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**Human Rights Council**  
Working Group on Arbitrary Detention

## **Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session, 23–27 November 2020**

### **Opinion No. 92/2020 concerning Mohammed Essam Al-Faraj (Saudi Arabia)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 17 July 2020 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Mohammed Essam Al-Faraj. The Government replied to the communication on 14 September 2020. 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. Mohammed Essam Al-Faraj is a citizen of Saudi Arabia, born in February 2002. Before his arrest, he was a resident of Al-Awamiyah, near Qatif, in the country's Eastern Province. He is an active practitioner of Shia Islam.

### Arrest and detention

5. According to the source, Mr. Al-Faraj was arrested on 29 June 2017, when he was 15 years old, as he was leaving a games hall in Medina. Mr. Al-Faraj was arrested along with seven other persons by the local Medina police, who took him into custody and incarcerated him initially at a General Directorate of Investigation (Al Mabathith) prison in Medina.

6. The source explains that the authorities neither presented a warrant nor informed the individuals of the reasons for their detention at the time of arrest. They held Mr. Al-Faraj at the prison in Medina for two days, after which they transferred him to a General Directorate of Investigation (Al Mabathith) prison in Dammam that is normally used exclusively for adult prisoners. It reportedly does not have adequate facilities to hold juveniles in separate detention.

7. The source alleges that while detaining and interrogating Mr. Al-Faraj at the Al Mabathith prison in Dammam, security agents tortured him. They placed him in solitary confinement for a period of two months, during which time they beat him, kicked him and placed him in forced standing and stress positions for up to four hours at a time. Due to the torture, Mr. Al-Faraj now suffers from chronic medical conditions, including high blood pressure. He has been transferred to the Al Mabathith prison hospital on at least one occasion.

8. The source explains that, in order to stop the torture and abuse, Mr. Al-Faraj signed a document confessing to the charges which the authorities would eventually bring against him. At no point during his torture or incarceration was Mr. Al-Faraj permitted access to legal counsel. Thus far, to the knowledge of the source, authorities have not undertaken any investigation into Mr. Al-Faraj's treatment or torture during his deprivation of liberty.

9. Mr. Al-Faraj had reportedly been held at the Al Mabathith prison in Dammam for five days before the authorities notified his family of his detention. Including the initial two days of incommunicado detention in Medina, the authorities held Mr. Al-Faraj in incommunicado detention for seven days. When his family was finally able to visit him after his release from solitary confinement after two months, they noticed visible signs of his poor health.

10. The source further explains that the authorities charged Mr. Al-Faraj with forming a terrorist cell with the purpose of harming security guards with the intent to kill, monitoring police patrols and their movements at Al-Awamiyah police station and sending information to a wanted man, covering for this individual and not providing information concerning him to the authorities, participating in protests and funerals of persons allegedly killed by the State and chanting anti-State slogans, and storing and sending information potentially harmful to public security.

11. The source specifies that the offences that Mr. Al-Faraj stands accused of committing occurred before he reached the age of majority, that is, prior to turning 18. None of the offences are violent in nature, and some – including those relating to participating in protests and attending funerals – date back to when he was 9 years old. Despite these facts, these charges render Mr. Al-Faraj eligible for the death penalty, and the prosecution has requested his execution.

12. In relation to these charges, Mr. Al-Faraj admits that he was present at the funerals and protests mentioned in the criminal complaint, and that he was protesting against the Government. He also states that he sent text messages to WhatsApp groups regarding the movements of police personnel in or around a police station that is in view of his house, but that he did not know that these messages might end up being used for criminal activity, and that he ended all contact with these groups upon suspicion that they may have been involved in such activity.

13. The source explains that, as at June 2020, due to the coronavirus disease (COVID-19) crisis, Mr. Al-Faraj's trial has yet to commence. However, in preliminary submissions related to the trial, the prosecution requested the death penalty under the *hudud* category of offences. Saudi Arabia divides criminal offences into three categories: The first and most common, *ta'zir*, is roughly translated as discretionary offences, the penalties for which may be decided by a ruler or government. The second category, *hudud*, encompasses punishments prescribed in the Qur'an. The third category, *qisas*, punishes an offender by retribution in kind.

14. Moreover, it is specified that in 2018, Saudi Arabia promulgated a new Juvenile Law aimed at restricting the use of the death penalty against minors at trial. That law forbade the public prosecution from seeking capital punishment for *ta'zir* offences, but continued to allow the prosecution to seek the death penalty for *hudud* and *qisas* offences. In early 2020, the Government promulgated a new law further restricting the use of the death penalty for crimes committed by juvenile offenders by making the 2018 law apply retroactively to cases decided prior to its issuance. Neither of these laws affects the prosecution's power to condemn Mr. Al-Faraj to death for *hudud* offences.

