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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 55/2023 concerning Awad bin Mohammed al-Qarni (Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 12 May 2023 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Awad bin Mohammed al-Qarni. The Government replied to the communication on 4 July 2023. The State is not a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability,

¹ [A/HRC/36/38](#).



or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

1. Submissions

(a) Communication from the source

4. Awad bin Mohammed al-Qarni is a national of Saudi Arabia and a law professor. He was 65 years of age and residing in Saudi Arabia at the time of his arrest.

5. On 12 September 2017, several members of the General Directorate of Investigation (Mabahith), some in civilian clothes and others in uniform and heavily armed, raided Mr. Al-Qarni's house at night. They searched the residence, showing their guns to family members and causing panic among them. Agents confiscated all computers, telephones and children's games. Mr. Al-Qarni was reportedly arrested without a mandate and without knowing the reasons for his arrest. He was allegedly beaten and forced inside one of the vehicles before being taken to an unknown destination.

6. Following Mr. Al-Qarni's arrest, his family did not hear from him for several weeks, until he was allowed to make a brief phone call to inform them that he was being held in Dhahban Prison in Jeddah. He was then cut off from the outside world again and detained incommunicado for about six months. His family was allowed to visit him only at the end of that period.

7. Mr. Al-Qarni's family has been informed that, after more than five years of detention, he is currently at risk of being sentenced to death. According to the charges brought against Mr. Al-Qarni, the prosecutors are seeking the death penalty against him for using social media platforms to spread allegedly hostile information about Saudi Arabia.

8. Reportedly, the charges against Mr. Al-Qarni include his own admission that he used a social media account under his own name to express his opinions. The charges also state that he admitted participating in a WhatsApp chat and in videos in which he praised the Muslim Brotherhood, and creating and using a Telegram account.

9. The source claims that Mr. Al-Qarni was presented as a dangerous preacher who spreads conspiracy theories and that he is at risk of being sentenced to death solely for having peacefully expressed opinions that were not aligned with those of the authorities. Allegedly, Mr. Al-Qarni was arrested in a crackdown on dissent against the Government.

10. In relation to category I, the source argues that Mr. Al-Qarni was arrested without an arrest warrant and without knowing the reasons for his arrest. During his arrest, he was not informed at any time of his rights and he was not allowed to be assisted by a lawyer. He was not informed of the charges against him until 6 September 2018, at the commencement of his trial, more than a year after his arrest, at which the prosecutor called for him and two co-accused to face the death penalty.

11. The source alleges that Mr. Al-Qarni was arrested as part of a massive campaign to silence dissenting voices at the height of the ascendancy of the Crown Prince, on 12 September 2017, for having publicly and peacefully expressed opinions on social networks, such as Twitter and Facebook.

12. The source recalls that in order to invoke a legal basis for the deprivation of liberty, the authorities should have promptly informed Mr. Al-Qarni of the charges against him, and states that the failure to do so was a violation of articles 3 and 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, rendering Mr. Al-Qarni's arrest and detention devoid of any legal basis.

13. The source therefore submits that the deprivation of liberty of Mr. Al-Qarni, from his arrest in September 2017 until the beginning of his trial on 6 September 2018, lacks a legal basis and is thus arbitrary, falling under category I.

14. In relation to category II, the source claims that the prosecutors are currently requesting the death penalty for crimes such as the use of Twitter and WhatsApp to share news considered hostile to Saudi Arabia.

15. The right to hold opinions, including those critical of official policy of the Government, and to express them, is protected under international human rights law. Reportedly, depriving Mr. Al-Qarni of his freedom, with the aim of ending his critical stance, for expressing his opinions through social networks, demonstrates an absence of freedom of expression and violates articles 19 and 20 of the Universal Declaration of Human Rights.

16. The prosecutors' request for the death penalty against Mr. Al-Qarni, because of his use of social media, is intended not only to eliminate him for his critical stance against authorities but also to put an end to any criticism that could supposedly harm the country's image.

17. Mr. Al-Qarni was exercising his right to freedom of opinion and expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, as protected by article 19 of the Universal Declaration of Human Rights, and which forms part of customary international law.

18. The prosecutors' request for Mr. Al-Qarni to be sentenced to the death penalty is a direct consequence of his exercise of the right to freedom of expression. The source claims that this request and the risk of Mr. Al-Qarni being sentenced to the death penalty by a court, in the absence of a legal basis and without any possibility of appeal, reflects an intention to silence all opponents of the Government.

19. The source concludes that the deprivation of liberty of Mr. Al-Qarni is arbitrary and falls under category II, since it is caused by the use of the rights and freedoms guaranteed by articles 18, 19 and 20 of the Universal Declaration of Human Rights.

20. In relation to category III, the source alleges that there has been a disregard for international fair trial standards, as set out in the Universal Declaration of Human Rights and other international instruments, which is of such gravity as to render the detention of Mr. Al-Qarni arbitrary.

