families. During the first three months of their detention, they were both held incommunicado and in solitary confinement in Dhahban Prison, near Jeddah. The families had no idea about the whereabouts of either of them, and the two men were not provided with any reason during the period of solitary confinement to justify them being detained in this manner.

9. The source reports that a month after the date of arrest, security personnel from Dhahban Prison called the wife of Mohammed Al Khoudary to ask about his medical records, and requested that the medicine he needed be brought to the prison. At that time, no information was provided about the whereabouts of Hani Al Khoudary, or the reason why the two men were being detained. The men were allowed a phone call each to their family for the first time in late June 2019. It was only then that the family of Hani Al Khoudary learned that he was also detained at Dhahban Prison along with his father. Neither the father nor the son knew that the other had been detained, and that they were in fact being held in the same detention facility.

10. Since that phone call, the family was allowed more frequent calls and visits. On about 9 July 2019, each of the two men was allowed a separate family visit, for the first time.

Following that visit, a weekly phone call was instituted, whereby they were allowed to speak to their family for five minutes, and a monthly visit was scheduled which was to last about an hour. In August and September 2019, all communications were temporarily suspended without explanation.

11. According to the source, both men were allegedly subjected to abusive and coercive interrogations during their detention, particularly during the first three months while being held in solitary confinement. Interrogations were reportedly held in the middle of the night and with no warning, putting them under emotional and psychological pressure and into a state of exhaustion. During the three months in solitary confinement, the lights in their cells were kept on 24 hours a day, making it difficult to rest and causing confusion about the time of day.

12. The source also reports that neither man was afforded the opportunity to consult a lawyer during or between any of the interrogations. In addition, both men have been prevented from formally challenging in court their continued detention without charge or legal reason, or from otherwise bringing their case before a judge. Several lawyers that the family approached for assistance reportedly refused to take up their case, as they feared that they would also be targeted. According to the source, lawyers handling similar cases have subsequently been detained.

13. The source reports that for a period of over 11 months, the two men were neither brought before a judge or a court, nor provided access to any case file or evidence against them that might explain or justify their detention. They were told that their case was awaiting a decision from a judge in order to determine the next steps, but no further information was provided about what this decision would involve or when it might be made.

14. The source reports that on 8 March 2020, Mohammed Al Khoudary and Hani Al Khoudary were brought before a judge for the first time. On that date, about 60 detainees – mostly of Palestinian nationality or descent – appeared before a court in Riyadh, and were presented with terrorism charges, including the Al Khoudarys. The source alleges that these charges were based on abusive interrogations that took place without the presence of a lawyer while the men were being held in solitary confinement. The source notes with concern that neither of the men was informed by the authorities that he would be brought before the court or charged on that date, however the family reportedly found out about the court hearing accidentally when speaking to the family of another detainee. The family thereafter informed Mohammed Al Khoudary and Hani Al Khoudary during a scheduled call, both of whom were surprised about the hearing.

15. The source adds that since the hearing on 8 March 2020, and as a result of the global coronavirus disease (COVID-19) pandemic, the families of Mohammed Al Khoudary and Hani Al Khoudary have been informed that all future visits have been suspended. According to the source, this not only includes family visits, which have been critical to monitoring the health particularly of Mohammed Al Khoudary, but also means that they cannot meet with a lawyer. The source notes that not only has the right of these two men of access to their family been violated, but there are grave human rights and fair trial implications to this decision, as explained below.

16. According to the source, additional trial hearings took place on 5 October and 15 November 2020 respectively. The next trial hearing is scheduled for 10 January 2021, and it is predicted that two further trial hearings will subsequently be necessary in order to complete the trial proceedings against Mohammed Al Khoudary and Hani Al Khoudary.

17. According to the source, the only evidence submitted against Mohammed Al Khoudary and Hani Al Khoudary during these hearings is evidence obtained from their co-accused who are also detained, which was gained during interrogations of the co-accused in the context of detention. There is reportedly no corroborating evidence in this case. The source notes with considerable concern that the co-accused might have been subjected to similar abusive and coercive interrogation techniques as Mohammed Al Khoudary and Hani Al Khoudary (see para. 88 below), and that the evidence might have been obtained under conditions of torture or abusive treatment.

18. As indicated above, no lawyer was appointed by the Saudi authorities for Mohammed Al Khoudary and Hani Al Khoudary at any stage of their arrest or detention or during the initial legal proceedings, and it took the family a considerable amount of time to find a local lawyer willing to represent them. This meant that both men did not have legal representation during the first hearing on 8 March 2020. The authorities took no steps to ensure that a lawyer was appointed for this hearing.

19. The source reports that in May 2020, the family was able to find a local lawyer willing to represent Mohammed Al Khoudary and Hani Al Khoudary, and instructed this lawyer. However, the lawyer was reportedly unable to communicate or meet with either Mohammed Al Khoudary or Hani Al Khoudary until the second hearing, on 5 October 2020. This means that despite having a lawyer instructed by the family to represent Mohammed Al Khoudary and Hani Al Khoudary, both men were prevented from communicating with their lawyer for over five months. The first time that the lawyer met with or spoke to his clients was for 15 minutes before the second hearing, on 5 October 2020. In total, the lawyer has reportedly been given access to speak to the Al Khoudarys only twice – for 15 minutes before the hearing on 5 October and for 15 minutes before the hearing on 15 November 2020. In addition, after the 15 November hearing, one of the lawyer's colleagues was allowed to meet with Mohammed Al Khoudary in prison. This means that the Al Khoudarys have only been able to speak to their local lawyer for a total of 30 minutes, and Mohammed Al Khoudary has had one additional meeting with the lawyer's colleague, during the entire period of their detention since their initial arrest on 4 April 2019 – that is, for nearly one year and eight months. In addition, despite having been instructed with regard to the case since May 2020 and the fact that he appeared in court for the Al Khoudarys during the hearing on 5 October 2020, the local lawyer was not given access by the Saudi authorities to the case file until the 15 November 2020 hearing, including to the evidence against the Al Khoudarys.