#### Legal analysis

15. The source argues that Mr. Al-Faraj's detention and treatment violate obligations of Saudi Arabia under the Convention on the Rights of the Child, acceded to on 26 January 1996. The source recalls that article 37 (a) of the Convention states that no child shall be tortured and that no child shall be subjected to the death penalty or life imprisonment. Article 37 (b) states that no child shall be arbitrarily deprived of his or her liberty. Article 37 (c) states that every child deprived of liberty must be treated humanely and with respect. Article 37 (d) states that every child deprived of liberty must be given prompt access to legal counsel.

16. The source argues that, in the present case, Saudi Arabia deprived Mr. Al-Faraj of his liberty without providing him with the reason, or access to legal counsel, and held him incommunicado for one week. He was allegedly tortured and treated with extreme disregard for the sanctity of his person, including by subjecting him to beatings, stress positions, and prolonged periods of solitary confinement. When the relevant authorities announced the charges, many of those charges were in violation of his protected human rights to free association and expression.

17. The source also claims that Mr. Al-Faraj's detention and treatment are in violation of the obligations of Saudi Arabia under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded to on 23 September 1997. The source recalls that article 2 of the Convention provides an affirmative obligation to prevent acts of torture from taking place in its territory. Article 4 mandates each State party to the Convention to criminalize the use of torture, while article 6 requires investigation of any credible allegations of torture and punishment of those responsible. Yet, the source claims that Saudi Arabia did not effectively prevent Mr. Al-Faraj's torture, has not investigated the acts of torture carried out against him and has not punished those responsible for them. Article 15 of the Convention provides that each State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. It appears that the prosecution will rely on Mr. Al-Faraj's confession extracted under torture as evidence to convict and execute him.

18. According to the source, Mr. Al-Faraj's treatment falls under category II of arbitrary deprivation of liberty. Mr. Al-Faraj is accused of several crimes relating to his attendance at peaceful protests and funerals and to his manifestation of a political opinion that runs contrary to that of the Government. He is also accused of transmitting information potentially harmful to public security.

19. Furthermore, it is submitted that Mr. Al-Faraj's detention falls under category III of the Working Group because he was not provided with the reason for his arrest. He was held incommunicado for a period of one week, during which time the authorities tortured him into making a coerced confession. At no point has he ever been given access to an attorney. The source submits that although his trial has not taken place, it is clear that the Government is creating conditions for an unfair trial in advance, with the intent to convict him unfairly.

20. In addition, the source argues that Mr. Al-Faraj's detention falls under category V of the Working Group given that he has been charged with attending funerals and political protests and chanting anti-State slogans.

21. Moreover, the source states that Mr. Al-Faraj's detention without trial for almost three years falls under category I of the Working Group. He has been held for almost three years without charge or trial, which includes his initial one-week incommunicado detention. He was a minor at the time of his arrest and for the most part of his ongoing detention, and therefore should benefit from the higher level of scrutiny under the Convention on the Rights of the Child.

#### *Response from the Government*

22. On 17 July 2020, the Working Group transmitted the allegations made by the source to the Government through its regular communications procedure. The Working Group requested the Government to provide, by 15 September 2020, detailed information about the situation of Mr. Al-Faraj and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Al-Faraj's physical and mental integrity.

23. In its response of 14 September 2020, the Government states firstly that the allegations of the source are inaccurate and are based on information from a source that has furnished no supporting documentation or evidence to back them up. The Government of Saudi Arabia is looking into the allegations and clarifying the factual matters in the case in the framework of its cooperation with the human rights mechanisms.

24. The Government states that Mr. Al-Faraj was arrested and detained on a warrant and detention order issued pursuant to article 2 of the Terrorist Crimes and Terrorism Financing Act of 2013 (Royal Decree No. M/16 of 24/2/1435H (27 December 2013)). He was charged with terrorism and was informed of the reasons for his arrest in line with article 36 (1) of the Code of Criminal Procedure. Mr. Al-Faraj was placed in a special facility for minors.

25. With regard to the allegations that Mr. Al-Faraj was subjected to torture, placed in solitary confinement, denied the right to contact a lawyer, and forced to sign a confession in order for the torture to be brought to an end, and that he consequently suffers from poor health and chronic pain, the Government denies the allegation of torture and confirms that torture is prohibited under national law, namely articles 2 and 102 of the Code of Criminal Procedure. Moreover, the laws of Saudi Arabia provide safeguards that guarantee this man's rights. Article 6 of the Terrorist Crimes and Terrorism Financing Act of 2013 states that a person may be denied the right to contact a person of their choosing for a limited period of time in the interests of the investigation. This does not interfere with the person's right to contact relatives to let them know what has happened. This individual was not denied the right to contact his lawyer. Moreover, he freely acknowledged his commission of several terrorist crimes, confirmed his confession was valid before the courts and made no claims at the time of having been coerced to confess.

26. The Government also reports that Mr. Al-Faraj is in good health, underwent medical tests as soon as he was imprisoned, was given all the medical care he needed and can exercise his right to receive visits and have contact with others.

