
Advance Edited VersionDistr.: General
3 April 2019

Original: English

Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018****Opinion No. 68/2018 concerning Mohammad Abdullah Al Otaibi (Saudi Arabia)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 4 May 2018 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Mohammad Abdullah Al Otaibi. The Government replied to the communication on 24 May 2018. The State is not a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. The information concerns Mohammad Abdullah Al Otaibi, born on 28 August 1968. He is married and is currently detained in Dammam Prison, Saudi Arabia.

a. Context

5. According to the source, on 3 April 2013, Mr. Al Otaibi participated, along with a group of Saudi activists, in the creation of a new human rights association called the Union for Human Rights. The source states that the association aimed to spread and defend the culture of human rights, to enforce its principles and values and to promote the Universal Declaration of Human Rights and other relevant international covenants and charters.

6. The source reports that, after the establishment of the Union for Human Rights, the Public Prosecution launched a criminal investigation against members of the group. It summoned Mr. Al Otaibi and three other activists for “co-founding an illegal association”, under article 24 of the Regulation on Charitable Associations and Foundations (Council of Ministers decision No. 107 of 1990). They were interrogated separately between 28 April and 4 May 2013, and were denied the right to have a legal counsel present. On 4 May 2013, the Union for Human Rights was officially obliged to halt its activities.

7. The source further explains that the Ministry of Islamic Affairs, which is responsible for granting authorizations to establish associations and charities in the country on an ad hoc basis, twice rejected the requests for registration of the Union for Human Rights, in both May 2013 and November 2015. Furthermore, the source reports that Mr. Al Otaibi was again summoned for questioning by the Public Prosecution office in March 2014, and was required to sign a pledge to stop issuing statements and reports and participating in television interviews. The Public Prosecution placed him under surveillance without notifying him, monitoring his “compliance with the pledge”, including on his social media accounts.

b. Arrest and detention

8. According to the source, on 30 October 2016, Mr. Al Otaibi was summoned before the Specialized Criminal Court and charged with “illegally founding an association”, under article 24 of the Regulation on Charitable Associations and Foundations; and “spreading chaos and stirring up public opinion against the State” and “harming the reputation of the Kingdom before the international community and human rights bodies”, under articles 12 and 39 of the Basic Law, by “preparing, signing and publishing statements on the Internet that are harmful to the reputation of the Kingdom and of its judicial and security institutions, with the intention of dividing national unity, and damaging the reputation of the State and its security and stability”, in infringement of article 6 of the Anti-Cybercrime Law. Mr. Al Otaibi was also charged under article 6 of the Anti-Cybercrime Law with publishing (on a Twitter account) “hostile and abusive posts insulting the Kingdom and the religious authority and aimed at disrupting the social order”.

9. The source indicates that, on 30 March 2017, Mr. Al Otaibi fled to Qatar, in an attempt to avoid an unfair prosecution for his peaceful human rights activism in Saudi Arabia. Allegedly, while in Qatar, Mr. Al Otaibi sought and obtained refugee status. The source explains that Mr. Al Otaibi was then supposed to be resettled in Norway as part of a United Nations protection programme, but he was arrested on his way to Oslo on 24 May 2017, at Hamad International Airport in Doha. He was taken into custody by the Qatari security forces and was then forcibly deported to Saudi Arabia on 28 May 2017.

10. According to the source, Mr. Al Otaibi was arrested upon arrival in Riyadh by officers of the General Directorate of Investigation (Al Mabathith) and transferred to Dammam Prison, without being shown an arrest warrant. He was then allegedly held incommunicado for more than two weeks and was only allowed to call his family for the first time on 12 June 2017, despite repeated requests made by his relatives to the Saudi authorities. During this period, he was also denied access to medical care. Furthermore, he was held in solitary confinement for three months.

11. The source further claims that Mr. Al Otaibi was not brought before a judicial authority until 12 July 2017, almost 50 days after his arrest, when the Specialized Criminal Court resumed the proceedings against him. Until that time, he was denied access to a lawyer.