Analysis of violations

20. In the light of the above, the source submits that the arrest and detention of Mohammed Al Khoudary and Hani Al Khoudary is arbitrary according to categories I, III and V of the categories applicable to cases submitted to the Working Group on Arbitrary Detention.

i. Category I

21. The source submits that the detention of Mohammed Al Khoudary and Hani Al Khoudary falls under category I, which means that when a detention “manifestly cannot be linked to any legal basis” it must be found to be arbitrary in nature.²

22. The source submits that the right of Mohammed Al Khoudary and Hani Al Khoudary to be informed of the reasons for their arrest and of the charges against them, both of which elements are integral to their fundamental fair trial rights, have been violated. The source refers to article 14 of the Arab Charter on Human Rights, which sets out an individual's right to be informed of the reasons for detention, and particularly to sections 1, 3, 5 and 6 of that article.

23. The source refers to Saudi Arabian law, which requires that charges be filed within 72 hours of arrest, and specifies that “authorities may not legally detain a person under arrest for more than 24 hours, except pursuant to a written order from a public investigator”. In addition, the provisions of article 14 of the Arab Charter on Human Rights clearly set out the obligation to provide all detainees with a legal reason for detention and with access to a judge to challenge the detention.

24. The source adds that equally critical to their fair trial rights and their right of access to an independent and impartial tribunal is the fact that during this period, neither man was ever brought before a judge or court, and they were not given access to any case file or evidence against them that might explain or justify their detention. The source notes that this alone demonstrates that their detention is unlawful and unreasonable.

² E/CN.4/1992/20, annex 1.

25. According to the source, this treatment, whereby Mohammed Al Khoudary and Hani Al Khoudary were detained for over 11 months for no legal reason and with no charge brought against them, and were then brought before a judge to be charged, with no warning from the authorities, establishes that their detention has not been accessible, understandable, or applied in a consistent and predictable way. This reportedly demonstrates the arbitrary nature of their detention.

ii. Category III

26. The source submits that the proceedings against Mohammed Al Khoudary and Hani Al Khoudary have violated their fundamental right to a fair trial and right of access to an independent and impartial tribunal, under article 10 of the Universal Declaration of Human Rights. The source adds that the right of Mohammed Al Khoudary and Hani Al Khoudary not to be subjected to arbitrary detention has been violated, because their detention in Saudi Arabia is unreasonable, unlawful, inappropriate and unnecessary due to the “non-observance” and gross violation by Saudi Arabia of their fundamental rights to a fair trial.

27. The source also submits that evidence of these violations, as detailed above, includes the fact that they were arrested and continued to be detained for 11 months without any charge being brought against them or any legal reason (see above under category I), were only brought before a judge or court after 11 months and were not given access to their case file or permitted to review the evidence against them until an additional six months later, have been denied any access to a lawyer, including during interrogations, and were denied any communication with their family for substantial periods of time. As a result, they were reportedly denied the right to an independent and impartial judiciary. In addition, the psychological torture that they have allegedly endured during periods of interrogations, aggravated by the pain and stress suffered as a result of the lack of adequate medical treatment, has exacerbated the impact of these violations of their fair trial rights. The source asserts that each of these violations stands alone as indicating that their detention is unlawful and unjust, but when viewed as a whole, the evidence overwhelmingly demonstrates that these violations confer an arbitrary character.

28. The source submits that the right of the Al Khoudarys to instruct and consult a lawyer has been breached during the entire period of their detention.

29. In particular, the source underlines that the Al Khoudarys were never afforded the ability to consult a lawyer during any interrogations. Indeed, without any information on the allegations against them or on what charges might be brought, or sight of the case file or evidence against them, both were interrogated without legal counsel. According to the source, the questions asked during these interrogations have focused solely on Mohammed Al Khoudary’s former position as a Palestinian leader in Saudi Arabia. Indeed, Hani Al Khoudary has reportedly only been questioned about his father and his father’s affiliations. However, without knowing the exact allegations against them or the charges that each of them might potentially be vulnerable to, both men worry about not having had the ability to consult a lawyer during the interrogations. In this respect, the source refers to Saudi Arabian law, according to which “any accused person shall have the right to seek the assistance of a lawyer or a representative to defend him during the investigation and trial stages”. The source acknowledges that because the language of this provision guarantees the right to consult a lawyer to an “accused” person, this might leave those detained without charge short of the protections provided.

30. According to the source, this position highlights the severe impact of denying an individual the right to be informed of the legal reason for detention and of delaying charging. Denying the two men the right to be informed of the charges against them allegedly has the ripple effect of jeopardizing their right to legal representation. Nevertheless, the source notes that this domestic provision guarantees the right to legal representation during the investigation stage, and so is applicable to the first 11 months of the detention of the Al Khoudarys. Still, the source adds that fundamental principles of a fair trial under international human rights law must be considered, including the right to a lawyer as set out in the Universal Declaration of Human Rights. By this measure, their inability to instruct and consult a lawyer has also denied them the ability to appear before an independent and impartial tribunal to determine their rights, and to seek an effective remedy by a competent

national tribunal for their fundamental rights which have been violated contrary to the Universal Declaration of Human Rights and article 14 (5) and (6) of the Arab Charter on Human Rights. The source also adds that they have been prevented from challenging the circumstances of their detention.