21. Mr. Al-Qarni was reportedly arrested on 12 September 2017 by the country's intelligence agency, acting under the control of the Ministry of the Interior. He was detained for almost a year without trial, charges or the opportunity to challenge his detention. It was only on 6 September 2018 that the trial began before the Specialized Criminal Court, and the prosecutors requested the death penalty. The sentencing hearing was scheduled to take place on 20 November 2019. However, it has been postponed to a date yet to be determined.

22. Almost a year after his arrest, when the trial began, Mr. Al-Qarni learned about the charges he was facing, which included joining, supporting and showing sympathy for the Muslim Brotherhood, which is listed in Saudi Arabia as a terrorist organization; inciting offence against the leaders of other States; expressing support for detainees deprived of their liberty on security grounds and calling for their release while defaming the State; and preparing, sending and storing information that could undermine public order.

23. These charges were brought against Mr. Al-Qarni on the basis of the content of his posts. He reportedly has more than 2.1 million followers on Twitter and was peacefully critical of Saudi Arabia during an alleged wave of arrests and travel bans on intellectuals. The source stresses that this cannot constitute a crime or a punishable offence.

24. It is alleged that Mr. Al-Qarni was denied access to a lawyer during the entire period of pretrial detention; this constitutes a violation of his right to counsel as part of his right to a fair trial and due process under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as well as principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

25. Furthermore, Mr. Al-Qarni has been tried before the Specialized Criminal Court, which, according to the Committee against Torture, is "insufficiently independent of the Ministry of the Interior".² It is further stressed that the Specialized Criminal Court is "a court

² CAT/C/SAU/CO/2, para. 17.

of exception with jurisdiction over terrorism cases that is not composed of independent judges but of a panel appointed by the Ministry of the Interior”.³

26. Reportedly, institutional reforms implemented since 2017 have aggravated the situation, by placing the interior ministry’s investigatory powers directly under the authority of the Public Prosecution and the State Security Presidency, both of which report directly to the King. This allegedly raises further concerns regarding the lack of independence of the Specialized Criminal Court.

27. Furthermore, the source stresses that the Specialized Criminal Court cannot be considered an independent and impartial tribunal that complies with the presumption of innocence and with the guarantees necessary for defence, and that trial before the Court thus contravenes article 10 of the Universal Declaration of Human Rights.⁴ It is alleged that, in such conditions, there can be no respect for equality of arms and the rights of the defence.

28. In the case of Mr. Al-Qarni, the prosecution has requested the death penalty on charges that do not relate to any act of violence. This allegedly shows the political nature of his trial.

29. Mr. Al-Qarni’s trial has reportedly been ongoing for the past five years and this cannot be considered as reasonable, being in violation of his right to be tried within a reasonable time or to release pending trial.

30. The source therefore claims violations of Mr. Al-Qarni’s right to a fair trial which reveal the political nature of the proceedings and give the deprivation of liberty a manifestly arbitrary character, falling under category III.

31. Finally, in relation to category V, the source alleges that the arrest of Mr. Al-Qarni took place in the political context of a major internal power struggle for succession, regional tensions and successive major crackdowns on freedom of expression.

32. Mr. Al-Qarni is an academic and a visible figure who has been advocating for the respect and protection of human rights in the country. Criticism of royal power is considered both a political and, above all, a religious transgression, criminalized by the anti-terrorism law of 2014.

33. The source indicates that the already broad definition of terrorism in the anti-terrorism law includes acts such as questioning the foundations of the Islamic religion on which the country is founded, or describing explicitly or implicitly the King or the Crown Prince as an infidel, or challenging either of them in their religion. The source also notes that abuse of educational or social status or media influence is considered as an aggravating factor for the purposes of sentencing and is punishable by a minimum sentence of 15 years’ imprisonment for minor offences.

34. It is alleged that such a provision is inherently discriminatory towards scholars or influential professors, such Mr. Al-Qarni, who are expected to support and propagate the official religious doctrine in their teachings and not to criticize it.

35. In the light of the above, the source claims that Mr. Al-Qarni was discriminated against on the basis of his political opinions. His current deprivation of liberty is thus arbitrary under category V.

(b) Response from the Government

36. On 12 May 2023, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 11 July 2023, detailed information about the current situation of Mr. Al-Qarni and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Saudi Arabia under international human rights law.

37. The Government responded to the communication on 4 July 2023, denying the allegations from the source. It stresses that it cooperates with all United Nations human rights

³ Opinion No. 86/2020, para. 83.

⁴ Ibid.

mechanisms and stands ready and willing to fulfil its obligations under international human rights law and all relevant international standards.

38. According to the Government, Mr. Al-Qarni was arrested on 9 September 2017, after a warrant was issued by the competent authority in accordance with articles 2 and 5 of the Counter-terrorism and Financing of Terrorism Act. He was detained in Riyadh's Mabahith prison, and his arrest warrant was extended in accordance with the law applicable to terrorist offences. The charges brought against him included joining a terrorist entity, supporting terrorist thought and crime, inciting others to travel and participate in fighting in areas of armed conflict, and committing information offences.