27. According to the Government, Mr. Al-Faraj was charged with violent terrorist offences, namely: (a) participating in the creation of a terrorist entity whose goal is to kill law enforcement officers; (b) tracking police vehicles and movements at a police station and sending information to an individual wanted by the authorities with the intent of targeting the police by mutual prior agreement; (c) harbouring a wanted man, failing to report his whereabouts, and working with him to cause disorder and undermine public security; (d) participating in riotous assemblies with a view to breaching the peace and public order and undermining national unity; and (e) storing and disseminating material to be used to undermine public order, which is punishable under article 6 of the Data Offences Act.

28. The Government argues that, after Mr. Al-Faraj was interviewed and charged, the Office of the Public Prosecutor determined that there was enough evidence to send the case to court. When the accused appeared for the hearing, the prosecution's charges were read out

to him in accordance with article 160 of the Code of Criminal Procedure. He was given a copy of the bill of indictment and given a chance to reply. The prosecution asked for penalties, including the death penalty, to be applied, and this was before the passing of the Juvenile Law of 2018, which rules out the death penalty for persons who are below the age of 18 when they commit a crime. The Juvenile Law states that the death penalty will be replaced by up to 10 years' imprisonment for such persons. The Law was passed during the trial and the Office of the Public Prosecutor changed its sentencing request accordingly. The court explained the defendant's rights to him. Mr. Al-Faraj asked for legal representation and his request was granted. He was able to respond to the charges. After a number of sessions, all conducted in public, he asked for a lawyer at the State's expense. His request was granted, the court appointed a lawyer and his case is still being considered by the court.

29. The State further affirms that the Office of the Public Prosecutor is an independent entity that is part of the judiciary and that the charges in this case have nothing to do with freedom of expression and assembly. It states that all persons in the country enjoy their rights and freedoms without discrimination or any form of preferential treatment.

30. The Government specifies that its laws protect freedom of opinion and expression and guarantee the exercise of this right as long as it does not involve any breach of the law or affront to society, individuals or public morals. These restrictions are consistent with international standards, including article 29 (2) of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. As for freedom of assembly, national law prohibits the holding of any kind of gathering likely to undermine public security and national stability. All State agencies are legally required to treat all persons equitably, regardless of their faith, ethnicity, sex or nationality. A number of mechanisms are in place to address human rights breaches and safeguard human rights, namely the judiciary, and government bodies and non-governmental organizations that deal with human rights. The right of legal recourse is guaranteed equally to all under article 47 of the country's Basic Law. Article 43 of the Basic Law also recognizes the right of all to submit complaints and grievances to the Saudi authorities.

31. The Government repeats that Mr. Al-Faraj was not subjected to torture, and that it adheres to the Convention against Torture. He confessed to his crimes without any coercion, he reaffirmed this in court and he did not argue in court at the time that he had been subjected to coercion.

32. The Government also reiterates that it complies with human rights treaties and that the offences in this case have nothing to do with freedom of expression and of assembly. No one is being held in detention in Saudi Arabia for exercising his or her rights and freedoms, and access to these rights and freedoms is afforded to all without discrimination. This person was treated with respect for his dignity and his rights were guaranteed. He was charged with terrorism offences that have nothing to do with the expression of political opinions or involvement in peaceful protests.

*Further comments from the source*

33. The Working Group sent the response of the Government to the source, which submitted its comments on 25 September 2020. In its response, the source observes that it is for the Government to provide evidence to back up its claim that Mr. Al-Faraj was arrested following the issuance of a warrant under article 2 of the Terrorist Crimes and Terrorism Financing Act of 2013 and that he was informed of the reasons for his arrest in accordance with article 36 (1) of the Code of Criminal Procedure.

34. According to the source, the Government has also failed to provide evidence showing that Mr. Al-Faraj was incarcerated at a juvenile detention facility, and it has made the contradictory claims that Saudi law prohibits terror suspects from contacting the outside world and that Mr. Al-Faraj was allowed to contact anyone he wanted.

35. With respect to the allegation of torture, the source points out that the Government again provided no contrary evidence other than the existence of laws prohibiting torture. The Government is therefore under an obligation to proceed to a prompt and impartial investigation, in accordance with article 12 of the Convention against Torture, as there are reasonable grounds to believe that Mr. Al-Faraj has been subjected to torture.

36. The source also refutes the Government's violent terrorism charges against Mr. Al-Faraj as a misrepresentation of his exercise of the right to free expression. However, Mr. Al-Faraj has had no opportunity to contest these charges in court, and his confession was obtained under torture.

37. In the source's view, the Government has provided no documentary evidence for its claim that Mr. Al-Faraj has made requests for legal representation or that an attorney was assigned to him, and neither has it produced any dates and locations of the alleged public hearings. The charge sheet was first presented to him at the first and only hearing, on 16 September 2019.