31. As explained above, the family of Mohammed Al Khoudary and Hani Al Khoudary has made considerable efforts to appoint a local lawyer in Saudi Arabia on their behalf, but they could not find a lawyer willing to take the instruction, either out of fear that the lawyer would also be targeted or due to the fact that the charges were still unknown. All efforts by the family to learn the charges in advance of the first hearing on 8 March 2020 were reportedly met with the explanation that they would have to wait for the hearing. The source notes that it is highly unusual to conduct a first appearance where the accused is denied the ability to know the charges in advance. The Saudi authorities also did not provide legal assistance for the two men during the initial hearing. They were thus not legally represented at the hearing.

32. As noted above, the family continued to struggle to find a local lawyer after the hearing on 8 March 2020, then in May 2020 they were able to find a lawyer willing to represent the two men. However, Mohammed Al Khoudary and Hani Al Khoudary were prevented from communicating with their lawyer for over five months, until the second hearing, on 5 October 2020. The source notes that it is an impossible task to present one's defence without access to counsel who can enquire about obtaining the full case file and all evidence against the accused so that they can respond fully to the charges. Also, their lack of counsel reportedly impaired their ability to challenge evidence gained by way of torture and abusive interrogations, both from Mohammed Al Khoudary and Hani Al Khoudary themselves and from any other detainees who might have provided false information under coercion. According to the source, as the trials move forward, they might rely on information gathered during these abusive interrogations without a lawyer present. For these reasons, both men have been denied the right to a lawyer, and this violation has severely impacted their due process rights, as well as their rights to a fair trial and to an independent and impartial tribunal.

33. The source also submits that Mohammed Al Khoudary and Hani Al Khoudary have been subjected to abusive and coercive interrogations during their detention, and particularly during their first three months in detention when they were held in solitary confinement. According to the source, this is a violation of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The source adds that the emotional and physiological pressure placed on both men in solitary confinement put them into a state of exhaustion, with interrogations being conducted in the middle of the night and with no warning. During the three months in solitary confinement, the lights in the cells where they were held were kept on, making it difficult to rest and causing confusion about the time of day. In particular, the source recalls that given the serious medical conditions of Mohammed Al Khoudary, requiring specialist care and adequate rest, this psychological pressure would put him in a position of extreme vulnerability, especially when being interrogated.

34. The source further submits that the severe psychological pressure and stress that Mohammed Al Khoudary and Hani Al Khoudary were subjected to, particularly during the period of detention in which they were regularly interrogated, rises to the level of torture.

35. The source notes that now that charges have been laid against Mohammed Al Khoudary and Hani Al Khoudary, there is considerable worry that statements taken during these abusive and coercive interrogations – conducted while they were subjected to treatment rising to the level of psychological torture, and while their right to a lawyer and to know the charges against them was denied – will be relied upon as part of the case file against them. Until the hearing of 15 November 2020, the local lawyer was not granted access to the case file to confirm what evidence was being relied upon for the charges against Mohammed Al Khoudary and Hani Al Khoudary. The source adds that their interrogations under conditions of coercion and torture are violations of their rights to a fair trial.

36. The source submits that Mohammed Al Khoudary and Hani Al Khoudary's rights to be protected against psychological torture were violated in detention, especially during the

initial three months of incommunicado detention and solitary confinement. The source refers to article 5 of the Universal Declaration of Human Rights, article 8 of the Arab Charter on Human Rights and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), as well as to the Convention against Torture.

37. The source also submits that the initial treatment and conditions of detention of Mohammed Al Khoudary and Hani Al Khoudary rose to the level of psychological torture. The situation of their arrest without a legal reason or explanation placed both of them in a position of extreme stress and in a situation where they constantly feared for their safety. As they were not provided with any legal reason for their continued detention and no charges were brought, this situation of uncertainty, with the stress and fear that went with it, was considerably prolonged.

38. The source recalls that Saudi officials placed Mohammed Al Khoudary and Hani Al Khoudary in a situation of extreme emotional and psychological pressure, referring to article 15 of the Convention against Torture.

39. The source notes that it is apparent that this treatment will directly affect their fair trial rights. Since the statements taken during these interrogations clearly might be relied upon as part of any case file used for charges or legal proceedings against them, the psychological torture they have endured further violates their right to a fair trial. Furthermore, although the condition of being held in solitary and incommunicado detention changed when they were moved to group cells and were allowed limited communication with their family, the source asserts that the emotional pressure and stress did not end, due to not knowing why they continued to be detained, and if and on what grounds they might be charged. The source thus submits that this severe emotional pressure amounting to torture has continued to affect them beyond the initial three months of detention and during the entire course of their detention.

40. According to the source, this also applies to their lack of adequate medical treatment during the entire period of detention. The Saudi officials' failure to provide proper medical care and treatment for Mohammed Al Khoudary's serious and urgent medical conditions only adds to his pain, suffering and emotional stress, thus contributing to the inhumane conditions of his detention and aggravating the severity of the psychological torture. The same applies to Hani Al Khoudary, in relation to his toothache and inadequate dental care.

