
Advance Edited Version

Distr.: General
6 February 2017

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-seventh session, 21-25 November 2016

Opinion No. 61/2016 concerning three minors (minors A, B, and C, whose names are known to the Working Group) (Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/69), on 22 June 2016 the Working Group transmitted a communication to the Government of Saudi Arabia concerning the three minors. The response of the Government to the communication was received on 22 August 2016. 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 is aimed at or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Minor A was born on 20 December 1994, minor B was born on 6 February 1995 and minor C was born on 24 March 1996. The three young men are residents of Qatif.

5. Minors A, B and C were the subjects of a joint urgent appeal sent by several special procedure mandate holders on 22 March 2016.¹ Minors A and B were also the subjects of two previous urgent appeals sent by several mandate holders on 21 September 2015² and 19 October 2015³ respectively.

6. In late 2011 and early 2012, the three minors participated in protests in the Eastern Province of Saudi Arabia, which were recognized by the international community as peaceful. The source states that they did not engage in any violent or hostile acts and were peaceful protesters seeking to exercise their civil and political rights.

7. In the first half of 2012, following their participation in the protests, all three were arrested. At that time, minors A and B were 17 years old, while minor C was 15. According to the source, they were not arrested during any protest, only afterwards, and no warrant was presented. The source submits that their arrest does not comply with the juvenile procedures set out in Saudi national law.

8. According to the source, the three minors were detained for periods of between 20 and 22 months before their court trials started. The source stresses that the duration of their pretrial detention violates the Saudi Basic Law of Criminal Procedure which states that pretrial detention should not exceed six months.

9. The source reports that the three young men were subjected to torture and ill-treatment (both physical and psychological) and to insults and verbal abuse for their Shiite religious affiliation during the interrogation sessions. The source submits that the use of torture and ill-treatment resulted in their coerced confessions.

10. The source argues that their deprivation of liberty was neither monitored nor regularly reviewed through judicial oversight, while they had no recourse to effective habeas corpus. The source alleges that they were held incommunicado during some stages of their pretrial detention and that they were denied the right to a lawyer during interrogation and in pretrial periods.

11. The source reports that, despite their age at the time of arrest, they were tried in the Specialized Criminal Court, a closed court set up to deal with terrorism cases. The Court applied the Laws for the crimes of terrorism and its financing (2014), which were introduced almost two years after their arrest. The source mentions that these laws have been widely criticized by the international community for their ambiguous wording and the many provisions which do not comply with international norms. According to the source,

¹ Available from [spdb.ohchr.org/hrdb/33rd/public_-_UA_SAU_22.03.16_\(2.2016\).pdf](http://spdb.ohchr.org/hrdb/33rd/public_-_UA_SAU_22.03.16_(2.2016).pdf).

² Available from [spdb.ohchr.org/hrdb/31st/public_-_UA_Saudi_Arabia_21.09.15_\(6.2015\).pdf](http://spdb.ohchr.org/hrdb/31st/public_-_UA_Saudi_Arabia_21.09.15_(6.2015).pdf).

³ Available from [spdb.ohchr.org/hrdb/31st/public_-_UA_Saudia_Arabia_19.10.15_\(8.2015\).pdf](http://spdb.ohchr.org/hrdb/31st/public_-_UA_Saudia_Arabia_19.10.15_(8.2015).pdf).

the Specialized Criminal Court has similarly been criticized for its lack of independence and the immense power of the Minister of Interior in overseeing the cases.

12. According to the source, minor A was tried separately and his trial consisted of six sessions, while minors B and C were tried as part of a joint trial, which included another individual. The trials started on 29 January 2014. Both trials were held in camera.

13. Equality of arms was allegedly not afforded during the trials and serious procedural irregularities and flaws greatly undermined the right of the three young men to an effective defence and fair trial on several grounds.

