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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. 86/2020 concerning Sheikh Mohammad bin Hassan Al Habib (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 26 June 2020 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Sheikh Mohammad bin Hassan Al Habib. The Government replied to the communication on 21 August 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. Sheikh Mohammad bin Hassan Al Habib, born in 1964, is a citizen of Saudi Arabia. He usually resides in the city of Safwa.

5. The source submits that Mr. Al Habib is a cleric known for supporting protests against the systematic discrimination faced by the Shia minority in Saudi Arabia, of which he also is a member. He was first threatened by the Saudi authorities in December 2012 over a sermon delivered in July 2012 in which he denounced religious hatred against the Shia community and called upon the Government to put an end to sectarianism. He was then accused of “insulting some religious leaders and authorities, calling for sectarianism, and incitement against the rulers causing disobedience” and was forced to sign a pledge not to give sermons that could be considered objectionable. Notwithstanding this restriction on his right to freedom of expression, Mr. Al Habib reportedly continued to oppose State-sponsored discrimination. In a sermon pronounced on 17 July 2015, responding to bomb attacks carried out against Shia and Husayniyah mosques, Mr. Al Habib mentioned how school curriculums propagated an ideology of hate toward Shiites by portraying them as “infidels”. The source adds that Mr. Al Habib expressed his views peacefully while promoting dialogue between Shia and Sunni Muslims.

a. Arrest, detention and trial proceedings

6. The source reports that on 8 July 2016, while travelling to Kuwait, Mr. Al Habib attempted to pass through Saudi immigration at the Khafji border crossing. At customs, he was arrested by members of the General Directorate of Investigation (Al Mabahith) without a warrant and was taken to the Al Mabahith prison in Dammam, where he was held in solitary confinement. On 21 July 2016, members of the intelligence services searched his house without a warrant and confiscated several laptops and mobile phones.

7. According to the source, at the Al Mabahith prison Mr. Al Habib was held incommunicado for nearly four months and was denied the right to contact his family and his lawyer. During this period, he was allegedly subjected to torture and ill-treatment. He was forced to swallow hallucinogenic substances and was threatened with beheading. He was also subjected to sleep deprivation for prolonged periods of time. On several occasions, he was obliged to remain in a squatting position for a prolonged time. He was ultimately forced to confess that he had attempted to leave Saudi Arabia illegally. As a result of being tortured, Mr. Al Habib continues to suffer long-lasting effects.

8. The source reports that Mr. Al Habib was first presented before a judicial authority on 27 October 2016, at a court hearing held before the Specialized Criminal Court in Riyadh. He was informed that he was charged with violating the terms of the aforementioned pledge not to give sermons that could be considered objectionable, which he made following the events of 2012 (see para. 5 above). On 16 November 2016, while Mr. Al Habib was in prison in Dammam, his lawyer was allowed to meet him for the first time. During the hearings, Mr. Al Habib explained that he had been forced to sign confessions under torture, and asked the prosecutor to present health reports as well as his interrogation records, which included video recordings of the interrogations. The prosecutor reportedly responded that the records had been erased.

9. On 10 July 2017, Mr. Al Habib was reportedly found not guilty of violating his pledge, as the judge ruled that the prosecution had not provided dates for the sermons submitted and as such was unable to prove that he had violated the pledge. On 4 January 2018, this decision was overturned on appeal by the appeal chamber of the Specialized Criminal Court, which sentenced him to seven years in prison for “sectarianism” and “calling people to sedition”, under Royal Decree No. 44.

10. While serving his sentence, Mr. Al Habib was reportedly further charged on 30 April 2018 with “endeavouring to shake the societal fabric and national unity by supporting protests inciting riots in Al-Qatif Governorate”, “attempting to leave Saudi Arabia for Kuwait irregularly” and “violating the Anti-Cybercrime Law”. Regarding the third charge, the prosecution invoked content extracted from electronic devices of his relatives, which were

seized on 21 July 2016. It included a picture of a Shia cleric, who was executed in January 2016 after being sentenced to death following an unfair trial. The source adds that the sentencing of Mr. Al Habib was based on charges that were directly related to the exercise of his fundamental right to freedom of opinion and expression.