41. The source submits that the Saudi authorities have also violated Mohammed Al Khoudary and Hani Al Khoudary's right to health and to adequate treatment and living standards. This is particularly the case for Mohammed Al Khoudary, due to his serious medical conditions which require regular specialist care.

iii. Category V

42. The source submits that the detention of Mohammed Al Khoudary and Hani Al Khoudary is part of a pattern of detentions of Palestinian nationals living in Saudi Arabia, and as such demonstrates that their detention is, impermissibly, for reasons of race and their national origin as Palestinians. The source notes the possibility that their detention could impermissibly also be for reasons of imputed political opinion.

43. The source recalls that their arrest and detention, as well as that of the other Palestinian individuals detained, initially took place without any information being provided or any legal proceedings being instituted. However, the source submits that their detention falls within a pattern of conduct against Palestinian nationals in Saudi Arabia, and that the criteria for category V is thus met. Therefore, their detention is, as such, found to be arbitrary.

Response from the Government

44. On 23 December 2020, the Working Group transmitted the source's allegations to the Government under its regular communication procedure. The Working Group requested that the Government provide it with detailed information by 22 February 2021 about Mohammed Al Khoudary and Hani Al Khoudary and clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Saudi Arabia under international human rights law. The Working Group also called upon the Government of Saudi Arabia to ensure their physical and mental integrity. On 19 February 2021, the Government requested

an extension to the deadline for responding. The extension was granted, with a new deadline of 24 March 2021 being set.

45. In its response dated 19 March 2021, the Government emphasized that the allegations and claims made in the communication were untrue and were based on unfounded and uncorroborated information from the source. It sets out, in its response, the steps that it has taken to investigate the allegations and to clarify all relevant facts, in line with its policy of cooperation with international human rights procedures.

46. The Government submits that the two men were arrested under warrants issued against them by the competent authority in accordance with article 2 of the Terrorism and Financing of Terrorism Act. The Government also submits that the two men were immediately informed of the reasons for their arrest and the charges against them, in accordance with the Code of Criminal Procedure. The Government adds that their detention was subsequently extended on the basis of article 19 of the Terrorism and Financing of Terrorism Act.

47. The Government submits that Mohammed Al Khoudary and Hani Al Khoudary have not been prevented from communicating with others during their detention and that they enjoy all the rights and guarantees provided in law. Nonetheless, investigators may prevent accused persons from communicating with others for a limited period, in the interests of the investigation, in accordance with article 20 of the Terrorism and Financing of Terrorism Act.

48. The Government denies that the two men were subjected to enforced or involuntary disappearance, and states that they are being held in a place of detention that is designated as such and is well known. It submits that they have communicated with their families, as their families know where they are being held, which demonstrates that they have not been subjected to enforced or involuntary disappearance.

49. The Government submits that the two individuals have the same rights to calls and visits as other detainees and prisoners, in accordance with domestic law, which protects and safeguards their rights. They are not prevented from communicating with others.

50. Citing the Code of Criminal Procedure, the Government denies that the two men were subjected to abusive interrogations, which are forbidden under domestic law.

51. The Government submits that the two men were granted their right to appoint a legal representative or lawyer to defend them during the investigation and the trial.

52. The Government notes that the right to contest the legality of an arrest or detention is a general principle of Saudi law, which is enshrined in the Code of Criminal Procedure, and that both men have legal representatives to defend them and plead on their behalf.

53. Citing the Basic Law of Governance and the Code of Criminal Procedure, the Government submits that the allegation that lawyers are targeted and detained is unacceptable and incorrect.

54. The Government acknowledges that the right to appear before a competent court is one of the fundamental rights of any accused person. Having questioned the two men, the investigating authority believed there to be sufficient evidence and filed charges against them. The case file was then referred by the Public Prosecution Service to the competent court, and the two were duly informed, in accordance with the Code of Criminal Procedure.

55. The Government submits that of their own free will, the two men confessed to the charges against them, before the investigating authorities acknowledged that confession in the courts, in a manner consistent with provisions of the Code of Criminal Procedure. It submits that no judgment will be handed down until after consideration and discussion of the evidence, pleadings, communications, statements and confessions submitted and approved by the public prosecutors, the defendants and their legal representatives, and of the content of the arrest and interrogation record, of witness evidence and of expert reports, including the report of the forensic examiner. Citing the Code of Criminal Procedure, the Government submits that the trial in fact serves as the final investigation and therefore necessitates safeguards and protection for the parties involved.

56. The Government denies that Mohammed Al Khoudary and Hani Al Khoudary were subjected to torture or ill-treatment, noting that the laws of Saudi Arabia prohibit and punish torture and contain guarantees and measures aimed at preventing torture and ill-treatment.

57. The Government submits that all prisons and detention facilities in the country are supervised and inspected, and that action is taken in the event of any violation.

58. The Government reiterates its commitment to the human rights treaties that it has ratified, including the Convention against Torture, which is deemed to constitute part of domestic legislation.

59. The Government submits that the two men did have legal assistance and were able to exercise their right to appoint a lawyer to defend them and plead on their behalf in the present case. In accordance with the Code of Criminal Procedure, when they appeared in court in the presence of the prosecutors, the prosecution case was read out to them. The judges informed them that they had the right to make an immediate oral response to the prosecution case or to submit a written response, and that they had the right to appoint a lawyer or legal representative to defend them. The two men requested a delay to prepare their response to the prosecution case and appoint a lawyer to defend them and plead on their behalf. This request was granted. Communication between the two men and their lawyer is guaranteed by law.

60. The Government submits that Mohammed Al Khoudary and Hani Al Khoudary have received the requisite medical care and are provided with appropriate food and meals, just like other detainees and prisoners. All detention centres and prisons are subject to judicial, administrative, health and social inspections in accordance with the law.