38. The source also disputes the Government's claim that the prosecution initially pressed for the death penalty until 2018 but has since removed it from the charge sheet, in line with the recent reforms that purport to abolish the death penalty for *ta'zir* offences. In fact, the prosecution requested the death sentence for Mr. Al-Faraj for *hudud* offences on 16 September 2019, after the promulgation of the said Juvenile Law (Royal Decree No. M/113 of 31 July 2018), as *hudud* offences are explicitly exempt from the application of the said Law. As of 24 September 2020, the royal decree of 24 March 2020 has not been published, and therefore juveniles remain at risk of execution for *hudud* offences. Mr. Al-Faraj's family has received no notification that the prosecution has dropped the demand for the death penalty. The Government should produce an amended charge sheet showing that the prosecution has withdrawn the demand for capital punishment, and outlining the maximum penalty sought.

### Discussion

39. The Working Group thanks the source and the Government for their submissions in relation to the deprivation of liberty of Mr. Al-Faraj.

40. In determining whether Mr. Al-Faraj's detention was 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 (A/HRC/19/57, para. 68).

41. The source has submitted that the detention of Mr. Al-Faraj falls under categories I, II and III. The Government denies these allegations and argues that the arrest and subsequent detention of Mr. Al-Faraj was carried out in accordance with the national legislation of Saudi Arabia. The Working Group recalls that it has repeatedly stated in its jurisprudence that even when the detention of a person is carried out in conformity with national legislation, it must ensure that the detention is also consistent with the relevant provisions of international law.<sup>1</sup>

#### *Category I*

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

43. The source submits that Mr. Al-Faraj was not presented with an arrest warrant or informed of the reasons for his arrest at the time of arrest on 29 June 2017. The Government contested these allegations. The Working Group notes that the Government has not substantiated its claim that a proper warrant was presented at the time of arrest, or that notification of the reasons for the arrest was rendered during the arrest.

44. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was not implemented in the present case.<sup>2</sup>

45. International law on the right to personal liberty includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and

<sup>1</sup> See, for example, opinions No. 50/2018, No. 42/2012 and No. 46/2011.

<sup>2</sup> See, for example, opinions No. 93/2017, para. 44; No. 10/2018, paras. 45–46; and No. 34/2020, para. 44.

impartial judicial authority, which is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 37 (b) of the Convention on the Rights of the Child 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.<sup>3</sup>

46. Moreover, the Working Group notes the response of the Government, that an arrest warrant was issued in accordance with the Terrorist Crimes and Terrorism Financing Act of 2013. In this respect, the Working Group notes that articles 2 and 4 of the said Act respectively provide that the crimes of terrorism and its financing shall be punishable under the law and that the interior minister shall issue an arrest warrant for the suspected offenders. In this regard, the Working Group recalls its previous jurisprudence concerning Saudi Arabia,<sup>4</sup> where it questioned the legality of arrest warrants issued under article 4 of the said Act.<sup>5</sup> An arrest warrant issued by the interior minister or by delegated organs such as the General Directorate of Investigation (Al Mabahith) under article 4 does not meet the requirement that any form of detention or imprisonment should be ordered by, or be subject 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. The Working Group underlines that any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial judicial authority with oversight exercised by the judicial authority is arbitrary and lacks legal basis.

47. The Working Group therefore concludes that the arrest of Mr. Al-Faraj without a warrant and without invoking the reasons for the arrest is a breach of article 9 of the Universal Declaration of Human Rights.

48. The Working Group also finds that, in order to invoke a legal basis for deprivation of liberty, the authorities should have promptly informed Mr. Al-Faraj of the reasons for his arrest, at the time of arrest, and of the charges against him.<sup>6</sup> Their failure to do so violates articles 3 and 9 of the Universal Declaration of Human Rights and article 37 (b) of the Convention on the Rights of the Child as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders his arrest devoid of any legal basis.<sup>7</sup>

49. The source further maintains, and the Government again has not fully refuted, that Mr. Al-Faraj was subjected to enforced disappearance and incommunicado detention for seven days from the time of his arrest on 29 June 2017.

50. Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention, lacks any valid legal basis under any circumstance and is inherently arbitrary as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.<sup>8</sup> Articles 8, 10 and 11 of the Universal Declaration of Human Rights also confirm the impermissibility

<sup>3</sup> See, for example, decisions No. 1/1993, paras. 6–7; No. 33/2020, para. 54; and No. 34/2020, para. 46. See also art. 14 (1) of the Arab Charter on Human Rights.

<sup>4</sup> See, for example, opinions No. 93/2017 and No. 10/2018.

<sup>5</sup> Opinions No. 93/2017, para. 44; and No. 10/2018, para. 46.

<sup>6</sup> See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; and No. 34/2020, para. 47.

<sup>7</sup> See also art. 14 (1) and (3) of the Arab Charter on Human Rights.

