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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019****Opinion No. 22/2019 concerning Ahmad Khaled Mohammed Al Hossan (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 4 December 2018 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Ahmad Khaled Mohammed Al Hossan. The Government replied to the communication on 29 January 2019. 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).



## Submissions

### *Communication from the source*

4. Ahmad Khaled Mohammed Al Hossan, a citizen of Saudi Arabia, was born on 29 August 1987. He usually resides in Riyadh.

#### a. Arrest and detention

5. The source reports that on 16 June 2003, Mr. Al Hossan, who was a 16-year-old student at the time, was arrested at Hadibyah Mosque on the Old Mecca Jeddah Road in Mecca by members of Al-Mabahith al-Amma (the Directorate of General Investigation, the Saudi intelligence agency) dressed in civilian clothes. They did not present an arrest warrant or give any reason for Mr. Al Hossan's arrest.

6. The source goes on to report that the security forces took Mr. Al Hossan to the Mabahith prison in Mecca. There, he was allegedly subjected to torture, including being forced to sleep on the floor, held in solitary confinement for a period of seven months, beaten on the head and exposed to extremely low temperatures until he lost consciousness. In January 2004, he was allegedly tortured to force him to sign and fingerprint a self-incriminating statement that he was not allowed to read beforehand.

7. According to the source, it later emerged that the statement contained confessions in which Mr. Al Hossan admitted to being part of a terrorist organization and going to a flat with members of the organization in the Al Khalidiya district of Riyadh, where they supposedly plotted to carry out a terrorist attack against security officials, including members of the Mabahith. According to the confession, Mr. Al Hossan admitted that when the flat was raided by members of the security forces, he attempted to shoot at them, but he was not able to do so due to a fault with his rifle. It is added in the statement that he subsequently proceeded to escape from the scene by means of a stolen car, along with other members of the terrorist organization, and drove towards Mecca.

8. Seven months after his arrest, Mr. Al Hossan was transferred to Al Ha'ir Prison in Riyadh, where he has been held ever since.

#### b. Charges and trial

9. The source reports that on 20 October 2014, more than 11 years after his initial arrest, Mr. Al Hossan's single trial session was held before the Specialized Criminal Court. The source adds that the court, established in 2008 by the Ministry of Interior, is a court of exception, with jurisdiction to try cases of terrorism, and has been used to prosecute human rights activists and peaceful political dissidents under the pretext of protecting national security. The source notes that the court is composed of individuals appointed by the Ministry, and that it therefore cannot be considered independent.

10. According to the source, it was only during the trial session that Mr. Al Hossan was officially informed of the charges against him. They included embracing a takfirist ideology; being convinced that studying in a public school was forbidden; travelling to Al Qaseem to the funeral of a member of a deviant group ("group that has strayed");<sup>1</sup> hosting in his house a number of individuals who had strayed; planning terrorist attacks in the country with those individuals; meeting in the Al Khalidiya flat with members of a deviant group; helping them to store a large quantity of weapons, bombs and ammunition, with the intention of using them to disrupt and corrupt security; distributing ammunition to others in order to attack the security forces; trying to shoot at members of the security forces when they raided the flat (albeit he was not able to do so due to a fault with his weapon); and absconding from the apartment, along with others, in a stolen car.

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<sup>1</sup> According to the source, the Arabic equivalent of the phrase "deviant group" or "group that has strayed" used in the charges is "الفئة الضالة". In this context, it reportedly has religious connotations, indicating that the group in question has strayed from the path of righteousness.

11. Mr. Al Hossan's trial session was reportedly held in camera. Neither he nor his family were informed beforehand of the date of the trial, and his family were prevented from attending. Furthermore, Mr. Al Hossan was denied access to legal counsel during interrogation, while in custody and throughout and after the trial proceedings.

12. The source reports that, at his trial session, Mr. Al Hossan was sentenced to 32 years' imprisonment on the basis of the above-mentioned charges, was credited with time served before he was charged and tried, and was issued with a travel ban for an equivalent amount of time upon his release. He was also convicted of the following additional charges relating to his conduct in prison: writing papers in prison in support of his agenda; not following prison instructions; creating chaos within the prison; trying to commit suicide; and not upholding his pledge to distance himself from groups of individuals who had strayed.

13. The source adds that Mr. Al Hossan was sentenced to a further 12 years in prison, specifically on the basis of the charge of assisting in the storage of a large quantity of weapons, bombs and ammunition, with the intention of using them to disrupt security.

c. Conditions of detention

14. The source alleges that, over the course of the 15 years that he has spent in prison thus far, Mr. Al Hossan has been subjected to torture and cruel, inhuman and degrading treatment on a regular basis.