61. With regard to the source's allegation that the detention of the two men meets the criteria for arbitrary detention under category V, the Government submits that they were arrested and detained on charges of having committed terror offences that are punishable under domestic law, noting that the charges against them had nothing to do with race, national origin or political opinions.

62. The Governments surmises that the proceedings against the two men were correct and in line with international human rights standards, with the country's obligations under international human rights law and with the human rights treaties to which Saudi Arabia is a party.

63. The Government also details the measures that it has taken to counter the spread of COVID-19 in prisons and places of detention.

Further comments from the source

64. On 22 March 2021, the Government's response was transmitted to the source for its further comments. In its reply dated 5 April 2021, the source submits that there is nothing new in the Government's response to diminish the information contained in its submission, which it reiterates.

65. In a recent update, the source submits that on 8 August 2021, Mohammed Al Khoudary and Hani Al Khoudary, as well as other Palestinian nationals being tried in the mass trial against over 60 Palestinian nationals, were brought to court, and the verdict from the trial proceedings against them was delivered. Mohammed Al Khoudary was found guilty and received a sentence of 15 years' imprisonment with a deduction for time served, meaning that his sentence is of about seven and a half years. Hani Al Khoudary was sentenced to three years' imprisonment.

Discussion

66. The Working Group thanks the source and the Government for their submissions.³ As a preliminary matter, the Working Group notes that while the Government has extensively

³ The Working Group notes that an urgent appeal which included these two individuals was sent to the Government by several special procedure mandate holders on 27 January 2020. The Working Group

referred to its domestic legislation and procedures, its submissions do not fully clarify the extent and manner in which these legal standards were applied specifically to Mohammed Al Khoudary and Hani Al Khoudary.

67. In determining whether Mohammed Al Khoudary and Hani Al Khoudary's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁴ Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁵

Category I

68. The source submits that the detention of both men falls within category I because they were arrested and then detained without charge, for a period of more than 11 months, during which no explanations or legal reasons were provided by an investigator, prosecutor or judge to justify their continued detention. The Government submits that the arrest, detention, questioning and trial of the two men were conducted in accordance with the law.

69. While the Government submits that the two men were informed of the reasons for their arrest and of the charges against them, its claim is lacking in detail on the circumstances in which both men were taken into custody. In contrast, the Working Group finds to be credible the detailed information provided by the source in relation to when and how both men were taken into custody. Notably, they were arrested under false pretences, supporting the Working Group's conclusion that the arrests did not follow legal procedures (see paras. 6–7 above).

70. These circumstances do not indicate that the arrests were conducted in a proper and procedurally correct manner. As such, the Working Group considers that the source has presented a *prima facie* credible case that the authorities did not present arrest warrants at the time of the arrests, nor did they inform Mohammed Al Khoudary or Hani Al Khoudary of the reasons for their arrest and the charges against them. 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.⁶ For similar reasons, the Working Group finds that the source has presented a credible case that Mohammed Al Khoudary and Hani Al Khoudary were not informed of the reasons for their arrests when arrested and were not promptly informed of the charges.

71. In order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest; the authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.⁷ The Saudi authorities should have informed Mohammed Al Khoudary and Hani Al Khoudary of the reasons for their arrest at the time of arrest, and of the charges against them promptly.⁸ The Working Group finds a violation of the right of Mohammed Al Khoudary and Hani Al Khoudary to be informed of

thanks the Government for its reply to the communication, of 27 March 2020, in accordance with the requirement under paragraph 23 of the Working Group's methods of work to respond separately to urgent appeals and to communications under the regular procedure.

⁴ See, for example, opinions No. 50/2017, para. 54; No. 61/2017, para. 25; No. 62/2017, paras. 30 and 45; No. 69/2017, para. 24; No. 70/2017, para. 48; No. 75/2017, para. 34; No. 79/2017, para. 47; No. 11/2018, para. 41; No. 19/2018, para. 25; No. 35/2018, para. 24; No. 36/2018, para. 37; No. 37/2018, para. 27; No. 40/2018, para. 42; No. 43/2018, para. 71; No. 44/2018, para. 78; No. 45/2018, para. 39; No. 46/2018, para. 45; No. 52/2018, para. 68; No. 67/2018, para. 69; No. 70/2018, para. 31; No. 75/2018, para. 57; No. 78/2018, para. 67; No. 79/2018, para. 68; and No. 90/2018, para. 29.

⁵ A/HRC/19/57, para. 68.

⁶ Opinions No. 22/2019, No. 26/2019, No. 56/2019, No. 71/2019, No. 33/2020, No. 86/2020 and No. 92/2020.

⁷ See, for example, opinions No. 93/2017, para. 44; No. 10/2018, paras. 45–46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

⁸ See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

the reasons for their arrest and the charges against them, which is integral to establishing the legal basis for their arrest and detention as well as to their fundamental fair trial rights. On this basis, the Working Group finds violations of article 9 of the Universal Declaration of Human Rights, as well as of principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

72. The source alleges and the Government does not refute that Mohammed Al Khoudary and Hani Al Khoudary were first brought before a judge when the prosecution case was read out to them, which according to the source was 11 months after their arrest on 4 April 2019. The Working Group observes that Mohammed Al Khoudary and Hani Al Khoudary were not brought promptly before a judge – that is, within 48 hours of the arrest, barring absolutely exceptional circumstances, as per the international standard set out in the Working Group’s jurisprudence.⁹ The Working Group further observes that Mohammed Al Khoudary and Hani Al Khoudary were not afforded the right to bring proceedings before a court so that the court could decide without delay about the lawfulness of their detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.¹⁰

73. Furthermore, their detention – bearing in mind that pretrial detention should be the exception rather than the rule – lacked a legal basis, as it was not based on an individualized determination that it was reasonable and necessary taking into account all the circumstances, for such purposes specified in law as to prevent flight, interference with evidence or the recurrence of crime, and it was not accompanied by consideration of alternatives, such as bail, electronic bracelets or other conditions that would render detention unnecessary.¹¹ The need for individualized determinations is only heightened in light of the source’s submission that Mohammed Al Khoudary, who has serious medical issues, was arrested after his recent surgery for prostate cancer, and was not permitted to bring his medications with him (see para. 6 above).