12. According to the source, on 25 January 2018, the court deliberated on the case in a closed hearing and sentenced Mr. Al Otaibi on the aforementioned charges to 14 years in prison. Mr. Al Otaibi appealed his sentence on 22 February 2018, but no date has yet been set for a first hearing.

c. Legal analysis

13. The source considers that the deprivation of liberty of Mr. Al Otaibi amounts to arbitrary detention under categories II and III.

i. Category II

14. The source submits that the arrest and the prosecution of Mr. Al Otaibi stem directly from the exercise of his fundamental rights to freedom of expression and freedom of association, enshrined in articles 19 and 20 of the Universal Declaration of Human Rights.

15. In fact, the source reports that Mr. Al Otaibi was summoned for interrogations a few weeks after he announced on social media the establishment of the Union for Human Rights, and he was explicitly charged with “co-founding an illegal organization”.

16. The source notes that despite repeated attempts to legally register the Union for Human Rights, all requests were rejected and its members were banned from continuing their activities as human rights defenders. In this regard, the source indicates that Saudi Arabia lacked a legal framework for the establishment of civil society organizations until 2015, as authorizations were granted by the Ministry of Islamic Affairs on an arbitrary ad hoc basis, effectively allowing the authorities to ban peaceful activities of groups critical of the Government. The source claims that the situation did not change after the adoption in November 2015 of the Law on Civil Associations and Institutions, as the case of the Union for Human Rights clearly shows. The law considerably limits the registration of human rights or political civil society organizations, for instance by excluding groups whose activities “contradict public morals” or “undermine national unity”.

17. Allegedly, Mr. Al Otaibi was further condemned for publishing reports and tweets critical of the Government on social media, on charges related to the peaceful expression of his opinion. In particular, he was sentenced under article 6 of the Anti-Cybercrime Law, which punishes with up to five years in prison individuals who “produce, prepare, transmit or store material impinging on public order, religious values, public morals and privacy”.

18. Furthermore, the source notes that Mr. Al Otaibi was charged with “harming the reputation of the Kingdom before the international community and human rights bodies”, for reporting acts of torture and ill-treatment by the security forces against some detainees. The human rights activism of Mr. Al Otaibi clearly falls within his fundamental right to freedom of opinion and expression enshrined in and protected by article 19 of the Universal Declaration of Human Rights.

ii. Category III

19. The source also submits that Mr. Al Otaibi’s detention is arbitrary due to violations of his fair trial rights.

20. First of all, the source submits that Mr. Al Otaibi was arrested by officers of the General Directorate of Investigation without being shown an arrest warrant, in contravention of principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source alleges that Mr. Al Otaibi was furthermore detained incommunicado for more than two weeks and denied all contact with his lawyer and family. The source recalls that, by putting victims outside the protection of the law, incommunicado detention is a prima facie form of arbitrary detention. It constitutes a violation of the detainee’s right to be recognized as person before the law, under article 6 of the Universal Declaration of Human Rights, and it contravenes principles 15, 16, 17, 18, 19,

37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

21. In addition, the source claims that the right of Mr. Al Otaibi to be brought promptly before a judge was violated. The source explains that Mr. Al Otaibi was only brought before a judge once his trial had begun, almost three months after his arrest. He was thus denied the right to challenge the legality of his detention before a competent judicial authority, in violation of principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

22. Moreover, the source claims that, as mentioned above, Mr. Al Otaibi was held in incommunicado detention for more than 20 days, which may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of torture, according to General Assembly resolution 60/148. Furthermore, the source alleges that he was detained in prolonged solitary confinement for the first three months of his detention. The source thus recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has repeatedly called upon States to ban solitary confinement as a punishment or extortion technique, arguing that prolonged solitary confinement (i.e. exceeding 15 days) may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. Moreover, during the first days of detention Mr. Al Otaibi was denied access to medical care, despite his repeated requests.