15. The source notes that between 16 June 2003 and 21 July 2007, members of Mr. Al Hossan's family were allowed to visit him once every month and a half. From 21 July 2007 until 2014, however, he was held incommunicado and was denied all contact with the outside world. Since 2014, his family have been allowed to call him approximately once a month, and they were permitted a single visit on 28 August 2018. Mr. Al Hossan's relatives were arbitrarily denied their right to visit him on two occasions upon arriving at Al Ha'ir Prison, on 22 May 2013 and 22 June 2018.

16. Mr. Al Hossan has allegedly been held in solitary confinement for the duration of the 15 years he has spent in prison. He was only moved out of solitary confinement and into a group cell for very brief periods between 2005 and 2008.

17. The source alleges that, while in Al Ha'ir Prison, Mr. Al Hossan was forcibly injected with an unknown sedative on at least eight occasions, which left him temporarily paralysed and bedridden, and that the prison guards then proceeded to taunt and ridicule him. Mr. Al Hossan has reportedly had stitches administered to his forehead on several occasions following beatings to which he has been continuously subjected by prison guards at both the Mabahith and Al Ha'ir prisons. He also suffers from chronic neck pain, due to beatings to his neck, which has made it almost impossible for him to walk.

18. The source adds that the authorities have allegedly forced Mr. Al Hossan to undress and exposed him to extremely cold temperatures until he has lost consciousness. This, along with a poor diet and a lack of sunlight, has meant that he has suffered from severe medical issues that have resulted in his hospitalization on several occasions. In addition, he has lost a substantial amount of weight and routinely coughs up blood.

19. According to the source, Mr. Al Hossan's mental health has deteriorated significantly, particularly from May 2017, since which time his speech has reportedly become incomprehensible.

20. The source adds that Mr. Al Hossan has been denied regular and adequate medical care for his physical and psychological health problems.

d. Internal measures taken following detention

21. According to the source, Mr. Al Hossan's family deny all the charges against him. They have lodged a number of complaints on his behalf, including with the Ministry of Interior, the Public Audit Bureau, the Human Rights Association and the Saudi Human Rights Commission.

22. In 2013, Mr. Al Hossan's family reportedly met with the Head of Security Affairs of the Ministry of Interior to request a medical release on the basis of Mr. Al Hossan's deteriorating state of health. His health was assessed by a panel of four officials, including a colonel, two prison officers and the manager of the prison's medical centre. After reviewing the case, the panel informed Mr. Al Hossan's family that his request for medical release had been granted by order of the Minister of Interior. Despite this, Mr. Al Hossan was sentenced the following year to 44 years in prison and a 32-year travel ban.

23. The source adds that Mr. Al Hossan continues to be denied the right to officially appeal his sentence, and his family have not been permitted access to the official court transcript or judgment.

e. Analysis of violations

24. In the light of the above, the source submits that the detention of Mr. Al Hossan is arbitrary according to categories I and III.

i. Category I

25. The source submits that Mr. Al Hossan's detention falls under category I, as he was arrested without a warrant and was not given any reason for his arrest. The circumstances of his arrest did not involve flagrante delicto, and he was only informed of the charges against him during his trial hearing in October 2014, more than 11 years after his arrest. As such, the source argues that Mr. Al Hossan's detention from 16 June 2003 to 20 October 2014 was not grounded in law, in violation of article 9 of the Universal Declaration of Human Rights.

26. The source adds that Mr. Al Hossan was held incommunicado for approximately six and a half years, from 21 July 2007 until 2014. While his family are currently permitted one phone call per month, they have only been allowed to visit him once, in August 2018. As such, Mr. Al Hossan has been placed outside the protection of the law and deprived of his legal safeguards as a detainee, including his right to challenge the legality of his detention.

ii. Category III

27. The source further submits that Mr. Al Hossan's detention is arbitrary due to the severe violations of fair trial guarantees that he suffered from the time of his arrest to the time of his sentencing.

Arbitrary arrest and incommunicado detention

28. As noted above, Mr. Al Hossan was not presented with a warrant upon his arrest, nor was he given any reason for the deprivation of liberty. The source submits that his detention violates principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and article 14 (3) of the Arab Charter on Human Rights, which was ratified by Saudi Arabia in 2009.

29. Mr. Al Hossan was held incommunicado between 21 July 2007 and 2014. In this regard, the source recalls that incommunicado detention is a prima facie form of arbitrary detention and constitutes a violation of Mr. Al Hossan's right to be considered a person before the law, in contravention of article 6 of the Universal Declaration of Human Rights.

Torture and cruel, inhuman and degrading treatment or punishment

30. While in detention, Mr. Al Hossan has allegedly been subjected to severe acts of torture and cruel, inhuman and degrading treatment. In particular, he has been forced to sleep on the floor, forced to undress and exposed to extremely cold temperatures, placed in solitary confinement, held incommunicado, beaten on his neck and head, and forcibly injected with an unknown sedative on at least eight occasions. The source submits that this constitutes a clear violation of the obligations of Saudi Arabia under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it acceded in 1997.