<sup>8</sup> See art. 1 of the Declaration on the Protection of All Persons from Enforced Disappearance, which condemned any act of enforced disappearance “as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field”, as well as, for example, opinions No. 82/2018, para. 28; No. 33/2020, paras. 58 and 73; and No. 34/2020, para. 49. See also art. 22 of the Arab Charter on Human Rights.

of incommunicado detention. Accordingly, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

51. The Working Group reminds the Government that it has also classified secret detention, which entails elements of incommunicado detention and enforced disappearance, as being per se arbitrary, falling within category I, in paragraph 19 of its opinion No. 14/2009, cited in paragraph 20 of the joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42).<sup>9</sup> The joint study restated in its summary that no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus.<sup>10</sup>

52. Moreover, the source reported that Mr. Al-Faraj had been arrested on 29 June 2017, that the charges had been presented to him on 16 September 2019 during the first hearing and that he had been held incommunicado. The Working Group observes that thereupon Mr. Al-Faraj was not brought promptly before a judge. While international standards set out in the Working Group's jurisprudence prescribe that the arrested person is to be brought before a judge within 48 hours,<sup>11</sup> a stricter standard of 24 hours is applicable for Mr. Al-Faraj under the Convention on the Rights of the Child.<sup>12</sup> The Working Group also recalls that pretrial detention should be the exception rather than the rule. Specifically, the pretrial detention of Mr. Al-Faraj lacked a legal basis as it was not based on an individualized determination that it was reasonable and necessary taking into account all the circumstances, rendering detention unnecessary in the present case.<sup>13</sup> Therefore, the Working Group finds that the Government has violated articles 3 and 9 of the Universal Declaration of Human Rights and article 37 (b) of the Convention on the Rights of the Child as well as principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>14</sup>

53. The Working Group further observes that Mr. Al-Faraj was not afforded the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and article 37 (b) of the Convention on the Rights of the Child as well as principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. 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 (A/HRC/30/37) affirm that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and that it is essential to preserve legality in a democratic society (paras. 2–3). This right applies to all forms and situations of deprivation of liberty, irrespective of the place of detention or the legal terminology used in the legislation (annex, para. 47 (a) and (b)), and effective judicial oversight and control of deprivation of liberty is essential in ensuring that detention has a legal basis.<sup>15</sup>

54. The Working Group will elaborate further on the propriety of detention under the Terrorist Crimes and Terrorism Financing Act of 2013 in view of the principle of legality and its effect on the right to a fair trial and other freedoms in the present case. The Working

<sup>9</sup> Art. 10 (1) of the Declaration on the Protection of All Persons from Enforced Disappearance also provides that any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention. See also opinions No. 5/2001, para. 10 (iii); No. 14/2009, para. 21; No. 11/2018, para. 51; No. 12/2018, para. 62; No. 29/2018, para. 50; and No. 38/2018, para. 66.

<sup>10</sup> A/HRC/16/47, para. 54.

<sup>11</sup> See, for example, opinions No. 57/2016, paras. 110–111; No. 33/2020, para. 75; and No. 34/2020, para. 51.

<sup>12</sup> Committee on the Rights of the Child, general comment No. 10 (2007), para. 83, cited in opinion No. 26/2019, para. 89.

<sup>13</sup> See also A/HRC/19/57, paras. 48–58; and opinion No. 26/2019, para. 89.

<sup>14</sup> See also arts. 14 (1) and (5) and 23 of the Arab Charter on Human Rights.

<sup>15</sup> See, for example, opinions No. 35/2018, para. 27; No. 33/2020, para. 52; and No. 34/2020, para. 52.

Group recalls that this is not the first time that it has been called upon to examine the application of the provisions of this law.<sup>16</sup>

55. One of the fundamental guarantees of due process is the principle of legality, which means that an act can be punished only if, at the time of its commission, the act was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached.<sup>17</sup>

56. Article 1 (a) of the Terrorist Crimes and Terrorism Financing Act of 2013 defines the crime of terrorism as an act committed by an offender in furtherance of a criminal enterprise, whether individually or collectively, directly or indirectly, which is intended to disturb public order, or undermine the security of society and the stability of the State, or which endangers national unity, the Constitution (Basic Law) or any part thereof, or which defames the State or position, or causes damage to a State facility or natural resource, or which attempts to compel an officer or employee to take action or refrain from taking action within the scope of his duties due to threats.

57. The Working Group finds that vaguely and broadly worded provisions, which cannot qualify as *lex certa*, could be used to deprive individuals of their liberty without a specific legal basis and violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.<sup>18</sup> The Working Group further notes that laws that are vaguely and broadly worded may have a deterrent effect on the exercise of the rights to freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty.<sup>19</sup>

58. In addition, the Working Group cannot fail to observe that the death sentence sought by the prosecution against Mr. Al-Faraj, which continues to be sought according to the source and which even by the Government's own admission was sought until the Juvenile Law (Royal Decree No. M/113 of 31 July 2018) abolished the death penalty for *ta'zir* offences committed when the offender was under the age of 18, is in clear contravention of article 37 (a) of the Convention on the Rights of the Child and is in any case null and void for having a deficient legal basis.<sup>20</sup>

59. The Working Group therefore considers that the deprivation of liberty of Mr. Al-Faraj lacks a legal basis and is thus arbitrary, falling under category I.