39. Upon his arrest, he was informed of the reasons for his arrest in accordance with article 36 (1) of the Code of Criminal Procedure and article 116 of the same Code. He was also informed about his legal rights, which he acknowledged by his signature, and which include the assistance of a lawyer or a representative in accordance with article 22 of the implementing regulations of the Basic Law, and being informed of the charges against him in accordance with article 101 (1) of the Code of Criminal Procedure. Mr. Al-Qarni has the right to challenge the legality of his arrest and detention in accordance with article 115 of the Code of Criminal Procedure.

40. After the end of the investigation procedures, the Public Prosecution considered that the evidence was sufficient and charged him in accordance with article 126 of the Code of Criminal Procedure. The case file was transmitted by the Public Prosecutor's Office to the Specialized Criminal Court mandated to hear his case, in accordance with article 15 of the same Code.

41. Mr. Al-Qarni was then summoned to appear before the Specialized Criminal Court in accordance with article 135 of the Code of Criminal Procedure. When he attended his trial, in the presence of the prosecutor, the prosecutor's case was read to him, and he was given copies in accordance with article 160 of the Code of Criminal Procedure. The Court informed Mr. Al-Qarni of his right to appoint a lawyer to defend him and plead for him in his case, in accordance with article 4 (1) of the same Code.

42. Mr. Al-Qarni requested the appointment of a number of lawyers and agents to defend him, and his request was granted. The laws of Saudi Arabia, such as articles 13 and 19 of the Code of Law Practice, enable all lawyers to perform their duties without intimidation, impediments, harassment or improper interference. The Saudi Bar Association also supports the role of lawyers in the promotion and protection of human rights.

43. Mr. Al-Qarni's case is being heard in the court of first instance by three judges and is still under consideration.

44. The Public Prosecutor's Office presented evidence proving that Mr. Al-Qarni had committed serious terrorist crimes. This included elements contained in statements, arrest and inspection reports and technical reports, as well as in judicially certified statements. Mr. Al-Qarni has admitted making statements of his own free will before the investigating authority and has endorsed his confessions. He has full legal capacity and did not plead before the courts under duress. The charges brought against him before the courts were in accordance with article 101 (2) of the Code of Criminal Procedure.

45. From the date of his arrest, Mr. Al-Qarni has had the right to be visited and communicated with periodically and regularly.

46. Lawfulness of arrest or detention is guaranteed to any person who is arrested or detained, in accordance with article 115 of the Code of Criminal Procedure. Complaints are to be lodged with the head of the investigating department of the prosecution, the head of the branch, or the chief prosecutor, depending on the case, and decisions are to be rendered within five days of the date of the submission. The Public Prosecutor's Office is an independent body and carries out its mandate without interference, in accordance with the Public Prosecution Act.

47. In order to strengthen the monitoring mechanisms to ensure the protection of the rights of prisoners and detainees, the Human Rights Commission, as stipulated in article 5 (6) and (7) of its regulations, visits prisons and detention centres at any time without permission from

the competent authority, and receives and verifies complaints related to human rights and takes legal action accordingly.

48. Saudi Arabia is committed to the human rights conventions to which it has become a party, including the International Convention on the Elimination of All Forms of Racial Discrimination.

49. All the laws of Saudi Arabia are formulated with sufficient precision, and anyone can access them. Any person can understand them and regulate their behaviour accordingly. The Counter-terrorism and Financing of Terrorism Act prohibits terrorist offences and clearly defines them in line with international norms and the country's international obligations. The Repression of Cybercrime Act clearly defines cybercrime, with a view to reducing the incidence of information offences.

50. Saudi Arabia protects and promotes human rights through its application of the principle of legality as well as the principles of necessity and proportionality.

51. Saudi Arabia respects and affirms the right to freedom of opinion and expression and guarantees to every person the exercise of that right, as long as there is no infringement or abuse of public order. This restriction is consistent with the relevant international standards, most notably article 29 (2) of the Universal Declaration of Human Rights.

52. There is no detention in Saudi Arabia caused by the exercise of a person's rights and freedoms. All citizens and residents, men and women, enjoy their rights and exercise their freedoms without discrimination in accordance with the laws in force in the country. No category of citizens or residents of Saudi Arabia may enjoy preferential treatment in the enjoyment of those rights.

53. The laws of Saudi Arabia guarantee respect for the principle of the presumption of innocence, and no criminal penalty is imposed on any person unless he or she has been proven guilty of committing an act prohibited by sharia or by law after a trial conducted in accordance with the requirements of sharia. The accused is considered innocent, as a matter of principle, until proven guilty by a court of law in a final judgment.