11. The source reports that on 26 August 2019, the Specialized Criminal Court sentenced Mr. Al Habib to an additional five years in prison followed by a five-year travel ban. A copy of the verdict indicates that the judges of the Specialized Criminal Court applied article 6 of the Anti-Cybercrime Law. The ruling was upheld on appeal on 15 December 2019. Mr. Al Habib's lawyer lodged an appeal before the Supreme Court, which acts as a cassation court.

b. Analysis of violations

i. Category I

12. The source submits that Mr. Al Habib's detention falls under category I, as he was arrested without a warrant and was not promptly informed of the reasons for his arrest or of the charges against him. The source adds that such an arrest is arbitrary and seriously undermines the capacity to mount an appropriate legal defence, violating article 9 of the Universal Declaration of Human Rights as well as principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source also notes a breach of guideline No. 5 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.

13. The source argues that Mr. Al Habib was held *incommunicado* from 8 July 2016 to 27 October 2016, rendering his arrest and four-month-long custody in secret detention *prima facie* arbitrary. During this period, he was not allowed to communicate with his family or his lawyer. He was thus placed outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.

14. During this period, Mr. Al Habib was also unable to challenge the lawfulness of his detention, in violation of his right to habeas corpus inscribed in principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source recalls that the Working Group has further asserted that habeas corpus is in itself a "self-standing human right" that can be inferred from articles 8, 9 and 10 of the Universal Declaration of Human Rights. In its jurisprudence, the Working Group has consistently argued that holding a person *incommunicado* breaches the right to challenge the lawfulness of detention before a judge.

ii. Category II

15. The source submits that Mr. Al Habib's deprivation of liberty is a direct consequence of the exercise of his fundamental rights to freedom of thought, conscience and religion, in conjunction with his right to freedom of expression. As stated above, he was initially sentenced for "sectarianism" and "calling people to sedition". For the same facts, he was later charged with "endeavouring to shake the societal fabric and national unity by supporting protests inciting riots in Al-Qatif Governorate" under Royal Decree No. 44, a follow-up decree to the 2014 counter-terrorism law. The source adds that these charges refer to acts that clearly fall within Mr. Al Habib's right to freedom of thought, conscience and religion, as well as his right to freedom of opinion and expression, enshrined in articles 18 and 19 of the Universal Declaration of Human Rights. The source refers to the concluding observations of the Committee against Torture on the second periodic report of Saudi Arabia (CAT/C/SAU/CO/2), where the Committee expressed its concern that this decree contains an extremely broad definition of terrorism that would enable the criminalization of acts of peaceful expression, notwithstanding that such rights are guaranteed by article 19 of the Universal Declaration of Human Rights and by the Arab Charter on Human Rights.

16. The source submits that Mr. Al Habib was sentenced on the basis of article 6 of the Anti-Cybercrime Law on 26 August 2019. It adds that many activists and human rights defenders have been sentenced to lengthy prison terms under this provision for the peaceful exercise of their rights to freedom of expression, association and assembly.

17. The source recalls that both freedom of thought, conscience and religion, and freedom of expression, can legitimately be restricted for advocacy that incites acts of violence or discrimination against individuals on the basis of their religion. However, in the present case, Mr. Al Habib is being prosecuted for the second time by the Specialized Criminal Court merely because he peacefully denounced the violations and discrimination experienced by the Shia community. The source adds that the judicial harassment of Mr. Al Habib constitutes an attempt to hinder his work as a cleric and to silence his critical views of sectarianism.

18. The source submits that in light of the above, Mr. Al Habib's detention should be characterized as arbitrary under category II.

iii. Category III

19. The source submits that Mr. Al Habib was denied access to legal counsel during his interrogation and was only allowed to meet with his lawyer on 16 November 2016, although his trial had begun on 27 October 2016. Such delay in obtaining legal counsel reportedly contravenes principles 15 to 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court in which it is stated that persons deprived of their liberty shall have "the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension". Additionally, Mr. Al Habib was denied access to legal counsel during the initial hearings of his first trial in violation of article 11 of the Universal Declaration of Human Rights, which provides that everyone charged with a penal offence must have "all the guarantees necessary for his defence". As a result, his right to have adequate time and facilities for the preparation of his defence, and to communicate with counsel of his own choosing, were not respected.