31. According to the source, Mr. Al Hossan has been in solitary confinement for the vast majority of the 15 years that he has been in prison thus far, and he was held incommunicado between 21 July 2007 and 2014. The source recalls that these practices not only facilitate torture but can amount to forms of torture in themselves (General Assembly resolution 60/148, para. 11, and A/56/156, para. 39 (f)). In particular, the source refers to rule 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which outlaws disciplinary sanctions that amount to torture, or other cruel, inhuman or degrading treatment or punishment, including prolonged solitary confinement (i.e. exceeding 15 days).

Violation of the right to habeas corpus and the right to be brought promptly before a judicial authority

32. The source submits that Mr. Al Hossan was brought before a judicial authority for the first time at his single trial hearing on 20 October 2014, more than 11 years after his initial arrest. The source adds that this is a gross violation of principles 11 and 37 of the Body of Principles, both of which stipulate that an individual detained on a criminal charge shall be brought before a judicial authority “promptly” after his or her arrest. Given that Mr. Al Hossan was a minor at the time of his arrest, this may be interpreted to mean within 24 hours, as stipulated by the Committee on the Rights of the Child in its general comment No. 10 (2007) on children’s rights in juvenile justice (para. 83).

33. The source submits that, given the above, the Saudi authorities violated Mr. Al Hossan’s right to have the lawfulness of his detention reviewed at regular intervals by an independent judicial body, as enshrined in principle 39 of the Body of Principles. He was also denied his right to habeas corpus, which is inscribed in principle 32. In this context, the source notes that the Working Group on Arbitrary Detention has asserted that habeas corpus is in itself a self-standing human right, as may be inferred from articles 8 to 10 of the Universal Declaration of Human Rights (A/HRC/19/57, para. 59).

Violation of the right to be tried without undue delay and with the presumption of innocence

34. As noted above, Mr. Al Hossan’s case was brought to trial on 20 October 2014, more than 11 years after his arrest. According to the source, this constitutes a grave violation of his right to be tried without undue delay, as enshrined in article 40 (2) (b) (iii) of the Convention on the Rights of the Child, to which Saudi Arabia acceded in 1996. In this regard, the source recalls that, in its general comment No. 10, the Committee on the Rights of the Child recommended that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, for the decision of the prosecutor (or other competent body) to bring charges against the child, and for the final adjudication and decision by the court or other competent judicial body. The Committee added that those time limits should be shorter than those set for adults (para. 52).

35. The source submits that the fact that Mr. Al Hossan was held in custody for 11 years violated his right to be presumed innocent until proven guilty, as stipulated in rule 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules).

Trial before a court of exception lacking in independence

36. The source submits that Mr. Al Hossan was prosecuted before the Specialized Criminal Court, a court composed of a panel of judges appointed by the Ministry of Interior and lacking independence. This was noted by the Committee against Torture in its concluding observations on the second periodic review of Saudi Arabia, where it stated that the Specialized Criminal Court, which had been established in 2008 to try cases of terrorism, was insufficiently independent of the Ministry of Interior (CAT/C/SAU/CO/2 and Corr.1, para. 17). The source adds that, as such, the Ministry is both judge and party in a court that cannot be impartial or respect due process rules, in contravention of article 10 of the Universal Declaration of Human Rights.

#### Denial of the right to legal counsel, and in camera proceedings

37. According to the source, Mr. Al Hossan was denied access to legal counsel during his interrogation and throughout his trial. This contravenes principle 18 (3) of the Body of Principles and rule 61 (1) of the Nelson Mandela Rules, both of which stipulate that defendants must have access to legal counsel “without delay”. The source adds that this, along with the fact that Mr. Al Hossan was tried in a single session, means that he was denied the time and facilities necessary to prepare and present his defence. The Saudi authorities also violated the principle of equality of arms, as enshrined in article 11 of the Universal Declaration of Human Rights and principle 18 (2) of the Body of Principles.

38. Noting that Mr. Al Hossan was a minor at the time of his arrest and interrogation, the source submits that the denial of his right to legal counsel violates the absolute prohibition on the questioning of minors without the presence of legal counsel, under guideline 10 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (para. 53 (b))<sup>2</sup> and article 18 (a) of the Havana Rules.<sup>3</sup> Furthermore, Mr. Al Hossan’s trial session was held in camera, neither he nor his family were given prior notice of the date on which it was to be held, and his family were prevented from attending. In addition, the court failed to publish his trial transcript and final judgment. According to the source, this violates the obligations of the Saudi authorities under article 10 of the Universal Declaration of Human Rights, article 13 (2) of the Arab Charter and principle 36 (1) of the Body of Principles.