74. The Government submits that the detention of Mohammed Al Khoudary and Hani Al Khoudary was extended for justifiable grounds under article 19 of the Terrorism and Financing of Terrorism Act. It is also of considerable concern to the Working Group that the Terrorism and Financing of Terrorism Act allows the public prosecution to hold a suspect in pretrial detention for up to 12 months, with unlimited extension upon court order (art. 19), and allows suspects to be held for up to 90 days in incommunicado detention (art. 20).¹²

75. The Government does not contest the source’s submission that, during their detention, both individuals did not have access to any case file or evidence against them and that neither was brought before a judge or court when detained for over 11 months with no legal charge. The Working Group finds that the Government of Saudi Arabia has thus violated article 9 of the Universal Declaration of Human Rights, as well as principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

76. The Government denies the source’s submission that Mohammed Al Khoudary and Hani Al Khoudary were subjected to enforced and involuntary disappearance and held incommunicado for three months following their arrest on 4 April 2019. According to the source, Mohammed Al Khoudary and Hani Al Khoudary did not have any contact with their families, who did not know of their whereabouts until late June 2019, when the two men were permitted to make a phone call to each of their families.

77. The Working Group observes that the Government has provided inadequate information to support its assertion that the families were notified of the arrest and the location of detention of the men, at the time of their arrest in April 2019. In light of the

⁹ Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

¹⁰ Opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

¹¹ A/HRC/19/57, paras. 48–58.

¹² Opinion No. 33/2020, para. 75.

circumstances of their arrests discussed above, the Working Group finds the source's submission to be credible, and observes that as a result of being held incommunicado, the men were placed outside the protection of the law as they were not able to challenge their detention during this period. Moreover, the failure to provide notification of their arrest and their location to their families violated principles 15 to 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹³ The Working Group notes that prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture as well as for protection against arbitrary detention and infringement of personal security.

78. The Working Group considers that Mohammed Al Khoudary and Hani Al Khoudary were initially detained in circumstances that amount to an enforced disappearance, as their family could not locate them, and the authorities do not appear to have disclosed their location. Enforced disappearance constitutes a particularly aggravated form of arbitrary detention, in violation of article 6 of the Universal Declaration of Human Rights.¹⁴ Prolonged incommunicado detention is conducive to torture and ill-treatment and can itself constitute such treatment.¹⁵

79. For the reasons set out above, the Working Group finds that the Government failed to establish a legal basis for the arrest and detention of Mohammed Al Khoudary and Hani Al Khoudary and that their detentions are arbitrary under category I.

Category III

80. The Working Group notes the source's submission that Mohammed Al Khoudary and Hani Al Khoudary were deprived of access to legal counsel during their period of enforced disappearance, which was followed by their incommunicado detention. Their inability to instruct and consult a lawyer has also denied them the ability to appear before an independent and impartial tribunal to determine their rights, and to seek an effective remedy by a competent national tribunal for their fundamental rights, thus preventing them from challenging the circumstances of their detention, in violation of their right to be recognized as persons before the law under article 6 of the Universal Declaration of Human Rights.

81. The source alleges and the Government does not refute that the men were only notified of their right to appoint a lawyer or legal counsel to defend them when they appeared in court for the first time, which according to the source was on 8 March 2020, 11 months after being detained without charges. Both had been interrogated without legal counsel. The Government submits that they were able to appoint a lawyer once the investigation was complete, as investigators may prevent accused persons from communicating with others for a limited period, in the interests of the investigation, under article 20 of the Terrorism and Financing of Terrorism Act. According to the source, Mohammed Al Khoudary and Hani Al Khoudary were allowed very limited communication with their lawyers one year and five months after their arrest, and their lawyers were permitted extremely restricted access to their case files, a month later (see paras. 18–19 and 28–32 above).

82. In the Working Group's view, the Government of Saudi Arabia failed to respect the right of Mohammed Al Khoudary and Hani Al Khoudary to legal assistance at all times, which is inherent in the right to liberty and security of person and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights as well as principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

83. The Working Group recalls that persons deprived of their liberty should have the right to legal assistance by counsel of their choice, at any time during their detention, including

¹³ Opinions No. 22/2019, para. 71; No. 26/2019, para. 99; No. 56/2019, para. 83; No. 33/2020, para. 87; and No. 92/2020, para. 72.

¹⁴ Opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020.

¹⁵ General Assembly resolution 68/156, para. 27.

immediately after the moment of apprehension.¹⁶ Upon apprehension, all persons should be promptly informed of this right.¹⁷ This right entitles persons deprived of liberty to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information.¹⁸ Furthermore, legal counsel should be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.¹⁹ By contrast, as noted above, the families of Mohammed Al Khoudary and Hani Al Khoudary struggled to secure legal representation for them for these reasons (see paras. 12, 18 and 19 above).