14. The source reports that following their unfair trials, they were sentenced to death by *ta'zir* (a discretionary sentence). Minor A was sentenced to death on 27 May 2014, whilst minors B and C received their death sentences on 21 October 2014. The sentences were based on trumped-up charges, including participation in demonstrations and chanting slogans that were hostile to the State; possession and throwing of Molotov cocktails; and covering up for wanted men.

15. According to the source, endorsement of the death sentences by the Appeals and Supreme Courts occurred in camera without prior notice given to the family or lawyers. The lawyers had reportedly no knowledge that hearings had taken place. In August 2015, minor A's family was notified that both the Appeals and Supreme Courts had endorsed the original death sentence. Those hearings were conducted in secret and their exact dates are not known to the source. On 29 September 2015, the families of minors B and C were only informed that their respective death sentence had been endorsed, again without the knowledge of the family, or lawyers being present.

16. On 5 October 2015, all three individuals were transferred to Al-Ha'ir prison, Riyadh, where they were all kept incommunicado in a cell reserved for persons on death row for approximately one month, until they were eventually granted the visits and calls. During their time in the detention facility, the three minors complained of being denied basic personal hygiene amenities. Minor A was reportedly denied prompt medical care after falling ill, after which he threatened to go on hunger strike before being eventually granted medical care approximately a week later.

17. On 13 November 2015, minor C was secretly transferred to Asir prison, where he was held incommunicado for approximately a month.

18. On 11 January 2016, the three minors were transferred back to the General Directorate of Investigation prison in Dammam. The source reports that weekly phone calls and monthly visits have been granted, although there have been several instances of missed weekly phone calls, causing immense distress to both the young men and their families. All three young men complained that medical care had become more difficult to access in the General Directorate of Investigation prison, as any prisoner who required medical care must formally request it and await a reply, which could take over a month to be given.

19. According to the source, all three remain on death row and are at risk of imminent execution. This threat of execution is compounded by the recent execution of another minor protestor, who was also arrested at the age of 17 in connection with participating in protests, arbitrarily detained, tortured into a coerced confession, tried in the same Specialized Criminal Court without access to a lawyer, sentenced to death on 9 June 2014 and executed on 2 January 2016 as part of a mass execution of 47 individuals. Furthermore, minor A is the nephew of a prominent Shia cleric and peaceful social justice activist Sheikh Nimr Baqir al-Nimr, who was also executed on the same date, following arbitrary arrest and detention and a grossly unfair trial.

20. The source reports that the three minors have exhausted all domestic remedies and legal defences. Execution is imminent unless they receive a pardon from the King.

21. The source claims that the deprivation of liberty of the three minors results from the exercise of their rights to freedom of opinion and expression and to freedom of peaceful assembly and association, which are guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights, during protests that have been recognized as peaceful by the international community. It therefore constitutes arbitrary detention falling within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. The source also claims that since they have not been guaranteed the international norms of due process and guarantees to a fair trial, in violation of articles 9 and 10 of the Declaration, their deprivation of liberty falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

22. With respect to the arrest and detention of minor A, the source provides the following arguments to support its claim that he was arbitrarily arrested and detained:

(a) Unnecessary force was used during his arrest, as he was violently arrested when a police car ran him over as he was riding his bicycle;

(b) Following the arrest, adequate medical care was not provided as minor A was taken to a local hospital and then referred to the military hospital in Dammam until the investigating officer from the Qatif police arrived and destroyed the paperwork, asserting there would be no medical care;

(c) Following the arrest, minor A was held incommunicado for three months, during which period he was held in solitary confinement for 40 days;

(d) Minor A was not brought before a judge until the first day of his trial and the extension of his deprivation of liberty was taken by judicial decision;