20. The source further submits that the second trial against Mr. Al Habib amounted to a violation of the principle of *non bis in idem*. The charge of "endeavouring to shake the societal fabric and national unity by supporting protests inciting riots in Al-Qatif Governorate" levelled against him on 30 April 2018 refers to facts for which he had already been convicted on appeal on 4 January 2018. Mr. Al Habib was also tried twice for attempting to leave Saudi Arabia for Kuwait irregularly. The source believes that the prosecutors were not satisfied with the seven-year sentence and were seeking to add to it with the second case.

21. The source alleges that Mr. Al Habib was subjected to severe acts of torture and cruel, inhuman and degrading treatment. He was held incommunicado for nearly four months. The intent of the security forces that tortured Mr. Al Habib was to coerce him into signing pre-written self-incriminating statements. The source adds that this contravenes the absolute prohibition of torture enshrined in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 5 of the Universal Declaration of Human Rights and principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, the confessions extracted from Mr. Al Habib were not excluded from the court proceedings despite the fact that he informed the judicial authorities that they had been extracted under torture. This is in contravention of article 15 of the Convention against Torture and principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

22. The source reports that the prosecutor of the Specialized Criminal Court refused to disclose any document proving that Mr. Al Habib had in fact been tortured and threatened during the interrogation period, on the grounds that the interrogation records had been erased. The source argues that this form of withholding or destruction of crucial evidence represents a clear violation of Mr. Al Habib's right to equality of arms in a judicial proceeding.

23. The source also submits that Mr. Al Habib's right to a fair and public hearing by a competent, independent and impartial tribunal has been breached at all stages of the procedure. All the proceedings were held before the Specialized Criminal Court, a court established in 2008 to try cases of terrorism. The source recalls that in its concluding observations on the second periodic report of Saudi Arabia (CAT/C/SAU/CO/2), the Committee against Torture described the Court as "insufficiently independent of the Ministry of the Interior". The source also notes that during a country visit from 30 April to 4 May

2017, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism “received many reports about due process violations, including the lack of an effective habeas corpus guarantee; trials proceeding in secret; trials going ahead in the absence of defence lawyers; and trials in absentia with no effective defence” (A/HRC/40/52/Add.2). The source also notes that under article 27 of the 2014 counter-terrorism law as amended in 2017, the Specialized Criminal Court is authorized to hear secret witnesses and expert testimonies without providing the defence with any opportunity to cross-examine in person or through counsel. The Special Rapporteur recalled that this provision “violates the fundamental rights of defence, and can only be consistent with the right to a fair trial if counterbalanced by effective safeguards”.

24. Consequently, the source submits that the detention of Mr. Al Habib is arbitrary under category III.

iv. Category V

25. The source further argues that Mr. Al Habib’s deprivation of liberty constitutes a violation of international law on the grounds of discrimination due to his status as a member of a persecuted and marginalized religious minority group. The source notes that the Government of Saudi Arabia has long promoted an exclusionary form of Sunni Islam – strongly inspired by the Wahhabi doctrine, while disenfranchising many other religious communities, including, but not exclusively, Shia Muslims, who are concentrated in the Eastern Province of the country. The source adds that the Shia minority in Saudi Arabia faces systematic discrimination in the education system, in the criminal justice system, in religious practice and in political participation.

26. The source recalls that this discrimination has been noted by the Committee on the Rights of the Child. In its concluding observations on the combined third and fourth periodic reports of Saudi Arabia, the Committee stated that “children belonging to religious and atheistic minorities, especially children belonging to the Shia community, continue to be discriminated against in various areas, notably with respect to access to school and justice” (CRC/C/SAU/CO/3-4). In light of these shortcomings, the Committee urged Saudi Arabia to “respect the right of the child to freedom of thought, conscience and religion by taking effective measures to prevent and eliminate all forms of discrimination on the grounds of religion or belief and by promoting religious tolerance and dialogue in society”.