#### Coerced confessions and violation of exclusionary rule

39. The source submits that the fact that Mr. Al Hossan’s confession was admitted as evidence against him during his trial session constitutes a serious violation of the exclusionary rule and contravenes the obligations of the Saudi authorities under article 15 of the Convention against Torture, article 37 (a) of the Convention on the Rights of the Child and principle 6 of the Body of Principles.

#### Violation of core principles of juvenile justice

40. The source submits that Mr. Al Hossan’s arrest at the age of 16, the sentencing to 44 years in prison and the 32-year travel ban constitute a grave violation of the core principles of juvenile justice, because his status as a minor upon arrest has not been taken into consideration. Moreover, Mr. Al Hossan’s detention was a measure of first instance, and there were no attempts by the Saudi authorities to adopt alternative deterrence methods. The source asserts that this violates article 37 (b) of the Convention on the Rights of the Child and rule 1 of the Havana Rules, both of which stipulate that the imprisonment of juveniles should be a measure of last resort. The source adds that there has been a further contravention of rule 2, which provides that, if imprisonment is used, this should be for the minimum necessary period and should be limited to exceptional cases. The source recalls that in its general comment No. 10, the Committee on the Rights of the Child noted that the adoption of a strictly punitive approach was not in accordance with the leading principles for juvenile justice (para. 71).

#### Denial of the right to appeal

41. Finally, the source argues that, by denying Mr. Al Hossan his right to appeal his conviction, the Saudi authorities have violated their obligations under article 8 of the Universal Declaration of Human Rights and article 40 (2) (b) (v) of the Convention on the Rights of the Child.

42. The source submits that, for the above-mentioned reasons, Mr. Al Hossan’s detention is arbitrary under category III.

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<sup>2</sup> E/2012/30 and Corr.1 and Corr.2-E/CN.15/2012/24 and Corr.1 and Corr.2; see also guideline 3 (para. 43 (b)).

<sup>3</sup> See also general comment No. 10 of the Committee on the Rights of the Child, para. 52.

*Response from the Government*

43. On 4 December 2018, the Working Group transmitted the allegations made by the source to the Government through its regular communication procedure. The Working Group requested the Government to provide, by 4 February 2019, detailed information about the current situation of Mr. Al Hossan and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Al Hossan's physical and mental integrity.

44. According to the Government's response of 29 January 2019, Mr. Al Hossan was arrested by the security forces on 16 June 2003 in flagrante delicto as he was fleeing a raid on a residential flat, together with members of a terrorist group, in a stolen car. This explains why there was no arrest warrant or explanation of the reasons for his arrest.

45. In reference to Mr. Al Hossan's statement before the court that he was forced to confess under duress, the Government disputes the allegation of confession having been extracted through torture. In fact, the domestic law criminalizes torture and other cruel, inhuman or degrading treatment. Prisons and detention centres are subject to oversight and inspection by the Bureau of Investigation and Public Prosecution and are accessible to the Saudi Human Rights Commission and the National Society for Human Rights.

46. The Government states that the Specialized Criminal Court was established as part of the measures taken to improve the provision of justice. It uses the same judicial procedures as all other criminal courts. Its judges are appointed by royal order, pursuant to a decision by the Supreme Council of the Judiciary, in accordance with article 47 of the Judiciary Act, having obtained the relevant qualifications and met the necessary conditions and having been registered as members of the judiciary, as required pursuant to articles 31 to 42 of the Act. All persons suspected of committing offences related to state security are referred to the Specialized Criminal Court.

47. The Government adds that, during the trial, the charges were read to Mr. Al Hossan and the court asked him to respond to those charges. The court granted his request for time to respond, and he did not seek to hire a lawyer or a guardian to defend him, even though it was proposed that he do so.

48. Concerning the allegation of solitary confinement, the Government alleges that Mr. Al Hossan was granted group detention but chose to remain in solitary confinement, and adds that he was recently transferred to group detention at his request. He enjoys the legal right to medical care and to visits and calls, like other detainees, in accordance with the regulations of the Mabath prison. He has been shown to suffer from a mental disorder and has been provided with medication, but he often stops taking it, which negatively affects his situation.

49. The Government maintains that Mr. Al Hossan held full criminal responsibility at the time of his arrest, because he had reached the legal age of majority according to domestic requirements, in conformity with the obligations of Saudi Arabia under article 1 of the Convention on the Rights of the Child.

*Further comments from the source*

50. The response from the Government was transmitted to the source on 30 January 2019 for further comments. In its response, on 13 February 2019, the source states that the Government did not address the allegation of the violation of habeas corpus and failed to provide evidence against the allegation of torture and coerced confession.