(e) Visible signs of torture were observed by his family during visits. Minor A was subjected to beating, kicking and slapping, resulting in visible marks of torture, including swelling in the nose and lips and broken teeth. He was also subjected to remarks and harassment of a sectarian nature. His health deteriorated with pain throughout his body and lower abdomen and he had blood in his urine. His family reported that they did not initially recognize his face due to the effects of torture and that he had told them that he wished that he had died under torture during his first six months of detention. Torture and ill-treatment were used to facilitate his coerced confession, which was handwritten by one of the investigators because his own handwriting was reportedly not clear enough. Minor A was coerced into approving the confession by adding his fingerprint, to acknowledge the charges in front of the judge, after being told his cooperation during the interrogation would help to release him;

(f) During his time at the juvenile detention facility, when he suffered from health problems his family purchased medication for him. However, it was not consistently delivered to him and sometimes not delivered at all. During one period of time, no doctor was available, but a medically trained person was later provided;

(g) Visitation rights during the pretrial detention of minor A have not been consistent, as his family were unable to gain an official regular visitation order until six months after his initial detention. Due to the insistence and persistence of his family in relation to the administration of the juvenile detention centre, a family member was eventually able to visit him prior to the official visitation order being granted;

(h) Prior to the transfer of minor A to the General Directorate of Investigation prison, whilst he was still being detained at the juvenile offenders facility, his family was in regular contact with the administration of the juvenile centre, from which it received promises that he would be released soon. On that basis, minor A's family requested on several occasions that he be permitted to have a home visit to allow them to process his

university application. This request was eventually granted and in 2014 he was allowed a single home visit lasting for less than 24 hours;

(i) Minor A's lawyers complained to the Court that the General Directorate of Investigation was denying them the *ziyarat al-wakeel* visits (visits allocated to legal representatives of the accused). The judge informed the defence that the court had already sent a *khetab*, or formal letter, numbered 4011/35 and dated 27 Safar 1435 (29 December 2013), to the General Directorate of Investigation, allowing the lawyers to meet with minor A;

(j) In the early stages of the trial, the Court allegedly gave minor A the option of responding to the charges against him, either verbally or in writing, and he indicated he would submit written replies. On 17 Jamada al-Ula 1435 (18 March 2014), he told the court he had been unable to prepare his replies for his defence because he had been denied the *ziyarat al-wakeel* visits and, consequently, he could not discuss his case with his lawyers. In response, he was warned by the judge that if he failed to bring his written replies to the following trial session, the Court would consider that he was refusing to respond to the case brought against him, and that the Court would proceed without his responses;

(k) Access to court documents and evidence was heavily restricted, as the defence lawyers for minor A were only allowed access to the list of charges against him. There was no full disclosure to the defence team of all the materials held by the prosecution, including the recorded reports of investigations by both the General Directorate of Investigation and the Bureau of Investigation and Public Prosecution. All statements made by minor A during the investigation, as well as the report containing the messages, images, videos and other materials found on his mobile phone and other possessions that the authorities had confiscated, were used as evidence against him in court. The source also points out that minor A was not allowed to bring witnesses to testify in his defence.

23. With respect to the arrest and detention of minor B, the source provides the following arguments to support its claims that he was arbitrarily arrested and detained:

(a) Minor B was initially arrested for a day, released after being asked to spy on other protestors and rearrested eight days later at a hospital where he was awaiting routine surgery on his eye. After the arrest, minor B was transferred to the military hospital for a week only, regardless of the continued pain in his eye;

(b) Minor B was held incommunicado for two weeks and subjected to several interrogation sessions involving torture. The first interrogation lasted 18 hours, during which he was severely beaten on his hands, feet with an *agal* (part of an Arab headdress), forced to lie on his stomach and then trampled by the torturers, forced to face the wall and then hit, mainly on the injured part of his leg;

(c) In November 2013, minor B was transferred to the General Directorate of Investigation in Dammam and detained in solitary confinement for a month. He was subjected to electric shocks on different parts of his body, was hanged upside down and tied to a chair where he was heavily beaten. Torture and ill-treatment were used in order to facilitate his coerced confession and he was forced to sign a blank document that would later contain his confession;

(d) Minor B was brought before a judge only after he signed a confession;