54. The Government reiterates that on the basis of the above-mentioned facts, the detention of Mr. Al-Qarni has a legal basis and therefore does not fall under category I. The actions taken by the authorities were consistent with articles 3 and 9 of the Universal Declaration of Human Rights as well as with principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

55. The Government also reiterates that the crimes with which Mr. Al-Qarni is charged do not relate to freedom of opinion and expression, but are terrorist offences, which include joining a terrorist organization, supporting terrorist thoughts and crimes, inciting others to travel to and participate in armed conflict zones, and the commission of information crimes.

56. Saudi Arabia respects and affirms the right to freedom of opinion and expression and guarantees to every person the exercise of this right, as long as there is no encroachment on or transgression against public order, or society, its individuals or its constants.

57. The source's claim that the prosecutor can impose the death penalty without the possibility of appeal is incorrect. The right to challenge judicial decisions before higher courts is guaranteed under national laws. Any party is entitled to file an appeal against the judgment of the court of first instance in accordance with article 192 of the Code of Criminal Procedure. It may also lodge a cassation appeal against the judgment of the Court of Appeal, under article 198 of the Code of Criminal Procedure, as well as an application for review of final judgments, under article 204 of the same Code. Moreover, the death penalty is only applied for the most serious crimes and when strictly necessary. The sentence may not be imposed or carried out until after the completion of judicial proceedings in courts at the different levels.

58. National laws provide all guarantees of a fair trial and fair proceedings, consistent with the country's international human rights obligations. The case must be examined in the court of first instance at a joint hearing with three judges, then the judgment is referred to the court of second instance, which is the Court of Appeal, even if one of the litigants did not request this, where it is reviewed by a circuit criminal court composed of five judges. If the

Court of Appeal approves the death sentence, it must be referred to the Supreme Court, even if one of the litigants did not request this, to be reviewed by five judges. If the Supreme Court certifies the judgment, the judicial review stages will have been completed and the ruling will become final and enforceable.

59. The measures taken against Mr. Al-Qarni are in line with the rights stipulated in articles 18, 19 and 20 of the Universal Declaration of Human Rights.

60. The laws of Saudi Arabia guarantee to everyone, including journalists and media professionals, the exercise of this right, unless there is an infringement of public order or an abuse of society, its members or its constants.

61. The promulgation of the Audiovisual Media Act in 2017, the creation of two independent bodies for radio and television and for audiovisual media, the establishment of several multilingual television channels and radio stations, the publication of several paper and electronic newspapers, and the facilitation of the use of various social media, all point to the expansion of the space for expression, the care given to such spaces and the creation of ways of exercising this right.

62. In order to enhance the safety and the role of journalists and those working in the field of the media in general, the Saudi Authority for Journalists, which has legal personality and an independent financial structure, has been established to serve the professional objectives of journalists in the country.

63. The laws of Saudi Arabia criminalize the use of violence against journalists and others. The Code of Criminal Procedure and its implementing regulations set out procedures for the prosecution of crimes, including crimes against journalists, whether reported by them or through monitoring by law enforcement authorities of such criminal activity. The perpetrators of such acts of violence are punished with enhanced penalties of up to 10 years' imprisonment.

64. On the basis of the explanation above, the Government rejects the allegations by the source that the deprivation of liberty of Mr. Al-Qarni is arbitrary under category II.

65. Moreover, the Government reiterates that the guarantees available to Mr. Al-Qarni are in accordance with articles 10 and 11 of the Universal Declaration of Human Rights and principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as well as principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

66. Mr. Al-Qarni is receiving a fair trial before an independent and impartial court (the Specialized Criminal Court), a court created by decision of the Supreme Council of the Judiciary. The judicial procedures of the Specialized Criminal Court are the same as those in force in other criminal courts, in accordance with the Judicial Code, the Code of Criminal Procedure and the Law of Procedure Before Sharia Courts. Judges are appointed by decision of the Supreme Council of the Judiciary by royal order, in accordance with article 47 of the Judicial Law.

67. The laws of Saudi Arabia guarantee the right of every accused person to a fair and public trial before an independent judiciary, as the country's judiciary derives its authority and principles from Islamic law, which demands justice and makes it the basis of governance. Article 46 of the Basic Law on Governance states that the judiciary is an independent authority, that judges have no authority in their judicial power other than the authority of Islamic law and the applicable regulations, and that no one interferes in the judicial system. In accordance with article 49 of the same legislation, the country's courts are competent to deal with all crimes and disputes, with the exception of cases that fall within the jurisdiction of the Council of Grievances.

68. A royal decree was issued in 2017 granting the Public Prosecution Office full independence in the exercise of its functions in direct association with the King. It is part of the judiciary, and no one interferes with its work, in accordance with the Public Prosecution Act.

69. The State Security Presidency is one of the State's government bodies and is concerned with all matters relating to the country's security in accordance with its specific missions, powers and duties under the laws in force in Saudi Arabia, and not in a discretionary capacity. It carries out its work in accordance with the law and is answerable to the Prime Minister, as are many government bodies.

70. There is therefore a separation between the functions of the judiciary and the functions of the executive, with each authority having precise and specific functions, and the judiciary enjoying full independence in the exercise of its functions.