### *Category II*

60. The source submits that Mr. Al-Faraj was arrested and charged for attending funerals of persons allegedly killed by the State and chanting anti-State slogans at political protests. The Government has denied these allegations by stating the charges against him. To the Working Group, the source has established *prima facie* that the present case thus concerns alleged violations of the rights to freedom of opinion and expression, freedom of assembly and association and freedom to take part in the conduct of public affairs.

61. The Working Group observes that individuals, including children, take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves and that this participation is supported by ensuring freedom of expression, assembly and association, pursuant to articles 19, 20 and 21 of the Universal Declaration of Human Rights.<sup>21</sup> Moreover, given that peaceful assemblies often have expressive functions, and that political speech enjoys particular

<sup>16</sup> Opinions No. 10/2018 and No. 36/2019.

<sup>17</sup> Opinions No. 10/2018, para. 50; and No. 36/2019, para. 40.

<sup>18</sup> Opinions No. 62/2018, para. 57; and No. 36/2019, para. 42.

<sup>19</sup> Opinion No. 10/2018, para. 55.

<sup>20</sup> Opinion No. 26/2019, para. 91.

<sup>21</sup> See, for example, opinions No. 16/2020, No. 15/2020 and No. 46/2011.

protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.

62. Article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one's rights and freedoms 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.

63. In the Working Group's view, the principle of necessity and proportionality inheres equally in all fundamental human rights. The Working Group, in its deliberation No. 9, confirmed that the notion of "arbitrary" *stricto sensu* includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary (A/HRC/22/44, sect. III, para. 61). In its jurisprudence, with regard to the application of the principle of proportionality, the Working Group has applied the four-pronged test of: (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.<sup>22</sup>

64. In view of the standard described above, the Working Group finds that the situation in the present case falls short of such requirement. There is no evidence of any violence or incitement to violence and the Government has not presented any explanation as to how the permissible restrictions on the right have been met in this case. Therefore, the standard for permissible restriction of the right, requiring a legitimate aim or objective in a free and democratic society, has not been met.

65. Moreover, the Working Group considers that the language used in article 1 (a) of the Terrorist Crimes and Terrorism Financing Act of 2013 is vague and overly broad, as discussed above, with the attendant chilling effect. The Working Group is concerned that these provisions appear to lack a clear definition and as such may be used to punish the peaceful exercise of human rights – as in the present case, preventing Mr. Al-Faraj from regulating his behaviour accordingly.

66. The Working Group therefore finds that Mr. Al-Faraj's deprivation of liberty is arbitrary, falling within category II, as it resulted from his legitimate exercise of the rights and freedoms under articles 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 13 (1) and 15 (1) of the Convention on the Rights of the Child.<sup>23</sup>

### *Category III*

67. Given its finding that Mr. Al-Faraj'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 Mr. Al-Faraj is being held in pretrial detention with a view to criminal prosecution, the Working Group will now consider the alleged violations of the right to a fair trial and due process.

68. The source alleges, and the Government has not substantiated its claim to the contrary, that Mr. Al-Faraj has had no access to legal counsel of his choice since his arrest on 29 June 2017.

69. In the Working Group's view, the Government has failed to respect Mr. Al-Faraj's right to legal assistance at all times, which is inherent in the right to liberty and security of person as well as in the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 37 (b) and (d) and 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child as well as principles 15, 17 and 18 of the Body

<sup>22</sup> See, for example, opinions No. 54/2015, para. 89; No. 87/2018, para. 64; and No. 32/2020, para. 49.

<sup>23</sup> See also arts. 24 (1), (2), (5) and (6), 30 (1) and 32 (1) of the Arab Charter on Human Rights.

of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers.<sup>24</sup>

70. The Working Group considers that this violation substantially undermined and compromised Mr. Al-Faraj's ability to defend himself in any subsequent judicial proceedings. As the Working Group has stated in 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, 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 the moment of apprehension, and must be promptly informed of this right upon apprehension; nor should access to legal counsel be unlawfully or unreasonably restricted (A/HRC/30/37, annex, paras. 12–15 and 67–71).<sup>25</sup>

71. The Working Group expresses its concern at article 6 of the Terrorist Crimes and Terrorism Financing Act of 2013, which provides that without prejudice to the detainee's right to contact his or her family to inform them of his or her arrest, an order may be issued to prevent other contact for a period not exceeding 90 days in the interest of the investigation. Such blanket power to deny access to legal counsel without due process of law constitutes the non-observance of international law on the right to a fair trial.