84. The Working Group considers that these violations substantially undermined the capacity of Mohammed Al Khoudary and Hani Al Khoudary to defend themselves in any subsequent judicial proceedings.²⁰ The present case is another example of legal representation being denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in Saudi Arabia.²¹

85. The Working Group finds credible the source's allegations that Mohammed Al Khoudary and Hani Al Khoudary were subjected to abusive and coercive interrogations during their detention, and particularly during the first three months in detention when they were held in solitary confinement (see para. 11 above). 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,²² or incommunicado detention in a secret place, may amount to torture as described in article 1 of the Convention against Torture.²³

86. The source recalls that Saudi officials placed Mohammed Al Khoudary and Hani Al Khoudary in a situation of extreme emotional and psychological pressure. While the Government denies these allegations, the Working Group expresses its gravest concern at the allegations of torture and ill-treatment,²⁴ which constitute a *prima facie* breach of the absolute prohibition of torture, which is a peremptory norm of international law. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

87. 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 at which the equality of both parties before the judicial proceedings is respected, this amounts to a fair trial violation.²⁵ Moreover, the extraction of forced confessions violates rule 1 of the Nelson Mandela Rules, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 5 of the Universal Declaration of Human Rights, and the *jus cogens* norm that it enshrines. In the Working Group's view, torture or ill-treatment of detainees is not only a grave violation of human rights, but also seriously undermines the fundamental

¹⁶ 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 (A/HRC/30/37).

¹⁷ *Ibid.*, para. 12.

¹⁸ *Ibid.*, para. 14.

¹⁹ *Ibid.*, para. 15. See also A/HRC/45/16, paras. 50–55; and opinions No. 66/2019, No. 70/2017, No. 36/2017, No. 34/2017, No. 32/2017 and No. 29/2017.

²⁰ 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, paras. 12, 15, 67 and 71.

²¹ Opinions No. 22/2019, No. 26/2019, No. 56/2019, No. 71/2019, No. 33/2020, No. 86/2020 and No. 92/2020.

²² A/63/175, para. 56; and A/66/268, para. 61. Likewise, rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) refers to solitary confinement that is for a period in excess of 15 consecutive days as being prolonged solitary confinement.

²³ A/56/156, para. 14.

²⁴ Opinion No. 39/2018, para. 42.

²⁵ Opinion No. 32/2019, para. 42.

principles of a fair trial, as it can compromise the ability to defend oneself, especially in light of the right not to be compelled to testify against oneself or to confess guilt.²⁶

88. The Government submits that the two men confessed, of their free will, to the charges against them before the investigating authorities and acknowledged the charges against them. The source denies this. In light of the credible allegations regarding coercive interrogation techniques, and the lack of legal assistance during the interrogations and the subsequent violations of the right to a fair trial, the Working Group does not find the Government's position to be tenable. The Working Group considers that confessions made in the absence of legal counsel are inadmissible as evidence in criminal proceedings.²⁷ The Working Group notes with concern the source's submission that the only evidence submitted against Mohammed Al Khoudary and Hani Al Khoudary during these hearings is evidence obtained from their co-accused, which may have been obtained under conditions of torture or abusive treatment²⁸ (see para. 17 above).

89. The Working Group therefore finds violations of article 10 of the Universal Declaration of Human Rights. The use of a confession extracted through ill-treatment also constitutes a violation of principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,²⁹ and a violation of article 15 of the Convention against Torture according to which "any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings".³⁰

90. The Government submits that Mohammed Al Khoudary and Hani Al Khoudary have been referred to the Specialized Criminal Court, which is an independent and competent court under the Terrorism and Financing of Terrorism Act. The Working Group retains in the present case its previous view³¹ that the Specialized Criminal Court cannot be considered an independent and impartial tribunal, as it comprises individuals appointed by the Ministry of the Interior. This was confirmed by the Committee against Torture in 2016.³² 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 that concerns regarding the lack of independence of the Court therefore remain undiminished.³³ The trial before the Court thus contravenes articles 10 and 11 (1) of the Universal Declaration of Human Rights.

91. The source submits and the Government does not deny that the first trial of Mohammed Al Khoudary and Hani Al Khoudary, on 8 March 2020, took place with 60 other defendants charged with similar offences. As the Working Group has emphasized, mass trials are incompatible with the interests of justice and do not meet the standards of a fair trial, given that it is impossible during such proceedings to conduct a specific assessment of individual responsibility.³⁴ The Working Group is not convinced that it was possible for all defendants in such a large trial to receive an individualized assessment of their culpability beyond reasonable doubt.

92. The Working Group concludes that the violations of the right to a fair trial noted above are of such gravity as to give the detention of Mohammed Al Khoudary and Hani Al Khoudary an arbitrary character under category III. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

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

²⁷ A/HRC/45/16, para. 53.

²⁸ Opinion No. 45/2019, para. 69.

²⁹ Opinions No. 48/2016, para. 52; No. 3/2017, para. 33; No. 6/2017, para. 43; No. 29/2017, para. 64; and No. 39/2018, para. 42.

³⁰ See also the Principles on Effective Interviewing for Investigations and Information Gathering.

³¹ Opinions No. 22/2019, para. 74; No. 71/2019, para. 44; No. 56/2019, para. 86; No. 26/2019, para. 102; No. 22/2019, para. 74; and No. 86/2020.

³² CAT/C/SAU/CO/2, para. 17.

³³ A/HRC/40/52/Add.2, para. 47.

³⁴ Opinions No. 65/2019, para. 75; and No. 5/2020, para. 86.