51. The source states that the only evidence that Mr. Al Hossan was arrested in flagrante delicto while fleeing from members of the security forces is his own confession, and stresses that the Government does not deny the fact that he was not charged until more than 11 years after his arrest.

52. With regard to the allegation of Mr. Al Hossan's solitary confinement, the source refers to the past findings of the Committee against Torture (CAT/C/SAU/CO/2 and Corr.1, para. 14) and of the Working Group (opinion No. 93/2017, para. 40) to corroborate a generalized pattern of behaviour by the Saudi authorities.

53. The source rebuts the Government's contention that Mr. Al Hossan had attained majority at the time of his alleged offences. Although article 1 of the Convention on the Rights of the Child defines a child as every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier, the Government's abusive interpretation of this provision has been criticized before. The Committee on the Rights of the Child stated that it was seriously concerned that Saudi Arabia did not intend to change the fact that judges had discretion to determine the age of majority (CRC/C/SAU/CO/3-4, para. 13). The Committee expressed its deepest concern that the State party tried children above 15 years of age as adults and continued to sentence to death and to execute persons for offences that they had allegedly committed when they were under the age of 18, and it urged Saudi Arabia to immediately halt the execution of people who were below the age of 18 at the time of the alleged commission of the offence (CRC/C/SAU/CO/3-4, paras. 20–21). The source submits that the general reservation of Saudi Arabia "with respect to all such articles as are in conflict with the provisions of Islamic law" to the Convention on the Rights of the Child is contrary to its object and purpose, and therefore is impermissible under article 19 (b) of the Vienna Convention on the Law of Treaties.

### Discussion

54. The Working Group thanks the source and the Government for their submissions in relation to Mr. Al Hossan's deprivation of liberty.

55. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has presented 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).<sup>4</sup>

56. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international and regional instruments.<sup>5</sup> Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>6</sup>

### *Applicability of the Convention on the Rights of the Child*

57. To discharge its mandate, in accordance with paragraph 7 of its methods of work, the Working Group refers to relevant international standards, including the Convention on the Rights of the Child, the Havana Rules and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The Working Group notes that Saudi Arabia, when it acceded to the Convention on the Rights of the Child on 26 January 1996, entered "reservations with respect to all such articles as are in conflict with

<sup>4</sup> See, for example, opinions Nos. 50/2017, para. 54; 61/2017, para. 26; 62/2017, para. 45; 69/2017, para. 24; 70/2017, para. 48; 75/2017, para. 34; 79/2017, para. 47; 11/2018, para. 41; 19/2018, para. 25; 35/2018, para. 24; 36/2018, para. 37; 37/2018, para. 27; 40/2018, para. 42; 43/2018, para. 71; 44/2018, para. 78; 45/2018, para. 39; 46/2018, para. 45; 52/2018, para. 68; 67/2018, para. 69; 70/2018, para. 31; 75/2018, para. 57; 78/2018, para. 67; 79/2018, para. 68; and 90/2018, para. 29.

<sup>5</sup> See General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; Human Rights Council resolutions 6/4, para. 1 (a), and 10/9, para. 4 (b); and opinions Nos. 41/2014, para. 24; 28/2015, para. 41; 76/2017, para. 62; 83/2017, paras. 51 and 70; 88/2017, para. 32; 94/2017, para. 59; 38/2018, para. 60; 68/2018, para. 37; 82/2018, para. 25; and 87/2018, para. 51.

<sup>6</sup> See, for example, opinions Nos. 1/1998, para. 13; 5/1999, para. 15; 1/2003, para. 17; 33/2015, para. 80; 94/2017, paras. 47–48; 38/2018, para. 60; 68/2018, para. 37; 82/2018, para. 25; and 87/2018, para. 51.



the provisions of Islamic law”. However, the Government does not indicate how Mr. Al Hossan’s treatment as an adult is justified by this reservation.<sup>7</sup>

58. The Government submits, instead, that Mr. Al Hossan held full criminal responsibility, because he had reached legal majority according to domestic requirements, and in conformity with the obligations of Saudi Arabia under article 1 of the Convention. While the standard in article 1 of the Convention that specifies the age of 18 appears to permit a degree of latitude, with its qualification of “unless under the law applicable to the child, majority is attained earlier”, the Working Group finds it difficult to conclude that Mr. Al Hossan’s deprivation of liberty, from the time of the commission of his alleged crime, was not covered by the Convention on that ground.

59. The Working Group recalls the reference in the preamble to the Convention to the Declaration of the Rights of the Child, which indicated that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection”. The need for such special safeguards and care is especially evident in cases which involve deprivation of life or of the liberty of the child.

60. With regard to the official age of majority, the Committee on the Rights of the Child has repeatedly urged States parties to the Convention to review existing legislation to ensure that all children up to the age of 18 years of age receive the protection they need, as provided for in the Convention (CRC/C/ALB/CO/2-4, para. 26). The Committee observed that a national constitutional provision defining a “child” as anyone under the age of 16 was not compatible with article 1 of the Convention (CRC/C/NAM/CO/2-3, para. 28).