(e) Minor B's family was granted weekly visits to the juvenile facility after he had been held incommunicado for two weeks. After he was transferred to the General Directorate of Investigation prison, minor B was allowed a monthly visitation and his phone calls, which were supposed to be weekly, were only granted on a monthly basis;

(f) Access to a lawyer was heavily restricted for minor B. A lawyer was appointed prior to the start of his trial and attended the first session and other court sessions, but was not present at the final sentencing hearing. Minor B's lawyer was able to access the court file and found that it contained no evidence, apart from his confession obtained under duress;

(g) The prosecutor did not bring any witnesses to testify against him, although the prosecutor claimed that the other prisoners had provided evidence against him. No opportunity to cross-examine these witnesses was granted.

24. With respect to the arrest and detention of minor C, the source provides the following arguments to support its claims that he was arbitrarily arrested and detained:

(a) Minor C was walking to the shops when he was shot at by Saudi security forces who subsequently caught him and hit him with their weapons until he fell on the ground bleeding;

(b) Minor C was beaten all over his body with an iron wire by officers at the Awamiyah police station. After being transferred to the juvenile detention centre, his family observed signs of suffering, with dramatic weight loss and a significant deviation in his nose, which still remains. Torture and ill-treatment were used in order to facilitate an alleged confession that he was forced to sign without reading it or consulting with his family or a lawyer. Minor C's coerced confessions were extracted at the General Directorate of Investigation prison in Dammam;

(c) Minor C was detained incommunicado for three months at the General Directorate of Investigation;

(d) Access to a lawyer was heavily restricted for minor C, since his lawyer was only able to be present at the second or third trial session. The source also states that the lawyer could not access the evidence;

(e) Minor C was brought before a judge in Riyadh prior to his trial, but only for the purpose of being provided with the list of charges against him, without a lawyer being present and without a proper hearing.

Response from the Government

25. On 22 June 2016, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure, requesting the Government to provide detailed information by 22 August 2016 on the current situation of the three minors and any comments on the allegations made by the source. The Working Group also requested the Government to clarify the factual and legal grounds justifying the continued detention of the three young men and to provide details regarding the conformity of their deprivation of liberty and apparent lack of fair judicial proceedings with domestic legislation and international human rights norms, including those that constitute the legal obligations of Saudi Arabia under international human rights law.

26. On 24 June 2016, the Government sought an extension of time to submit its response and forwarded a copy of the response it had sent on 28 December 2015 to the joint urgent appeal sent by Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 21 September 2015 on behalf of minor A.⁴ In its response of 28 December 2015 to the joint urgent appeal on behalf of minor A, the Government denied the claims that he had been

⁴ Available from [spdb.ohchr.org/hrdb/31st/public_-_UA_Saudi_Arabia_21.09.15_\(6.2015\).pdf](http://spdb.ohchr.org/hrdb/31st/public_-_UA_Saudi_Arabia_21.09.15_(6.2015).pdf).

detained and tried for his participation in the protests and subjected to torture and other inhuman, cruel and degrading treatment, citing the relevant provisions of Saudi domestic law.

27. On 29 July 2016, the Working Group granted the Government an extension of one month to 22 September 2016, in accordance with paragraph 16 of its methods of work and clarified with the Government that it was required to respond separately to the urgent appeal procedure of the special procedure mandate holders and the regular procedure of the Working Group, in accordance with paragraph 23 of its methods of work.

28. In its response received on 22 August 2016 by the Working Group, the Government provided the Working Group with the information set out below.

29. The Government stated that its criminal justice system provided all the guarantees of fair trial and fair procedures that were consistent with its international obligations in the field of human rights under the general principles of an independent judiciary, the prohibition of torture, criminal punishment reserved for the most serious crimes based on convictions only after the completion of judicial review proceedings, and equality before the law.