27. The source submits that, in addition, government-appointed religious figures frequently refer to the Shia minority in derogatory terms and vilify them in official documents, which are often cited in courts of law. In particular, the Council of Senior Religious Scholars has issued at least seven fatwas and publicly responded to questions submitted to it about Islamic beliefs and practice in a manner that is derogatory to members of the Shia community. The terms used include *rafidah* or *rawafid*, meaning “rejectionists”, and “polytheists”. Responding in a public meeting to a question about a Shia Muslim, one member of the Council reportedly stated that “they are not our brothers ... rather, they are brothers of Satan”. The source adds that such views can also be found in the education curriculum, which stigmatizes Shia religious beliefs and practices. In his sermons, Mr. Al Habib reportedly highlighted the fatal consequences of such biases, which were used by armed groups such as Islamic State in Iraq and the Levant and Al-Qaeda to justify targeting Shia civilians with violence.

28. The source notes that the crackdown against critical voices emanating from the Shia minority is reinforced by the fact that the Saudi criminal court system is staffed only by Sunni religious scholars. As of April 2017, no Shia citizens had served as prosecutors or judges in criminal courts.

29. In the light of the above, the source argues that Mr. Al Habib’s detention is arbitrary according to category V.

Response from the Government

30. On 26 June 2020, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 25 August 2020, detailed information about the current

situation of Mr. Al Habib and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Saudi Arabia under international human rights law. Moreover, the Working Group called upon the Government of Saudi Arabia to ensure his physical and mental integrity.

31. In its reply of 21 August 2020, the Government of Saudi Arabia underlines that the claims and allegations received in the communication submitted to the Working Group are inaccurate. The assertion that the detention is arbitrary and falls within categories I, II, III and V is based on allegations that are not supported by any evidence.

32. The Government submits that the individual in question had access to legal counsel, in accordance with the law. He was investigated in the first case and was released without being arrested. His case was referred to the court and he was again released. He was not arrested until after he had tried to leave Saudi Arabia illegally and be smuggled into Kuwait, on 8 July 2016. This refutes the claim that he was denied access to a lawyer and was not allowed to meet him until 16 November 2016. It confirms that the information received from the source is false and based on fabrications that do not reflect the reality of the situation.

33. The Government also states that the offences for which the individual concerned was convicted in the second case were different from those in the first case. By law, a person cannot be charged twice for the same offence. In the event that this does happen, the accused or his or her lawyer can invoke the previous ruling, whatever the outcome of the case. Even if the parties do not invoke the previous case, the court must adhere to the previous ruling, in accordance with article 186 of the Code of Criminal Procedure. A certified copy of the previous judgment or an attestation by the court is submitted to that end.

34. According to article 76 (1) of the Code of Civil Procedure, a motion for lack of jurisdiction; type or value of the suit; dismissal of the suit for lack of capacity, interest or any other ground; or if the suit has been previously decided, shall be admissible at any stage of the hearing and is to be decided by the court on its own motion. Moreover, the second case against the individual in question is still under judicial consideration, which confirms once again that the source's allegations are incorrect and are not based on evidence or reality.

35. According to the Government, the court took the necessary measures to verify the allegations made by the individual that he had been subjected to torture to coerce him to confess. None of these claims was proven to be true. It should be noted that judicial rulings are not handed down until it is proven that the person has committed a criminal act. A judicial ruling is not handed down until the entire case file has been examined and all the evidence, submissions and statements made by the public prosecutor, the defendant and his or her legal representative have been considered. In addition, the arrest report, witness testimony and expert reports must be taken into account. The penalties applicable differ depending on the crime that has been committed. If it is not proven that the defendant has committed any crime, the judge will rule not to convict him or her.

36. The Government adds that there is no discrimination between citizens of Saudi Arabia, and everyone enjoys all of their rights on an equal basis. Saudi laws do not include any provisions that discriminate against anyone, but instead criminalize and establish penalties for discrimination. All citizens have the same rights and duties. They enjoy equal rights in all fields, such as education, health, work, litigation and criminal justice. According to article 1 of the Civil Service Act, employees are appointed to public service positions based on merit. Accordingly, any citizen who meets the criteria can be employed in the public service or occupy a senior position in the State.