23. With regard to the conduct of the interrogations in the absence of legal counsel, the source claims that the authorities rejected the requests of Mr. Al Otaibi to have a lawyer present during the interrogations, which took place in April 2013 and March 2014 when he was forced to sign pledges to stop his activities. Furthermore, Mr. Al Otaibi was denied access to legal counsel until the beginning of his trial, in violation of principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

24. Moreover, the source alleges that Mr. Al Otaibi was prosecuted in the Specialized Criminal Court, an exceptional court with jurisdiction over cases of terrorism, which has repeatedly targeted human rights activists and government critics under the pretext of protecting national security. The Court is not composed of independent judges, but of a panel appointed by the Ministry of Interior and can therefore not be considered independent, as confirmed by the Committee against Torture in its 2016 review of Saudi Arabia.¹

25. Furthermore, according to the source, the court deliberated on the case of Mr. Al Otaibi in a secret hearing. The conduct of his trial is thus in clear violation of article 10 of the Universal Declaration of Human Rights, in which it is stated that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

Response from the Government

26. On 4 May 2018, the Working Group transmitted the source’s allegations to the Government under its regular communication procedure, requesting the Government to provide detailed information before 2 July 2018 concerning the current situation of Mr. Al Otaibi and any comment on the source’s allegations. Moreover, the Working Group called upon the Government to ensure Mr. Al Otaibi’s physical and mental integrity.

27. According to the Government’s response of 24 May 2018, a judicial decision of 8 Jumada al-Awwal 1439 (25 January 2018) in Mr. Al Otaibi’s case, which can be appealed, sentenced Mr. Al Otaibi to 14 years’ imprisonment and an overseas travel ban for an equivalent duration upon his release from prison for his participation in founding an association without permission, breaking his pledges, seeking to incite sedition and spread chaos breaching public security, and committing crimes punishable under article 6 of the Anti-Cybercrime Law.

¹ CAT/C/SAU/CO/2, paras. 17 ff.

Further comments from the source

28. The response from the Government was transmitted to the source on 24 May 2018 for further comment. In its response of 31 May 2018, the source asserted that the Government's response was a statement of facts detailing Mr. Al Otaibi's sentence without addressing or refuting any of the violations alleged by the source in its communication dated 10 April 2018.

29. With regard to category II, the source recalls that the Union for Human Rights aims to promote human rights. Mr. Al Otaibi and his colleagues twice tried to register the Union for Human Rights, to no avail. Until 2015, there was no legal framework governing the establishment of civil society organizations, with the authorization granted by the Ministry of Islamic Affairs on an arbitrary ad hoc basis. This effectively allowed the authorities to ban peaceful activities of groups critical of the Government. The Law on Civil Associations and Institutions, of November 2015, similarly restricted the registration of human rights organizations, for instance by excluding groups whose activities "contradict public morals" or "undermine national unity".

30. The source reasserts that, given the de facto impossibility of Mr. Al Otaibi registering the Union for Human Rights, the Government acted in violation of his fundamental right to freedom of association as enshrined in article 20 (1) of the Universal Declaration of Human Rights.

31. The source adds that the charges brought against Mr. Al Otaibi relate to the publication of reports and tweets critical of the Government on social media networks, and as such, they clearly result from the peaceful exercise of his right to freedom of opinion and expression enshrined in article 19 of the Universal Declaration of Human Rights.

32. With regard to category III, the source states that the Government does not address or refute the source's allegations in relation to the severe violation of fair trial guarantees.

33. As the source has asserted earlier, Mr. Al Otaibi's trial did not meet international fair trial standards. This is because he was arbitrarily arrested and held incommunicado, denied the right to challenge the legality of his detention before a competent authority, subjected to ill-treatment by being held in prolonged solitary confinement, and interrogated without legal counsel, and his trial was held in camera before an exceptional court.

34. Lastly, the source submits that Mr. Al Otaibi's incarceration is part of larger pattern of arbitrary detention in Saudi Arabia, characterized by seriously flawed trials and severe restrictions on freedom of expression and freedom of association.²

Discussion

35. The Working Group thanks the source and the Government for their submissions in relation to Mr. Al Otaibi.

36. In determining whether Mr. Al Otaibi's deprivation of liberty 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 requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

37. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty of person and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant

² The source refers to the fact that, since 2012, the Working Group has adopted 18 separate opinions in which it has declared the detention of individuals by the Government arbitrary due to non-observance of international fair trial norms and/or as a result of exercising their rights to freedom of expression, opinion or association. See opinions Nos. 93/2017, 63/2017, 47/2017, 10/2017, 61/2016, 52/2016, 38/2015, 13/2015, 32/2014, 14/2014, 46/2013, 45/2013, 44/2013, 32/2013, 53/2012, 52/2012 and 8/2012.

international standards set forth in the Universal Declaration of Human Rights and other applicable international or regional instruments.³ Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant rules and standards of international human rights law.⁴

Category I

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

39. The source submits, and the Government does not refute, that Mr. Al Otaibi was arrested upon arrival in Riyadh from Qatar by officers of the General Directorate of Investigation (Al Mabahith) and transferred to Dammam Prison without being presented with an arrest warrant. The international norms on detention include the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9 respectively of the Universal Declaration of Human Rights, as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁵ Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

40. The Working Group also notes that Mr. Al Otaibi was not brought promptly before a judge or afforded the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention. In fact, he was not brought before a judicial authority until 12 July 2017, almost 50 days after his arrest. This also deprived him of the right to challenge the legality of his detention, in violation of articles 8 and 10 of the Universal Declaration of Human Rights. Pretrial detention without an individualized determination of the risk of flight, of interference with the evidence or of recurrence of the crime, as well as consideration of less intrusive alternatives, such as bail, electronic bracelets or other conditions in accordance with the principle of necessity and proportionality, is devoid of legal basis.⁶

41. The Working Group therefore considers that Mr. Al Otaibi's arrest and detention for the first 50 days, in violation of articles 3, 8, 9 and 10 of the Universal Declaration of Human Rights, lack a legal basis and are thus arbitrary, falling under category I.⁷

Category II

42. The Working Group recalls that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has reiterated that the right to freedom of expression includes expression of views and opinions that offend, shock or disturb.⁸ In addition, the Human Rights Council, in its resolution 12/16, paragraph 5 (p) (i), stated that restrictions on the discussion of government policies and on political debate were

³ See General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; Human Rights Council resolutions 6/4, para. 1 (a), and 10/9, para. 4 (b); and opinions No. 38/2018, para. 60; No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, paras. 51 and 70; No. 76/2017, para. 62; No. 28/2015, para. 41; and No. 41/2014, para. 24.

⁴ See opinions No. 38/2018, para. 60; No. 94/2017, paras. 47–48; No. 33/2015, para. 80; No. 1/2003, para. 17; No. 5/1999, para. 15; and No. 1/1998, para. 13.

⁵ See opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27. See also art. 14 (1) of the Arab Charter on Human Rights.

⁶ See opinion No. 61/2018, para. 50.

⁷ See also arts. 12, 13 (1) and (2), 14 (1), (2), (5) and (6) and 23 of the Arab Charter on Human Rights.

⁸ See A/HRC/17/27, para. 37.

not consistent with article 19 (3) of the Covenant, which is based on articles 18 and 19 of the Universal Declaration of Human Rights.

43. The source submits, and the Government does not address the matter or refute, that Mr. Al Otaibi was convicted and sentenced for his critical reports and tweets on social media under article 6 of the Anti-Cybercrime Law, which carries a maximum term of five years' imprisonment for those who "produce, prepare, transmit or store material impinging on public order, religious values, public morals and privacy". He was also charged with "harming the reputation of the Kingdom before the international community and human rights bodies" for reporting acts of torture and ill-treatment by the security forces. In this regard, the Working Group is convinced that Mr. Al Otaibi's detention and imprisonment for his critical online and offline comments clearly resulted from the exercise of his right to freedom of thought and conscience and his right to freedom of opinion and expression, guaranteed in articles 18 and 19 of the Universal Declaration of Human Rights.

44. The Working Group expresses its concern at the Government's persecution of Mr. Al Otaibi and his colleagues for their attempts to register the Union for Human Rights. Mr. Al Otaibi was specifically charged with "co-founding an illegal organization". The Government provided no justifiable grounds for refusing the registration of the Union for Human Rights. This also leads the Working Group to conclude that Mr. Al Otaibi's prosecution and conviction for his attempts to co-found the Union for Human Rights were conducted in contravention of his fundamental rights to freedom of opinion and expression, freedom of thought and conscience, and freedom of association.