Category V

93. The Working Group observes with concern that Mohammed Al Khoudary and Hani Al Khoudary were brought before a judge for the first time on 8 March 2020 with about 60 other detainees – mostly of Palestinian nationality or descent – who were also presented with terrorism charges. The source submits that Mohammed Al Khoudary was solely interrogated with regard to his position as the former Palestinian leader in Saudi Arabia and that Hani Al Khoudary was only questioned on his father's affiliations in this regard. The source submits that on 8 August 2021, Mohammed Al Khoudary and Hani Al Khoudary, as well as other Palestinians being tried in the mass trial, were brought to court and the verdict from the trial proceedings against them was delivered (see para. 65 above).

94. In these circumstances, the detention of Mohammed Al Khoudary and Hani Al Khoudary suggests that they were targeted on the basis of their status as Palestinian nationals residing in Saudi Arabia. The Working Group finds that Mohammed Al Khoudary and Hani Al Khoudary were deprived of their liberty on discriminatory grounds, based on their national origin as Palestinians. Their detention violates articles 2 and 7 of the Universal Declaration of Human Rights and is arbitrary according to category V.

Concluding remarks

95. The Working Group further notes the denial of the right of Mohammed Al Khoudary and Hani Al Khoudary to be visited by and to correspond with their 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 rules 43 (3) and 58 (1) of the Nelson Mandela Rules and with principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group notes with concern the source's submission that all family visits to the men have been suspended since March 2020, due to the COVID-19 pandemic (see para. 15 above).

96. Mohammed Al Khoudary is 83 years old and the authorities knew he was a cancer patient at the time of his arrest (see para. 6 above). Since his detention, he has experienced a severe deterioration in health, as he has been without access to the required specialist medical care. Hani Al Khoudary is also suffering with health issues. Both have been detained since April 2019, for over 29 months. The Working Group urges the Government to immediately and unconditionally release both men, so that they may receive the required urgent medical care, in accordance with article 25 of the Universal Declaration of Human Rights and rules 24 to 35 of the Nelson Mandela Rules. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Independent Expert on the enjoyment of all human rights by older persons.

97. In its 29-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in numerous cases.³⁵ The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Saudi Arabia, which amounts to a serious violation of international law. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.³⁶

³⁵ See decisions No. 40/1992, No. 60/1993, No. 19/1995 and No. 48/1995; and opinions No. 8/2002, No. 25/2004, No. 34/2005, No. 35/2005, No. 9/2006, No. 12/2006, No. 36/2006, No. 37/2006, No. 4/2007, No. 9/2007, No. 19/2007, No. 27/2007, No. 6/2008, No. 11/2008, No. 13/2008, No. 22/2008, No. 31/2008, No. 36/2008, No. 37/2008, No. 21/2009, No. 2/2011, No. 10/2011, No. 11/2011, No. 17/2011, No. 18/2011, No. 19/2011, No. 30/2011, No. 31/2011, No. 33/2011, No. 41/2011, No. 42/2011, No. 43/2011, No. 44/2011, No. 45/2011, No. 8/2012, No. 22/2012, No. 52/2012, No. 53/2012, No. 32/2013, No. 44/2013, No. 45/2013, No. 46/2013, No. 14/2014, No. 32/2014, No. 13/2015, No. 38/2015, No. 52/2016, No. 61/2016, No. 10/2017, No. 63/2017, No. 93/2017, No. 10/2018, No. 68/2018, No. 22/2019, No. 26/2019, No. 56/2019, No. 71/2019, No. 33/2020, No. 86/2020 and No. 92/2020.

³⁶ A/HRC/13/42, para. 30. See also opinions No. 68/2018, para. 60; No. 73/2018, para. 69; No. 82/2018, para. 53; No. 83/2018, para. 68; and No. 87/2018, para. 80.

98. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary detention. On 24 August 2021, the Working Group reiterated earlier requests to the Government to undertake a country visit and will continue to seek a positive response.

Disposition

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

The deprivation of liberty of Mohammed Saleh Al Khoudary and Hani Mohammed Al Khoudary, being in contravention of articles 2, 3, 5, 6, 7, 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, III and V.

100. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Mohammed Al Khoudary and Hani Al Khoudary without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights. The Working Group recommends that the Government ratify the International Covenant on Civil and Political Rights and the International Convention for the Protection of All Persons from Enforced Disappearance.

101. The Working Group considers that, taking into account all the circumstances of the case, in particular the risk of harm to Mohammed Al Khoudary and Hani Al Khoudary's health, the appropriate remedy would be to release Mohammed Al Khoudary and Hani Al Khoudary immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of both men.

102. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Mohammed Al Khoudary and Hani Al Khoudary and to take appropriate measures against those responsible for the violation of their rights.

103. The Working Group requests the Government to revise its laws, particularly articles 19 and 20 of the Terrorism and Financing of Terrorism Act, and those concerning the Specialized Criminal Court, to meet the requirement of due process and fair trial, in conformity with the findings in the present opinion and with its obligations under international law.

104. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (a) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (b) the Special Rapporteur on the independence of judges and lawyers, (c) the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and (d) the Independent Expert on the enjoyment of all human rights by older persons, for appropriate action.

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

Follow-up procedure

106. 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 Mohammed Al Khoudary and Hani Al Khoudary have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mohammed Al Khoudary and Hani Al Khoudary;

(c) Whether an investigation has been conducted into the violation of the rights of Mohammed Al Khoudary and Hani Al Khoudary 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.

107. 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.

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

109. 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.³⁷

[Adopted on 8 September 2021]

³⁷ Human Rights Council resolution 42/22, paras. 3 and 7.