61. The Committee on the Rights of the Child raised the specific concern with the Government of Saudi Arabia that, even though the age of majority was 18, a judge had the discretionary power to decide that a child had reached majority at an earlier age. It recommended that Saudi Arabia take the necessary legislative and other measures to unequivocally set the age of majority at 18 with no exception for specific cases, including within the juvenile justice system (CRC/C/SAU/CO/2, paras. 25–26).<sup>8</sup>

62. The Working Group notes that the Government has put forward no legitimate aim for such judicial discretion in the determination of attainment of majority by a child under 18, in general or in this particular case. The Government therefore cannot opt out from its international obligations under the Convention in the matter relating to Mr. Al Hossan’s detention.

#### *Category I*

63. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis.

64. The source alleges, and the Government does not contest, that Mr. Al Hossan was not presented with an arrest warrant, nor was he informed of the reasons for his arrest, on 16 June 2003, and that he was not promptly informed of any charges against him by the Directorate of General Investigation.

65. The procedural guarantees protecting against arbitrary detention include the right to be presented with an arrest warrant, with supervision by a competent, independent and impartial judicial authority and with information provided about the motives for the arrest. This is procedurally inherent to the right to liberty and security of the person and to the prohibition of arbitrary detention, under articles 3 and 9 of the Universal Declaration of

<sup>7</sup> Several States raised objections to the reservation of Saudi Arabia. The Working Group is of the view that the impugned reservation is incompatible with the object and purpose of the Convention on the Rights of the Child and that the view expressed by the Human Rights Committee in its general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to the declarations under article 41 of the Covenant, with respect to the severability of reservations incompatible with the object and purpose of the Covenant is equally applicable vis-à-vis the Convention.

<sup>8</sup> The Committee also reiterated its serious concern that Saudi Arabia did not intend to change the fact that judges had discretion to determine the age of majority (CRC/C/SAU/CO/3-4, paras. 13–14).

Human Rights, article 37 (b) of the Convention on the Rights of the Child and principles 2, 4 and 10 of the Body of Principles.<sup>9</sup> While the Government claims, in justifying an exception to this requirement, that Mr. Al Hossan was arrested in flagrante delicto, it has offered no substantial and convincing evidence in support of such allegation.

66. The Working Group finds that, in order to ascertain a legal basis for the deprivation of liberty, the authorities should have immediately informed Mr. Al Hossan of the reasons for his arrest and of the charges against him. The failure to do so violates article 9 of the Universal Declaration of Human Rights, article 40 (2) (b) (ii) of the Convention on the Rights of the Child and principle 10 of the Body of Principles.<sup>10</sup> As Mr. Al Hossan was not informed of the charges against him until 20 October 2014, his detention for 11 years and 4 months after his arrest is considered to be without any legal basis.

67. The source further maintains, and the Government does not dispute, that Mr. Al Hossan was forcibly held incommunicado from 21 July 2007 to 2014. Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the detainee, lacks any valid legal basis and is inherently arbitrary, as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.<sup>11</sup>

68. The Working Group notes that Mr. Al Hossan was not brought promptly before a judge within 24 hours of his arrest, and neither was he afforded the right to bring proceedings before a court, so that it could decide without delay on the lawfulness of his detention, in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights, article 37 (d) of the Convention on the Rights of the Child and principles 11, 32 and 37 of the Body of Principles.<sup>12</sup> It is indicated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and that this judicial remedy is essential to preserve legality in a democratic society (paras. 2–3). This right, which is a peremptory norm of international law, applies to all forms and situations of deprivation of liberty.<sup>13</sup>

69. The Working Group therefore considers that Mr. Al Hossan's deprivation of liberty between 16 June 2003 and 20 October 2014 lacks a legal basis and is thus arbitrary, falling under category I.

### *Category III*

70. The Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give Mr. Al Hossan's deprivation of liberty an arbitrary character, falling within category III.

71. Mr. Al Hossan was denied the right to communicate with his family and lawyers, contrary to principles 15 to 19 of the Body of Principles. He was also deprived of his right to be brought promptly before a judge, who would decide without delay upon the lawfulness and necessity of the detention, as stipulated in principles 11, 32 and 37 of the Body of Principles. In the view of the Working Group, such procedural defects severely compromised due process and Mr. Al Hossan's fair trial rights from the beginning of his detention.