45. The Working Group therefore considers that Mr. Al Otaibi's deprivation of liberty is arbitrary under category II, as it resulted from his exercise of the rights and freedoms guaranteed under articles 18, 19 and 20 of the Universal Declaration of Human Rights.⁹

Category III

46. Given its finding that Mr. Al Otaibi's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that in such circumstances no trial should take place. However, as the trial has taken place, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give his deprivation of liberty an arbitrary character, so that it falls within category III.

47. The Working Group considers that the absence of legal counsel for Mr. Al Otaibi during the interrogations, in April 2013 and March 2014, at which time Mr. Al Otaibi was forced to sign pledges to stop his activities, and the denial to him of access to a lawyer until the beginning of his trial, violated his rights 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.¹⁰

48. The Working Group notes that Mr. Al Otaibi was detained incommunicado for more than two weeks and denied all contact with his lawyer and family.¹¹ The Working Group recalls that incommunicado detention constitutes a violation of the detainee's right to be recognized as person before the law, in breach of article 6 of the Universal Declaration of Human Rights and principles 15, 16, 17, 18, 19, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and that the refusal to disclose his fate or whereabouts violated his right not to be forcibly disappeared.¹²

49. Such practice, by putting victims outside the protection of the law, has the effect of posing a serious challenge to Mr. Al Otaibi's exercise of his right to a fair trial and due process. The Working Group is also concerned that it may have facilitated the perpetration

⁹ See also arts. 24 (5) and (6), 30 and 32 of the Arab Charter on Human Rights.

¹⁰ See also art. 16 (2), (3), (5) and (6) of the Arab Charter on Human Rights.

¹¹ See art. 14 (3) of the Arab Charter on Human Rights.

¹² See also art. 22 of the Arab Charter on Human Rights, and the references to the right to life, the right to liberty and security of person, the right not to be subjected to torture and the right to recognition as a person before the law in the Declaration on the Protection of All Persons from Enforced Disappearance.

of torture and other cruel, inhuman or degrading treatment or punishment, and can in itself constitute a form of torture according to General Assembly resolution 60/148, thereby making Mr. Al Otaibi's exercise of fair trial rights either impossible or difficult.

50. Furthermore, the Working Group recalls that Mr. Al Otaibi was detained in prolonged solitary confinement for the first three months of his detention. The Working Group wishes to note that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has repeatedly called upon States to ban solitary confinement as a punishment or extortion technique, arguing that prolonged solitary confinement (i.e. exceeding 15 days) may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. In this regard, the Working Group also stresses that prolonged solitary confinement, in certain instances, may amount to torture, in violation of article 5 of the Universal Declaration of Human Rights.¹³

51. The Working Group expresses its concern about the Specialized Criminal Court that has jurisdiction over terrorism cases, which tried, convicted and sentenced Mr. Al Otaibi. The Working Group understands that the Specialized Criminal Court is an exceptional court set up to try cases of terrorism, which repeatedly targets human rights activists and critics of the Government under the pretext of protecting national security. The Court is not composed of independent judges but of a panel appointed by the Ministry of Interior and can therefore not be considered independent, as confirmed by the Committee against Torture in its 2016 review of Saudi Arabia.¹⁴

52. Furthermore, the Working Group considers, and the Government does not address the matter or refute, that Mr. Al Otaibi was subjected to in camera hearings before the Specialized Criminal Court, in violation of his right to a public hearing under articles 10 and 11 (1) of the Universal Declaration of Human Rights.

53. In view of the above, the Working Group concludes that the violations of the right to a fair trial and due process, affirmed in articles 10 and 11 (1) of the Universal Declaration of Human Rights, are of such gravity as to give the deprivation of liberty of Mr. Al Otaibi an arbitrary character that falls within category III.

54. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

International obligation to observe the principle of non-refoulement

55. While the source has brought no formal complaint against Qatar with respect to Mr. Al Otaibi's arrest and subsequent deportation to Saudi Arabia, the Working Group notes that, after extending him hospitality as a political refugee and assuring him safe passage to Norway, the Qatari hosts delivered Mr. Al Otaibi to the authorities of Saudi Arabia.¹⁵

56. The Working Group will not specifically discuss the international responsibility of Qatar in the present case, but it wishes to recall the international obligations concerning the principle of non-refoulement.