71. The Government further quotes a number of legal safeguards against instances of arbitrary detention, which include article 7 of the Prisons and Detention Act, article 37 of the Code of Criminal Procedure, article 5 of the Prisons and Detention Act, article 3 (f) of the Public Prosecutor's Office Act and article 3 of the Code of Criminal Procedure.

72. The Government concludes that Mr. Al-Qarni's detention does not fall within category III.

73. In relation to category V, the Government reiterates that the crimes of which Mr. Al-Qarni is accused have nothing to do with his political opinions and positions, but are terrorist crimes, including belonging to a terrorist entity, supporting a terrorist ideology and terrorist crimes, inciting others to travel to areas of armed conflict and take part in the fighting there, and committing crimes on the Internet.

74. In this regard, the Government recalls Security Council resolution 1566 (2004), according to which terrorist crimes can under no circumstances be justified by considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature, as well as the restriction of the right to freedom of expression stipulated in article 29 (2) of the Universal Declaration of Human Rights and article 19 (3) of the Covenant. Mr. Al-Qarni's detention cannot be considered as falling within category V.

75. All the procedures followed in the case of Mr. Al-Qarni are in accordance with international human rights standards, with the obligations of Saudi Arabia under international human rights law and with the human rights conventions to which Saudi Arabia is a party, including its obligations arising under its accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination.

(c) Further comments from the source

76. On 11 July 2023, the reply of the Government was sent to the source for further comments, which the source provided on 23 August 2023.

77. The source reiterates its earlier allegations, adding that Mr. Al-Qarni is suffering from serious health problems, including malnutrition. Furthermore, his family members have been subjected to harassment and the authorities have imposed a general travel ban on the entire family. Visits take place under high surveillance and lack confidentiality.

78. The source also recalls that mere assertions that legal procedures were followed do not suffice to refute its allegations, which stem from the nature of the prohibition of arbitrary detention.⁵ By making general statements on applicable laws, the Government fails to explain what measures have been taken to ensure protection and realization of Mr. Al-Qarni's fundamental rights.

79. The Government does not specify the nature of the acts that are being prosecuted. Affirmations regarding the charges are wholly conclusory and limited to general statements about the Counter-terrorism and Financing of Terrorism Act, which does not qualify as *lex certa*.

⁵ [A/HRC/19/57](#), para. 68.

80. None of the articles that are cited by the Government clearly provide for assistance by a lawyer of the detainee's choice, since this is not a guaranteed right under national law, particularly in cases falling under the anti-terrorism law.⁶

81. Mr. Al-Qarni is an academic and a religious scholar who has been calling for reform of the governance in his country and for greater democratic participation, accountability, and respect for human rights. The Government is misinterpreting its international obligations to prosecute acts of terrorism, as it considers peaceful opposition and criticism as a form of terrorism.

82. The Specialized Criminal Court cannot be considered an independent and impartial tribunal replete with the presumption of innocence and guarantees necessary for defence.⁷ Judges are appointed by the King to represent him.

83. Mr. Al-Qarni was detained for almost a year without trial, without being charged and without being able to challenge his detention. His case is ongoing at the first stage of the proceedings before the Specialized Criminal Court, after almost five years of detention, which demonstrates unfairness of proceedings.

84. Mr. Al-Qarni was arrested because he had questioned the leadership of the authorities on social media and had denounced human rights violations committed by his Government and other Governments in neighbouring countries, without ever inciting violence or hatred. Statements by the Government that its laws prohibit discrimination and that all members of society are treated equally are not sufficient to rebut the allegations.

2. Discussion

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

86. In determining whether Mr. Al-Qarni'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 presented a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁸

87. Moreover, the Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including liberty of person, 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. Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.⁹

(a) Category I

88. According to the source, Mr. Al-Qarni was arrested without an arrest warrant and without being informed of the reasons for his arrest, nor was he allowed the assistance of a lawyer during the arrest. Mr. Al-Qarni reportedly only learned of the charges against him more than a year after his arrest, on 6 September 2018, at the commencement of his trial.

89. In response, the Government asserts that Mr. Al-Qarni was arrested after a warrant was issued by the competent authority in accordance with articles 2 and 5 of the Counter-terrorism and Financing of Terrorism Act. He was detained in Riyadh's Mabathith prison, and

⁶ CAT/C/SAU/CO/2, paras. 14–18.

⁷ Opinions No. 62/2022, para. 95; No. 71/2019, para. 44; No. 56/2019, para. 86; No. 26/2019, para. 102; and No. 22/2019, para. 74.

⁸ A/HRC/19/57, para. 68.

⁹ Opinions No. 1/1998, para. 13; No. 82/2018, para. 25; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

his arrest warrant was extended in accordance with the law applicable to the terrorist offences he was charged with, including joining a terrorist entity, supporting terrorist thought and crime, inciting others to travel and participate in fighting in areas of armed conflict, and committing information offences.