72. The Working Group further notes the denial of Mr. Al-Faraj's due process right to be visited by and to correspond with his family and to be given adequate opportunity for communication with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, in accordance with article 37 (c) of the Convention on the Rights of the Child as well as principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture as well as for protection against arbitrary detention and infringement of personal security.<sup>26</sup>

73. In the Working Group's view, Mr. Al-Faraj's pretrial detention for three years and five months without an individualized judicial determination has undermined the presumption of innocence guaranteed under article 11 (1) of the Universal Declaration of Human Rights and article 40 (2) (b) (i) of the Convention on the Rights of the Child as well as under principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>27</sup>

74. Mr. Al-Faraj's prolonged detention for three years and five months with no immediate prospect of a trial is also in clear violation of the right to be tried without undue delay under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 40 (2) (b) (iii) of the Convention on the Rights of the Child.

75. The Working Group also expresses its grave concern at the allegations of torture during Mr. Al-Faraj's pretrial detention, where he was placed in solitary confinement for two months and subjected to beatings and stress positions, while being interrogated. The Government has not specified when the regular medical treatment occurred.

76. With regard to Mr. Al-Faraj's two-month solitary confinement, the Working Group recalls that, according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, be used for as short a time as possible, be subject to independent review and be authorized by a competent authority. These conditions do not appear to have been observed in the present case. Prolonged solitary confinement in excess

<sup>24</sup> See also arts. 12, 13 (1), 14 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

<sup>25</sup> See also A/HRC/45/16, para. 51; and Human Rights Committee, general comment No. 32 (2007), para. 34.

<sup>26</sup> See, for example, opinions No. 10/2018, para. 74; No. 33/2020, para. 87; and No. 34/2020, para. 57.

<sup>27</sup> See also art. 16 of the Arab Charter on Human Rights.

of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules.<sup>28</sup>

77. Accordingly, the Working Group finds that the source has presented credible allegations that the absolute prohibition of torture enshrined in article 5 of the Universal Declaration of Human Rights, articles 2 and 16 (1) of the Convention against Torture and article 37 (a) of the Convention on the Rights of the Child has been violated in the present case.<sup>29</sup> The Government's failure to take remedial measures also violates articles 12, 13 and 14 (1) of the Convention against Torture and principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>30</sup> The Government's insistence that Mr. Al-Faraj's confession was voluntary, implying its admittance as evidence in trial, violates article 15 of the Convention against Torture and article 40 (2) (b) (iv) of the Convention on the Rights of the Child.<sup>31</sup>

78. The Working Group further expresses its gravest concern at Mr. Al-Faraj's prolonged incommunicado detention. The General Assembly has consistently held, firstly in its resolution 60/148 (para. 11) and most recently in its resolution 74/143 (para. 17), that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and violates the right to mount an appropriate legal defence and fundamentally undermines the fairness of the proceedings. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

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

#### *Category V*

80. The Working Group will now examine whether Mr. Al-Faraj's deprivation of liberty constitutes discrimination under international law for the purpose of category V.

81. The Working Group notes the Government's and the Sunni majority's historic discrimination against the Shiite ethno-religious minority in Eastern Province. The crackdown that included mass executions of Shias following the protest movement in 2011 form the background to Mr. Al-Faraj's arrest, trial and possible death sentence. The Working Group recalls the fate of three Shiite detainees, Abdelkarim Mohamed Al Hawaj and Mounir Abdullah Ahmad Aal Adam (opinion No. 26/2019) and Abbas Haiji Al-Hassan (opinion No. 56/2019), whose death sentences were carried out, despite the Working Group's indication of interim measures to ensure their physical and mental integrity, as part of the mass beheading of 37 mostly Shiite men on 23 April 2019.<sup>32</sup>

82. The Working Group also notes that in 2018 the Committee on the Elimination of Racial Discrimination expressed concern that ethno-religious minorities faced obstacles in freely practising their right to freedom of religion or belief and that certain ethno-religious minorities faced discrimination in education, employment and the legal system (CERD/C/SAU/CO/4-9, para. 23). The Committee recommended that Saudi Arabia take all measures necessary to ensure the rights of ethno-religious minorities, including their right to freedom of thought, conscience and religion, without any discrimination on the basis of race, colour, descent, or national or ethnic origin, as specified in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, and to eliminate all barriers faced by ethno-religious minorities in education, including by removing from textbooks derogatory comments on other religions, as well as in employment and in the legal

<sup>28</sup> See, for example, opinions No. 17/2019 and No. 83/2018.

<sup>29</sup> See also arts. 8 (1) and 20 (1) of the Arab Charter on Human Rights.

<sup>30</sup> See also art. 8 (2) of the Arab Charter on Human Rights.

<sup>31</sup> See also art. 16 (6) of the Arab Charter on Human Rights.