30. Regarding the deprivation of liberty of the three minors, the Government reiterated its explanation vis-à-vis minor A, submitted in its response dated 28 December 2015 to the joint urgent appeal, that the three young men were fully fledged adults, as their attainment of adulthood could be demonstrated by their capacity to bear religious, financial and criminal responsibility. The Government submitted that there were no violations of its obligations under the Convention on the Rights of the Child.

31. According to the Government, the protest movement in the Eastern Province was not a part of the Arab Spring but involved violent riots resulting in deaths, injuries and destruction of property.

32. The Government denied that there had been violations of provisions concerning the treatment of juveniles in Saudi domestic law and claimed that the three young men were treated in accordance with the criminal procedure law and were placed in juvenile facilities.

33. Concerning the contention of the source that the 20-22 months of pretrial detention violated the six-month limit under Saudi domestic law, the Government stated that the investigation had been delayed by lawsuits and that the criminal procedure for terrorism cases took a longer time than ordinary crimes.

34. As to the allegations of torture, ill-treatment and insults against the Shiite religious affiliation during the interrogations, the Government responded that torture was illegal under Saudi law and that the three young men confessed willingly without alleging torture at the time or during the visit by the officials of the Saudi Human Rights Commission. The Government also denied the allegations of incommunicado detention and stated that all detention centres and prisons were subject to judicial supervision and health regulations.

35. The Government defended the trial by the Specialized Criminal Court under the law against terrorism as criminal proceedings before a competent court under a valid law promulgated by royal decree to strengthen the rule of law. Furthermore, the Government contended that the claims of a trial without lawyers and in camera proceedings were inaccurate, as the trial was conducted in adversarial format in the presence of the defendants and their lawyers in open proceedings. The three young men had an adequate defence, contrary to the alleged lack of equality of arms.

36. In addition, the Government contends that the panel of three judges of the Specialized Criminal Court sentenced the three young men to death after careful consideration of the evidence presented at their trials by the prosecution and the defence. It

also submitted that it was inaccurate to claim that they had received the death sentences in camera, without prior notice being given to the family or lawyers, since the defendants and their lawyers were present during the sentencing in the court of first instance, while the Appeals and Supreme Courts had carefully considered the applicable law and appeal papers before upholding the death sentences in accordance with the judicial procedure.

37. The Government rejected the claim that the young men were held incommunicado for a month in a cell reserved for death-row inmates without basic personal hygiene amenities and medical care following their transfer on 5 October 2015 to the Al-Ha'ir prison in Riyadh, stating that full medical care and amenities were provided. The allegations of minor C's secret transfer to Asir prison on 13 November 2015 and his being held incommunicado for a month there were likewise dismissed. Following their transfer to the Damman prison on 11 January 2016, the Government claimed that the three young men enjoyed phone calls and visits organized by the prison administration and full medical care.

38. The Government also claimed that the three young men could not have been arbitrarily deprived of their liberty for their exercise of the right to freedom of opinion and expression, as Saudi laws guarantee such freedom, unless it is required to protect the rights or reputation of others or public order and public health or morals.

39. Regarding the specific allegations in minor A's case, the Government denies the unnecessary use of force in his arrest or the unavailability of necessary medical care after his arrest, as well as his being held incommunicado for three months, including 40 days of solitary confinement. The Government further states that minor A was not subjected to torture but confessed before the judge without alleging torture and again did not complain about torture to a visiting representative from the Saudi Human Rights Commission. The Government argues that he enjoyed the same medical care as any other detainee, in accordance with the law, and had access to his lawyer and the case file, and the court heard arguments and evidence from both sides before issuing its ruling.

40. Regarding the specific allegations in minor B's case, the Government claims that he was not released after his initial arrest and that he enjoyed medical care in accordance with the law rather than being treated for only a week at the military hospital. According to the Government, he was neither subjected to two weeks of incommunicado detention and torture during the interrogations, nor held in solitary confinement and tortured by the General Directorate of Investigation for a coerced confession, but rather kept in solitary confinement for a limited time in accordance with the law, while he voluntarily confessed before the judges. As to the assertion that he was brought before a judge only after he signed a confession, the Government states that he was interrogated by the competent authorities and sentenced after the completion of judicial proceedings. Access to a lawyer and the cross-examination of witnesses also preceded the rulings.