72. The Working Group notes that the authorities failed to respect Mr. Al Hossan's right to legal assistance and his right to a fair and public hearing by a competent, independent and impartial tribunal established by law, under articles 3, 9, 10 and 11 (1) of the Universal

<sup>9</sup> See opinions Nos. 76/2017, para. 55; 83/2017, para. 65; 88/2017, para. 27; 93/2017, para. 44; 3/2018, para. 43; 10/2018, para. 46; 26/2018, para. 54; 30/2018, para. 39; 38/2018, para. 63; 47/2018, para. 56; 51/2018, para. 80; 63/2018, para. 27; 68/2018, para. 39; and 82/2018, para. 29, and art. 14 (1) of the Arab Charter.

<sup>10</sup> See also arts. 14 (3) and 16 (1) of the Arab Charter.

<sup>11</sup> See A/RES/47/133, opinion No. 82/2018, para. 28, and art. 22 of the Arab Charter.

<sup>12</sup> See also arts. 12, 14 (5) and (6) and 23 of the Arab Charter.

<sup>13</sup> Opinion No. 39/2018, para. 35.

Declaration of Human Rights and articles 37 (d) and 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child. Given that he was interrogated without the presence of lawyers, Mr. Al Hossan was deprived of his right to legal counsel at the critical stage of criminal proceedings, and any effective safeguards against the use of torture and other coercive means to extract a confession were removed. He was denied access to legal counsel throughout and after the trial. The Working Group therefore finds that the case shows serious violations of articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 40 (2) (b) (ii) and (iii) of the Convention.<sup>14</sup>

73. The Working Group further determines that Mr. Al Hossan's pretrial detention from 16 June 2003 to 20 October 2014, lasting for more than 11 years and 4 months and lacking individualized judicial determination, undermined the presumption of innocence and the right to be tried within a reasonable time or to be released pending trial, as guaranteed under article 11 (1) of the Universal Declaration of Human Rights, articles 37 (b) and 40 (2) (b) (i) of the Convention on the Rights of the Child, principles 36 (1) and 38 of the Body of Principles and rule 17 of the Havana Rules.<sup>15</sup> The right to be tried without delay has also been violated. Such undue delay in criminal proceedings cannot be considered to be in the interest of justice or human rights.

74. In the Working Group's view, the Specialized Criminal Court, which tried, convicted and sentenced Mr. Al Hossan, is a court of exception with jurisdiction over terrorism cases, and is not composed of independent judges. The Court comprises individuals appointed by the Ministry of Interior, and therefore it cannot be considered independent, as was confirmed by the Committee against Torture in 2016.<sup>16</sup> The Working Group takes the view and stresses that the sentence of 44 years of imprisonment and a 32-year travel ban is of such harshness that it cannot be considered proportionate and reasonable. The Working Group therefore refers the present case to the Special Rapporteur on the independence of judges and lawyers, for further consideration.

75. Furthermore, the source alleges, and the Government does not contest, that Mr. Al Hossan was subjected to in camera hearings before the Specialized Criminal Court, in violation of his right to a public hearing under articles 10 and 11 (1) of the Universal Declaration of Human Rights.<sup>17</sup>

76. The Working Group finds that the lack of legal avenue to appeal Mr. Al Hossan's conviction and sentence by the Specialized Criminal Court represents a further violation of article 8 of the Universal Declaration of Human Rights and of article 40 (2) (b) (v) of the Convention on the Rights of the Child.

77. The Working Group expresses its gravest concern at the allegations of torture and ill-treatment, including prolonged solitary confinement, merciless beatings, being forced to sleep on the floor and exposure to freezing temperatures, which have left Mr. Al Hossan in a severe state of mental and physical disorder, in violation of articles 5 and 25 (1) of the Universal Declaration of Human Rights and articles 24 (1) and 37 (a) and (c) of the Convention on the Rights of the Child.<sup>18</sup> The treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law, of the Body of Principles and of the Nelson Mandela Rules. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.<sup>19</sup>

<sup>14</sup> See also arts. 12, 13 (1) and 16 (2) and (3) of the Arab Charter.

<sup>15</sup> See also arts. 14 (6) and 16 of the Arab Charter.

<sup>16</sup> See also general comment No. 10 of the Committee on the Rights of the Child, para. 52.

<sup>17</sup> See also art. 13 (2) of the Arab Charter.

<sup>18</sup> See also arts. 8 (1), 14 (4), 20 (1), 34 (3) and 39 (1) of the Arab Charter.

<sup>19</sup> Opinion No. 39/2018, para. 42. As the Committee against Torture observed in its concluding observations on Canada (CAT/C/CAN/CO/6 and CAT/C/CAN/CO/7) with regard to civil actions brought against Iran in Canadian domestic courts by victims of torture and sexual violence suffered at the hands of the Iranian authorities, a State must ensure that all victims of torture are able to access remedy and obtain redress, wherever acts of torture occurred and regardless of the nationality of the perpetrator or victim, including by restricting the application of sovereign immunity.