<sup>32</sup> Office of the United Nations High Commissioner for Human Rights, "Bachelet strongly condemns mass executions in Saudi Arabia", 24 April 2019, available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24510&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24510&LangID=E).

system (CERD/C/SAU/CO/4-9, para. 24). The Working Group refers the present case to the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief.

83. Mr. Al-Faraj's participation in political protests and his reported persecution may be understood against the backdrop of the pervasive discrimination and persecution faced by the Shiite ethno-religious minorities.

84. After considering all the elements of the case, the Working Group considers that Mr. Al-Faraj's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and article 2 (1) and (2) of the Convention on the Rights of the Child as well as principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, on the grounds of discrimination based on ethno-religious origin and political opinion.<sup>33</sup> His deprivation of liberty therefore falls under category V.

#### *Concluding remarks*

85. Given its finding that Mr. Al-Faraj was arbitrarily deprived of his liberty without legal basis as a result of exercising his freedom of expression and in violation of his right to a fair trial and non-discrimination, the Working Group considers that the prosecution's original indictment seeking his death sentence is indefensible and the ongoing threat of his possible execution inexcusable. It is of grave concern that even the royal decree of 24 March 2020 addresses *ta'zir* offences, and not *hudud* offences for which Mr. Al-Faraj risks being executed; indeed, his family has yet to receive an amended indictment that no longer seeks the death sentence. Therefore, the Government has failed its obligation to respect, protect and fulfil the right to life under article 3 of the Universal Declaration of Human Rights.<sup>34</sup>

86. The Working Group reminds the Government that the General Assembly has consistently called upon all States to establish a moratorium on executions with a view to abolishing the death penalty since its resolution 62/149 of 18 December 2007 (para. 2 (d)). Most recently, in its resolution 73/175 of 17 December 2018 (para. 7), the General Assembly called upon all States to respect the safeguards guaranteeing protection of the rights of those facing the death penalty,<sup>35</sup> to progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age, to reduce the number of offences for which the death penalty may be imposed, and to ensure that the death penalty is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law, as well as to establish a moratorium on executions with a view to abolishing the death penalty.<sup>36</sup> The Working Group refers the present case to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

87. In its 29-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in about 60 cases.<sup>37</sup> The Working Group is concerned that this indicates widespread or systemic arbitrary detention in Saudi Arabia, which amounts to a serious violation of international law. The duty to comply with international human rights standards rests with all State organs, officers and agents as well as all other natural and legal persons. The Working Group recalls that under certain circumstances, widespread or

<sup>33</sup> See also art. 3 (1) of the Arab Charter on Human Rights.

<sup>34</sup> See also art. 5 (1) and (2) of the Arab Charter on Human Rights.

<sup>35</sup> See [www.ohchr.org/en/professionalinterest/pages/deathpenalty.aspx](http://www.ohchr.org/en/professionalinterest/pages/deathpenalty.aspx).

<sup>36</sup> See also General Assembly resolution 75/183.

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

systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>38</sup>

88. The Working Group welcomes the voluntary pledges pursuant to General Assembly resolution 60/251 concerning the Human Rights Council by Saudi Arabia.<sup>39</sup> In particular, the Working Group lauds the expressed willingness of the Government to cooperate with the Human Rights Council and its various mechanisms, including the special procedures. In the light of this, the Working Group would welcome the opportunity, at the earliest convenience to the Government, to conduct a visit to Saudi Arabia in order to engage with the Government in a constructive manner and to offer its assistance in addressing its serious concerns relating to instances of arbitrary deprivation of liberty.

### Disposition

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

The deprivation of liberty of Mohammed Essam Al-Faraj, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 (1) and (2), 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 2 (1) and (2), 13 (1), 15 (1), 37 (a), (b), (c) and (d) and 40 (2) (b) (i), (ii), (iii) and (iv) of the Convention on the Rights of the Child, is arbitrary and falls within categories I, II, III and V.

90. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Mr. Al-Faraj without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

91. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Faraj immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.<sup>40</sup> In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Al-Faraj.

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

93. The Working Group requests the Government of Saudi Arabia to bring its laws, in particular the relevant provisions of the Terrorist Crimes and Terrorism Financing Act of 2013, into conformity with the recommendations made in the present opinion and with the commitments made by Saudi Arabia under international human rights law.

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

95. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 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 extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief, for appropriate action.

<sup>38</sup> A/HRC/13/42, para. 30; and see, for example, opinions No. 1/2011, para. 21; No. 51/2017, para. 57; and No. 56/2017, para. 72.

<sup>39</sup> See A/75/377.

<sup>40</sup> Working Group on Arbitrary Detention, deliberation No. 10 (A/HRC/45/16, annex I) (identifying comprehensive reparations to which victims of arbitrary deprivation of liberty are entitled).

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

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

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

98. 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.

99. 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.

100. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>41</sup>

*[Adopted on 27 November 2020]*

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<sup>41</sup> Human Rights Council resolution 42/22, paras. 3 and 7.