57. In this context, the Working Group recalls that the expulsion of a refugee is prohibited "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".¹⁶ Moreover, article 3 of the

¹³ See also art. 8 of the Arab Charter on Human Rights.

¹⁴ CAT/C/SAU/CO/2, paras. 17 ff.

¹⁵ The Working Group welcomes the subsequent accession by Qatar to the two Covenants, and recommends the ratification of their Optional Protocols.

¹⁶ Art. 42 of the Convention relating to the Status of Refugees, of 1951, explicitly disallows any reservations to art. 33 of the same Convention. See also the 1967 Protocol relating to the Status of Refugees, and art. 3 of the Convention relating to the International Status of Refugees, of 1933,

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which both Qatar and Saudi Arabia are parties, stipulates that no State party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, and that the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, for the purpose of determining whether there are such grounds.

58. As the Working Group has previously observed, international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country and in ensuring that their right to a fair trial is protected.¹⁷

59. Moreover, it is thus incumbent upon governments and authorities to respect, protect and fulfil the right to personal liberty by exercising due diligence to prevent expulsion, return or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of liberty, and by taking into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, for the purpose of determining whether there are such grounds.¹⁸

60. With respect to Saudi Arabia, the Working Group notes that the present opinion is only one of several opinions in which the Working Group has found the Government in violation of its international human rights obligations.¹⁹ The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Saudi Arabia, which amounts to a serious violation of international law. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.

Disposition

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

The deprivation of liberty of Mohammad Abdullah Al Otaibi, being in contravention of articles 3, 6, 8, 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

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

63. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al Otaibi immediately and accord him

as well as the technical note on the principle of non-refoulement under international human rights law, prepared by the Office of the United Nations High Commissioner for Human Rights for the intergovernmental negotiations on the global compact for migration being held in January–July 2018, available from www.ohchr.org/EN/Issues/Migration/Pages/GlobalcompactforMigration.aspx.

¹⁷ See, for example, opinions No. 2018/11, No. 2/2015 and No. 57/2013.

¹⁸ See opinions No. 56/2016, paras. 55–60; and No. 53/2016, paras. 59–63. See also A/HRC/4/40, paras. 44–45.

¹⁹ The Working Group found the deprivation of liberty of the person concerned to be arbitrary in its decisions No. 40/1992, No. 60/1993, No. 19/1995 and No. 48/1995, and in its opinions No. 8/2002, No. 25/2004, No. 34/2005, No. 35/2005, No. 9/2006, No. 12/2006, No. 36/2006, No. 37/2006, No. 4/2007, No. 9/2007, No. 19/2007, No. 27/2007, No. 6/2008, No. 11/2008, No. 13/2008, No. 22/2008, No. 31/2008, No. 36/2008, No. 37/2008, No. 21/2009, No. 2/2011, No. 10/2011, No. 11/2011, No. 17/2011, No. 18/2011, No. 19/2011, No. 30/2011, No. 31/2011, No. 33/2011, No. 41/2011, No. 42/2011, No. 43/2011, No. 44/2011, No. 45/2011, No. 8/2012, No. 22/2012, No. 52/2012, No. 53/2012, No. 32/2013, No. 44/2013, No. 45/2013, No. 46/2013, No. 14/2014, No. 32/2014, No. 13/2015, No. 38/2015, No. 52/2016, No. 61/2016, No. 10/2017, No. 63/2017, No. 93/2017 and No. 10/2018.

an enforceable right to compensation and other reparations, in accordance with international law.

64. 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 Otaibi and to take appropriate measures against those responsible for the violation of his rights.

65. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

66. The Working Group recommends the Government to ratify the two International Covenants on Human Rights and their Optional Protocols.

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

68. The Working Group transmits the present opinion to the Government of Qatar for its consideration.

Follow-up procedure

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

70. 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.

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

72. 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.²⁰

[Adopted on 20 November 2018]

²⁰ See Human Rights Council resolution 33/30, paras. 3 and 7.