90. The Government further submitted that upon his arrest, Mr. Al-Qarni was duly informed of the reasons for his arrest as well as of his legal rights, which he acknowledged by his signature. This was done in accordance with article 36 (1) of the Code of Criminal Procedure, article 22 of the implementing regulations of the Basic Law and article 101 (1) of the Code of Criminal Procedure.

91. The Working Group has consistently held that in order for a deprivation of liberty to be justified, it must have a legal basis. It is not sufficient for there to be a national law or practice authorizing the arrest and detention of a suspect. The authorities must invoke a legal basis consistent with international human rights standards. This is typically accomplished by way of an arrest warrant, an arrest order or an equivalent document.¹⁰ This ensures the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary.¹¹

92. The Working Group also recalls that failure to provide the reasons for an arrest is a violation of articles 3 and 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, and renders their arrest and detention devoid of any legal basis.¹²

93. Mindful of the ways in which it deals with evidentiary issues, namely that if the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations, the Working Group proceeds to consider whether that burden has been discharged by the Government through its response.

94. The Working Group considers that the Government, whose authorities are the issuer of the warrants of arrest or such other documents, should have gone further in discharging its burden than merely to assert that the warrants had been issued. The Government could, in this connection, have indicated when the warrants had been issued, by whom, and at what point they had been given or shown to Mr. Al-Qarni. Likewise, the Government should have given specific information about the prompt explanation of the reasons for the arrest, mere reference to the existence of the law in this regard being insufficient. The Government not having done so in its reply leaves the source's version – that no arrest warrant was issued, no reason for the arrest was given at the time of the arrest and the charges were not explained promptly – credible.

95. Although the Government has explained that article 116 of the Code of Criminal Procedure stipulates that any person arrested or detained is to be immediately notified of the grounds for the arrest or detention and must have the right to contact any person of his or her choice, under the supervision of the preliminary criminal investigation officer, it has not

¹⁰ In cases of arrest in *flagrante delicto*, obtaining a warrant is generally not an option.

¹¹ See, for example, decisions No. 1/1993, paras. 6 and 7; No. 3/1993, paras. 6 and 7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6 and 7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; No. 82/2018, para. 29; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; and No. 34/2020, para. 46.

¹² Opinions No. 71/2019, para. 71; No. 46/2019, para. 51; and No. 10/2015, para. 34.

rebutted the source's claim that Mr. Al-Qarni was not informed of the charges against him until 6 September 2018, at the commencement of his trial, more than a year after his arrest. The Working Group is thus inclined to rely on the source's assertion in this regard.

96. The source alleges that the family did not hear from Mr. Al-Qarni for several weeks following his arrest, until he was allowed to make a brief phone call and to inform them that he was being held in Dhahban Prison in Jeddah. He was then cut off from the outside world again and detained incommunicado for about six months. His family was allowed to visit him only at the end of that period. Mr. Al-Qarni's family has been informed that, after more than five years of detention, he is currently at risk of being sentenced to the death penalty. According to the charges brought against Mr. Al-Qarni, the prosecutors are seeking the death penalty against him for using social media platforms to spread hostile information about Saudi Arabia.

97. The act of keeping detainees at a location unknown to their family and lawyers entails a wilful refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention. The detention thus lacks any valid legal basis under those circumstances 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. The Government's failure to provide notification of the arrest and the location of the detention to Mr. Al-Qarni's family also violated principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

98. The Working Group has consistently asserted that holding persons at secret, undisclosed locations and in circumstances unrevealed to the person's family violates the right of the person concerned to contest the legality of his or her detention before a court or tribunal. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that detention has a legitimate basis.

99. In its response, the Government denied these allegations, stating that from the date of his arrest, Mr. Al-Qarni has had the right to be visited and communicated with periodically and regularly. He also enjoys all the rights and guarantees set forth in Saudi law, which are in conformity with the relevant international standards.

100. What the Government does not do is to explain why at the time of his arrest and detention the place of detention was not disclosed to the family and lawyers of Mr. Al-Qarni. For the purposes of complying with the requirements of international human rights law, the place of detention must be disclosed at the time of the detention so that the whereabouts of the individual detained are known throughout his or her detention. This obligation is not one to be satisfied retrospectively after enforced disappearance has been alleged or its impact has been felt.

101. In the circumstances, Mr. Al-Qarni was unable to challenge the legality of his detention before an independent judicial authority, in violation of articles 8, 9 and 10 of the Universal Declaration of Human Rights and principles 32 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹³

102. For the reasons articulated, the Working Group finds that the Government failed to establish a legal basis for Mr. Al-Qarni's detention, thus rendering his detention arbitrary under category I.

(b) Category II

103. The source submits that the deprivation of Mr. Al-Qarni's liberty results from him exercising his rights, protected by articles 18, 19 and 20 of the Universal Declaration of Human Rights. In particular, it argues that the charges against Mr. Al-Qarni refer to acts that fall within his right to freedom of opinion and expression. According to the source, Mr. Al-Qarni is an academic and a religious scholar who has been calling for reform of the governance in his country and for greater democratic participation, accountability, and respect for human rights.