41. With specific regard to minor C's case, as to the allegations that he was shot and apprehended by the security forces while walking to the shops and that he endured torture at the Awamiyah police station, the Government states that he was arrested in accordance with the criminal procedure law and that Saudi law prohibits torture in all its forms. The Government denies that he was held incommunicado for three months, but confirms that minor C was in solitary confinement for a month in accordance with the law. As to the claim that he had limited access to his lawyers and evidence, the Government responds that he was able to meet his three lawyers in prison and attend hearings.

Further comments from the source

42. The response of the Government was sent to the source on 26 August 2016 for comment, to which the source replied on 24 November 2016. The source states that the severe lack of fair trial guarantees in the proceedings before the Specialized Criminal Court

has been extensively documented in the past, despite the official announcements by the Government to the contrary. The cases of the three minors demonstrate grave violations of procedural safeguards in accordance with international human rights law and domestic regulations. The source notes in particular the various violations of the right to liberty and the right to a fair trial.

43. According to the source, the death sentences against the three young men contradict the claim by the Government that capital punishment is reserved for the most serious crimes. The source claims that, in fact, as at 17 November 2016, the Government had already executed 144 individuals in 2016. The source maintains that the judicial review of capital crimes cannot be relied upon as the Specialized Criminal Court has been partial to the prosecution and has ignored the claims by the defence of confessions extracted under torture.

44. The source argues that the Government systematically violates its own laws on detention, interrogation, torture and trial procedures. The source claims that the judiciary lacks independence as the King appoints members of the Supreme Judicial Council and has the power to approve changes to the rules of procedure issued by the Council. According to the source, the Specialized Criminal Court that sentenced the three young men to death has no written regulations and is used by the Government to condemn its critics, including human rights activists and journalists; the Bureau of Investigation and Public Prosecution is under the jurisdiction of the Ministry of the Interior many secret trials occur without lawyers or family members being present and without prior notification of trial dates.

45. The source states that the formal charges against the three young men, despite their being based on confessions extracted through torture, do not claim that any of them has used a firearm, or injured or killed anyone. The source submits that since the first killing of security personnel occurred in August 2012, after the arrests of the three minors conducted respectively in February, March and May of 2012, the Government has depicted them as murderers deserving death.

46. According to the source, contrary to the Government's claim that terrorism charges necessitated long pretrial detention periods, the actual investigation took less than six months and no extension of detention was formally approved by the prosecution or any court to its knowledge. The source claims that it has documented their torture and their families have raised the issue with the media.

47. The source states that while the Government is correct that the three young men knew about their death sentences at the court of first instance, they, as well as their lawyers and family, could not attend the appeal proceedings and were informed of the decisions upholding the death sentences weeks later.

48. The source rejects the Government's response to the specific allegations concerning the cases of the three minors as evasive, misleading or a fabrication.

Discussion

49. The Working Group expresses its concern at the continued abuse of fundamental rights by Saudi Arabia and notes the case at hand is already the subject of urgent appeals from several special procedure mandate holders of the Human Rights Council (see para. 5 above). In the present case, the Working Group is alarmed by the fact that the three minors were prosecuted and sentenced based upon the Laws for the crimes of terrorism and its financing (2014), which were enacted two years after the time of their arrest. Such a retroactive application of the law is in clear contravention of the principle of legality, a cardinal principle of international human rights law, as enshrined in article 11 (2) of the Universal Declaration of Human Rights. While noting that the Government does not refute this allegation in its response, the Working Group finds that the resulting deprivation of

liberty of the three petitioners, which has lasted more than four years, is without any legal basis, thus falling within category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