78. In the Working Group's view, not only is torture a grave violation of human rights per se, but it also seriously undermines equality of arms and the ability of detainees to defend themselves from accusations. It obstructs the right to a fair trial, especially the right not to be compelled to testify against oneself or to confess guilt, under article 40 (2) (b) (iv) of the Convention on the Rights of the Child.<sup>20</sup> Furthermore, the use of a confession extracted through ill-treatment constitutes a violation of article 15 of the Convention against Torture and principle 21 of the Body of Principles.<sup>21</sup>

79. Given the above considerations, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Al Hossan's deprivation of liberty an arbitrary character that falls within category III.

80. In its 28-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in 57 cases.<sup>22</sup> 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.

81. The Working Group recalls that the corollary obligations *erga omnes* of protection "bind all the States which compose the organized international community" in a horizontal dimension and "bind both the organs and agents of (State) public power, and the individuals themselves (in the inter-individual relations)" in a vertical dimension.<sup>23</sup> Hence, the duty to comply with international human rights standards that are peremptory and with *erga omnes* norms, such as the prohibition of arbitrary detention, rests with all bodies and representatives of the State, all officials, including judges, prosecutors, police, security officers and prison officers in their relevant responsibilities, and all other natural and legal persons.<sup>24</sup> The domestic political and judicial organs are under a positive obligation to ensure an effective remedy and reparation for violations of such norms by removing the statute of limitations, sovereign immunity, the *forum non conveniens* doctrine or other domestic procedural obstacles to redress in such cases through legislative or judicial action.<sup>25</sup>

### Disposition

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

The deprivation of liberty of Ahmad Khaled Mohammed Al Hossan, being in contravention of articles 3, 5, 6, 8, 9, 10, 11 (1) and 25 (1) of the Universal Declaration of Human Rights and articles 24 (1), 37 (a)–(d) and 40 (2) (b) (i)–(v) of the Convention on the Rights of the Child, is arbitrary and falls within categories I and III.

<sup>20</sup> See also art. 16 (6) of the Arab Charter.

<sup>21</sup> See also opinions Nos. 48/2016, 3/2017, 6/2017, 29/2017 and 39/2018.

<sup>22</sup> See decisions Nos. 40/1992, 60/1993, 19/1995 and 48/1995, and opinions Nos. 8/2002, 25/2004, 34/2005, 35/2005, 9/2006, 12/2006, 36/2006, 37/2006, 4/2007, 9/2007, 19/2007, 27/2007, 6/2008, 11/2008, 13/2008, 22/2008, 31/2008, 36/2008, 37/2008, 21/2009, 2/2011, 10/2011, 11/2011, 17/2011, 18/2011, 19/2011, 30/2011, 31/2011, 33/2011, 41/2011, 42/2011, 43/2011, 44/2011, 45/2011, 8/2012, 22/2012, 52/2012, 53/2012, 32/2013, 44/2013, 45/2013, 46/2013, 14/2014, 32/2014, 13/2015, 38/2015, 52/2016, 61/2016, 10/2017, 63/2017, 93/2017, 10/2018 and 68/2018.

<sup>23</sup> Inter-American Court of Human Rights, advisory opinion OC-18/03, *Juridical Condition and Rights of Undocumented Migrants*, 17 September 2003, paras. 74–85.

<sup>24</sup> See opinions Nos. 5/2011, para. 6; 13/2011, para. 12; 15/2011, para. 5; 16/2011, para. 5; 20/2011, para. 25; 21/2011, para. 39; 37/2011, para. 15; 38/2011, para. 16; 39/2011, para. 17; 49/2011, para. 12; 64/2011, para. 25; 38/2012, para. 33; 47/2012, paras. 19 and 22; 50/2012, para. 27; 54/2012, para. 38; 60/2012, paras. 20 and 21; 9/2013, para. 40; 34/2013, paras. 33 and 35; 35/2013, paras. 35 and 37; 36/2013, paras. 34 and 36; 48/2013, para. 14; 22/2014, para. 25; 27/2014, para. 32; 34/2014, para. 34; 35/2014, para. 19; 36/2014, para. 21; 37/2014, para. 42; and 61/2018, para. 77.

<sup>25</sup> Opinion No. 52/2014, para. 51, CAT/C/CAN/CO/6, para. 15, and CAT/C/CAN/CO/7, paras. 40–41.

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

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

85. 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 Hossan and to take appropriate measures against those responsible for the violation of his rights.

86. The Working Group requests the Government to revise its laws, in particular those concerning the discretion granted to judges to determine the age of majority and the operation of the Mabath and the Special Criminalized 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.

87. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

88. The Working Group recommends that the Government ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and their Optional Protocols.

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

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

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

91. 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.

92. 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.

93. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its

views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>26</sup>

*[Adopted on 2 May 2019]*

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<sup>26</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.