¹³ See also opinion No. 71/2019, para. 72.

104. In response, the Government asserts that Saudi Arabia respects and affirms the right to freedom of opinion and expression and guarantees to every person the exercise of this right, as long as there is no encroachment on or transgression against public order, or society, its individuals or its constants. However, Mr. Al-Qarni was arrested and detained for reasons unrelated to his freedom of expression, but for terrorist offences, including joining a terrorist organization, supporting terrorist thoughts and crimes, inciting others to travel to and participate in armed conflict zones, and the commission of information crimes. These offences are criminalized under the Counter-terrorism and Financing of Terrorism Act.

105. The Working Group recalls that freedom of opinion and expression is a fundamental human right enshrined in article 19 of the Universal Declaration of Human Rights. Governments must respect, protect and fulfill the right of individuals to hold and express opinions, including those that are not in accordance with its official policy, and to think and manifest personal convictions at odds with its official ideology, under the peremptory norms (*jus cogens*) of customary international law.¹⁴

106. The Working Group notes that the Government does not provide any evidence that Mr. Al-Qarni's social media posts involved violence or inciting others to act in a violent manner, despite arguing that he had been prosecuted on the basis of evidence supporting the criminal charges.

107. The Working Group further recalls that article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations on the exercise of this right must be for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Restrictions placed on freedom of expression can only be justified when it is shown that the deprivation of liberty has a legal basis in national law, does not violate international law, and is necessary to ensure respect for the rights or reputations of others, or for the protection of national security, public order, public health or morals, and is proportionate to the pursued legitimate aims.¹⁵ While the Government mentions that restrictions to the right to freedom of expression are allowed, it does not present any specific explanation regarding how these restrictions applied in the present case.

108. The Working Group therefore finds that Mr. Al-Qarni was peacefully exercising his rights and that his conduct falls within the boundaries of the freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights. His deprivation of liberty cannot be regarded as consistent with the Universal Declaration of Human Rights. His detention is therefore arbitrary and falls within category II.

(c) Category III

109. Given its finding that the detention of Mr. Al-Qarni is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, as noted by the source, on 6 September 2018 the trial commenced before the Specialized Criminal Court and the prosecutors requested the death penalty. The sentencing hearing was scheduled to take place on 20 November 2019. However, it has been postponed to a date yet to be determined. The trial has been ongoing for the past five years.

110. The source alleges that there has been a disregard for international fair trial standards, as set out in the Universal Declaration of Human Rights and other international instruments, which is of such gravity as to render the detention of Mr. Al-Qarni's arbitrary under category III. Mr. Al-Qarni was, among other things, detained for almost a year without trial and without charges, and without the opportunity to challenge his detention until the commencement of the trial on 6 September 2018. He was also denied access to a lawyer for the entire period of pretrial detention.

111. Furthermore, the source argues that the Specialized Criminal Court is not sufficiently independent to try Mr. Al-Qarni. It emphasizes that the prosecution has requested the death

¹⁴ Opinions No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, para. 80; and No. 76/2017, para. 62.

¹⁵ Opinions No. 33/2020, paras. 81 and 82; No. 30/2022, para. 88; and No. 23/2023, para. 91.

penalty for charges that do not refer to any act of violence. This allegedly shows the political nature of his trial.

112. In response, the Government asserts that national laws provide all guarantees of a fair trial and fair proceedings consistent with the country's international human rights obligations. Mr. Al-Qarni is receiving a fair trial before an independent and impartial court (the Specialized Criminal Court), a court created by decision of the Supreme Council of the Judiciary. The judicial procedures of the Specialized Criminal Court are the same as those in force in other criminal courts, in accordance with the Judicial Code, the Code of Criminal Procedure and the Law of Procedure Before Sharia Courts. Judges are appointed by decision of the Supreme Council of the Judiciary by royal order, in accordance with article 47 of the Judicial Law.

113. The guarantees available to Mr. Al-Qarni are in accordance with articles 10 and 11 of the Universal Declaration of Human Rights and principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as well as principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

114. The Working Group notes the general nature of the Government's response. The Government admits the arrest and detention of Mr. Al-Qarni, and his subsequent appearance in court, but makes no reference to the period from his arrest to his appearance before a judicial authority. The Government could have, by way of rebuttal, indicated the timeline it had followed in bringing Mr. Al-Qarni to court following his arrest and detention. In the absence of such information from the Government, the Working Group is inclined to accept the version of events as narrated by the source. The Working Group thus accepts the source's submission that Mr. Al-Qarni was forcibly disappeared following his arrest and that he remained in pretrial detention for a prolonged period.