50. The next issue to be addressed is whether the deprivation of liberty of the three minors arose solely from the exercise of their right to freedom of expression. Despite the attempted contention of the Government to the contrary, the Working Group is convinced that the arrest and detention of the three minors resulted from their participation in the protests, the nature of which was peaceful. Such observation derives from the detailed, consistent and credible submissions of the petition, as corroborated by other credible sources,⁵ and the Working Group takes special note also of the fact that even the formal charges brought against the three minors did not involve any claims of use of force or use of any weapons, or claims of having caused injury to anyone. The deprivation of liberty of the three minors was therefore due to their exercise of their right to freedom of opinion and expression and therefore also constitutes arbitrary detention in breach of the international norms on detention, including articles 19 and 20 of the Universal Declaration of Human Rights, thereby falling within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

51. The Working Group now turns to the claim that the three minors have not been guaranteed the international norms of due process and guarantees to a fair trial, in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights, the gravity of which renders their deprivation of liberty arbitrary within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

52. With regard to the application of category III, the facts and circumstances that raise particular concern include the following: (a) at the time of the arrest of the three minors, no warrant was presented; (b) their pretrial detention lasted between 20 and 22 months prior to the commencement of their court trials; (c) the practice of torture and ill-treatment was conducted to extract false confessions; (d) the minors had no recourse to effective habeas corpus and were held incommunicado; (e) they were given limited access to lawyers and to the evidence against them, and were not permitted to cross-examine witnesses; (f) they were tried in the Specialized Criminal Court; and (g) the endorsement of the death sentences by the upper courts was made in proceedings held in camera.

53. Although the Government, in its response, denied the claims regarding the arrest, incommunicado detention and the application of torture, it has not provided any information about the details of the facts and circumstances to establish the authenticity of its claims. The source, by contrast, has submitted concrete information about the process of deprivation of liberty of the three minors in a consistent and detailed manner.⁶ In that regard, the Working Group is led to confirm that no warrant was presented at the time of the arrest of the minors, in violation of article 9 of the Universal Declaration of Human Rights, which also poses a significant barrier to the legitimate exercise of the right to defence in any further legal proceedings. These circumstances were also exacerbated by the lack of the habeas corpus proceedings provided to the victims.

⁵ See, for example, Human Rights Watch, *World Report 2017*.

⁶ The Working Group refers to its constant jurisprudence and recalls that where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she is entitled, the burden to refute the allegation made by the applicant lies with the public authority, because the latter is “generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out”. See International Court of Justice, case concerning Ahmadou Sadio Diallo, *Republic of Guinea v. Democratic Republic of the Congo*, Merits, Judgment, pp. 660-661, para. 55; see also opinion No. 57/2013.

54. The Working Group reiterates the basic principle enshrined most recently 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 one's detention is a self-standing human right, essential to preserve legality in a democratic society. Principle 4 of the Guidelines makes it clear that the right to challenge the legality of detention before a court is a non-derogable human right. This means that a State cannot suspend, render inapplicable, restrict or abolish that right under any circumstances.

55. Holding three minors over a period of more than 20 months is not only a violation of the Saudi Basic Law of Criminal Procedure, which reportedly requires pretrial detention to last not more than six months, it is also a violation of the international norms on detention dictating that pretrial detention should be an exception and should be as short as possible.⁷ In its annual report for 2011, the Working Group also emphasized that pretrial detention should be an exceptional measure only (see A/HRC/19/57, paras. 48-58). In this regard, the pretrial detention of minors in particular, often held incommunicado, could have seriously undermined their right to a legal defence and the legitimate exercise of their right to a fair trial.

56. All forms of torture are strictly prohibited under the international human rights norms on the prohibition of torture, including article 5 of the Universal Declaration of Human Rights, which states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". In fact, the prohibition of torture in international human rights law carries an absolute character, it is a norm of *jus cogens* and no derogations from this prohibition are possible for any State, irrespective of the obligations arising from treaty obligations. Moreover, in view of the fact that the victims are minors, such a practice is also prohibited by article 37 (a) of the Convention on the Rights of the Child, to which Saudi Arabia acceded on 26 January 1996.

57. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Saudi Arabia acceded on 23 September 1997, also emphasizes that it is never lawful for a State to use torture and prohibits this abhorrent practice in the strictest terms. Article 2 (2) states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".

58. Moreover, the trial and sentencing of the three minors based on "confessions" obtained through torture were conducted in violation of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which stipulates that "any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings". Given these observations, the Working Group considers that the original conviction was made in breach of the international norms on detention and gravely undermined the legitimate exercise of their right to a fair trial.

59. The Working Group once again takes note of the nature of the Specialized Criminal Court as a court of exception. Such a special court, specifically designed to deal with so-called terrorism cases, raises serious concerns about its lack of independence and due procedure and should not be seized of cases involving juveniles.⁸

60. The Working Group notes that in its concluding observations on the second periodic report of Saudi Arabia, the Committee against Torture expressed its concern that the

⁷ See, for example, Human Rights Committee, communication No. 1787/2008, *Kovsh v. Belarus*, Views adopted on 27 March 2013, paras. 7.3-4.

⁸ See, for example, opinion No. 44/2013.

Specialized Criminal Court, which was established in 2008 to try cases of terrorism, was insufficiently independent of the Ministry of the Interior. The Committee noted the reports it had received that judges of the Court had repeatedly refused to act on claims made by defendants facing terrorism charges that they had been subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession (see CAT/C/SAU/CO/2, para. 17).

61. The Working Group also wishes to note that, in its annual report for 2007, it expressed its concern over the continuing tendency towards deprivation of liberty by States abusing states of emergency or derogation; invoking special powers specific to states of emergency without formal declaration; having recourse to military, special or emergency courts; not observing the principle of proportionality between the severity of the measures taken and the situation concerned; and employing vague definitions of offences allegedly designed to protect State security and combat terrorism (see A/HRC/7/4, para. 59).

62. Furthermore, the Working Group notes that the trial and subsequent appeals were conducted in secret and with inadequate opportunity for the defendants to prepare a defence, in violation of the Universal Declaration of Human Rights (art. 10), which guarantees a fair and public hearing for anyone charged with a crime.

63. The Working Group confirms that the detention of the three minors is arbitrary, violating articles 9, 10 and 11 of the Universal Declaration of Human Rights and thus falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

64. Finally, the Working Group expresses its grave concern in relation to the death sentences imposed on the three minors. Given the finding of the Working Group that the three minors were arbitrarily deprived of their liberty without any legal basis as a result of exercising their freedom of expression and in violation of their right to a fair trial, their conviction and death sentences are inherently unsafe and in fact constitute a violation of the Convention on the Rights of Child (art. 37), to which Saudi Arabia is a party. The Working Group urges the Government not to proceed with carrying out the death sentences.

Disposition

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

The deprivation of liberty of the three minors, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights is arbitrary and falls within categories I, II and III.

66. Consequent upon the opinion rendered, the Working Group requests the Government, without delay, to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles enshrined in the Universal Declaration of Human Rights, the Convention on the Rights of the Child and all other relevant international norms on detention.

67. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to release all three minors immediately and to accord them an enforceable right to reparations, in accordance with international law.

68. The Working Group encourages the Government of Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

69. In light of the allegations of torture and other ill-treatment inflicted upon the detainees, the Working Group considers it appropriate, in accordance with article 33 (a) of its revised methods of work, to refer these allegations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Follow-up procedure

70. 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 the three minors have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to the three minors;
- (c) Whether an investigation has been conducted into the violation of the rights of the three minors 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 the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

71. 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.

72. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

73. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.⁹

[Adopted on 25 November 2016]

⁹ See Human Rights Council resolution 33/30, paras. 3 and 7.