115. In particular, the Working Group observes that Mr. Al-Qarni has been in pretrial detention for more than five years, without the Government providing any detailed or sufficient justification for such a delay. The Working Group is of the view that the delay is unjustified and in violation of his right to be tried without undue delay, guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

116. In response to the allegation that Mr. Al-Qarni was denied access to legal assistance at all stages of his detention, the Government maintains that following his arrest, Mr. Al-Qarni was informed of his legal rights, including the assistance of a lawyer, which he acknowledged by his signature. Furthermore, when summoned to appear before the court, Mr. Al-Qarni requested the appointment of a number of lawyers and agents to defend him, and his request was granted. The Government does not, however, provide information as to the effectiveness thereof, in the light of the allegations that Mr. Al-Qarni was enforcedly disappeared.

117. The Working Group reiterates principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court,¹⁶ in which it is stated that persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after apprehension, and must be promptly informed of this right upon apprehension. This right entitles persons detained to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information. Access to legal counsel should not be unlawfully or unreasonably restricted¹⁷ and principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that communication with counsel should not be denied for more than a matter of days. Accused persons must be able to meet with their

¹⁶ [A/HRC/30/37](#).

¹⁷ *Ibid.*, paras. 12–15 and 67–71.

counsel in private conditions that fully respect the confidentiality of their communication. This ensures compliance with fair trial guarantees.

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

119. Whereas the source has submitted that the Specialized Criminal Court was not a competent judicial forum for trying Mr. Al-Qarni as it suffers from a lack of independence since its members are appointed directly by the Ministry of the Interior, the Government has in its reply maintained that this Court is competent, impartial and independent and satisfies international human rights standards. In this regard, the Working Group recalls that in 2016, the Committee against Torture found that the judges of this Court "repeatedly refused to act on claims made by defendants facing terrorism charges that they were subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession".¹⁸

120. Moreover, the Working Group has stated previously that it considers that the Specialized Criminal Court is insufficiently independent of the Ministry of the Interior¹⁹ and cannot be considered an independent and impartial tribunal replete with the presumption of innocence and guarantees necessary for defence. It remains of the same view in the present case and finds that the trial of Mr. Al-Qarni before this Court contravenes article 10 of the Universal Declaration of Human Rights.

121. The Working Group concludes that the violations of the right to a fair trial are of such gravity as to render the detention of Mr. Al-Qarni arbitrary under category III.

(d) Category V

122. In respect of category V, the source alleges that the arrest of Mr. Al-Qarni took place in a particular political context, with successive crackdowns on freedom of expression by the authorities. Mr. Al-Qarni is an academic and a visible figure who has been advocating for the respect and protection of human rights in the country.

123. The source indicates that the broad definition of terrorism in the anti-terrorism law includes acts such as questioning the foundations of the Islamic religion on which the country is founded. It also notes that abuse of educational or social status or media influence is considered an aggravating circumstance for the purposes of sentencing and is punishable by a minimum sentence of 15 years' imprisonment for minor offences. Such a provision is inherently discriminatory towards scholars or influential professors, such as Mr. Al-Qarni. For the source, the treatment of Mr. Al-Qarni by the authorities can only be described as discriminatory.

124. In response, the Government submits that all persons are equal before and under the law and are entitled without discrimination to equal protection and benefit afforded by the law. All citizens and residents are treated equally before the law. All citizens enjoy all their rights on an equal footing. They practise their rites and religious beliefs freely and without discrimination. They enjoy equal rights in all fields such as education, health, employment and litigation.

125. Furthermore, the laws of Saudi Arabia do not include discriminatory provisions against anyone, but rather criminalize and punish discrimination, promote equality and combat discrimination. In accordance with article 8 of the Basic Law, the Government in

¹⁸ CAT/C/SAU/CO/2, para. 17.

¹⁹ See, for example, opinions No. 71/2019, para. 44; No. 56/2019, para. 86; No. 26/2019, para. 102; and No. 62/2022, para. 95.

Saudi Arabia is based on the premise of justice, consultation and equality, in accordance with Islamic sharia.

126. In its discussion above, the Working Group has established that detention of Mr. Al-Qarni resulted from the peaceful exercise of his rights under international law. When a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international human rights law on the grounds of discrimination on the basis of political or other views.²⁰ The Working Group notes that the Government has merely provided general statements about its laws, insufficient to dispel the credible allegations made by the source. The Working Group therefore concludes that Mr. Al-Qarni is being detained on discriminatory grounds, that is, on the basis of his political and religious opinions.

127. In the light of the above, the Working Group finds that Mr. Al-Qarni is being deprived of his liberty on discriminatory grounds, in violation of articles 2 and 7 of the Universal Declaration of Human Rights. His detention is thus arbitrary under category V.

3. Disposition

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

The deprivation of liberty of Awad bin Mohammed al-Qarni, being in contravention of articles of articles 2, 3, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

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

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

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

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

4. Follow-up procedure

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

134. 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

²⁰ Opinions No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43.

whether further technical assistance is required, for example through a visit by the Working Group.

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

136. 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.²¹

[Adopted on 1 September 2023]

²¹ Human Rights Council resolution 51/8, paras. 6 and 9.