37. The Government refers to its report to the Committee on the Elimination of Racial Discrimination, which provided clarification of all matters related to its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and of the legislative and other measures taken to promote and protect human rights in Saudi Arabia and eliminate all forms of racial discrimination.

38. According to the Government, it is clear that the measures taken in respect of the case in question are appropriate and compatible with international human rights standards and with the human rights conventions to which Saudi Arabia is a party, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the

International Convention on the Elimination of All Forms of Racial Discrimination. These conventions form part of the domestic legal order. The measures are also compatible with 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 and the Universal Declaration of Human Rights.

39. The Government reiterates that the reasons given by the source to support the conclusion that the detention of this individual is arbitrary and falls within categories I, II, III and V are not based on any valid legal grounds but rather on incorrect information.

40. The Government notes that it responds to the letters, appeals and reports submitted to it and clarifies all the relevant facts in order to cooperate with the international human rights mechanisms. The Government hopes that this cooperation will be matched by the commitment of these mechanisms, including the Working Group on Arbitrary Detention, to take into account this information and to investigate the accuracy, objectivity and integrity of the conclusions reached, and not rely on the information and opinions provided by the source.

41. In conclusion, the Government reminds the Working Group of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council adopted by the Council in its resolution 5/2, and cites paras. 1–10 of the Code in particular.

Further comments from the source

42. On 27 August 2020, the response of the Government was transmitted to the source for further comments. In its comments of 8 September 2020, the source expresses its concern at the remarks made by the Government of Saudi Arabia regarding the Working Group's working methods and at the statement by the Government that the claims and allegations transmitted by the Working Group are not accurate and based on information received from the source without proof.

43. The source submits that the State's reply is both incomplete – several allegations remain unaddressed – and incorrect. The source affirms that the Government failed to demonstrate that it had followed the appropriate procedures and applied the guarantees required by law with regard to Mr. Al Habib's detention and trials.

44. The source refers to the claim by the Saudi authorities that Mr. Al Habib was provided with a lawyer and benefited from the assistance of a lawyer when he was investigated for the first time, before he was freed after his case was referred to court. In this respect, the source notes that the Saudi authorities are referring to an investigation conducted in 2012 when Mr. Al Habib was accused of "insulting some religious leaders and authorities, calling for sectarianism, and incitement against the rulers causing disobedience".

45. The source notes that although its initial submission focused on the violation of Mr. Al Habib's right to legal assistance after he was arrested on 8 July 2016, it would like to inform the Working Group that even during the investigation conducted in 2012, Mr. Al Habib was denied access to a lawyer. Most notably, he was not able to consult his counsel when he was compelled to sign a pledge not to give sermons with content considered objectionable.

46. The source further notes that the Government has failed to provide any information that would prove that Mr. Al Habib had access to a lawyer after he was arrested on 8 July 2016. The source maintains that Mr. Al Habib was denied legal assistance until 16 November 2016 when a lawyer was able to meet with him in prison in Dammam. During this period, he was held in isolation.

47. The source also reaffirms its initial claim that the charges levelled against Mr. Al Habib in the second case were brought deliberately in order to extend the imprisonment period, in violation of the *non bis in idem* principle. In this respect, the source maintains that Mr. Al Habib's sentence rendered on 26 August 2019 is based on accusations for which he had already been convicted by the appeal chamber of the Specialized Criminal Court on 4 January 2018.

48. The source expresses its concern at the statement by the Government that the second case against Mr. Al Habib was still “under judicial consideration”. According to the source, this contradicts the information received by Mr. Al Habib, who was informed that his five-year sentence had been upheld by the Supreme Court in March 2020 as part of the second case. By definition, the Supreme Court is the highest judicial authority in Saudi Arabia and its rulings cannot be appealed. The source notes that if the proceedings against Mr. Al Habib are still ongoing, he should be officially informed of the next hearing in order to prepare his defence.

49. The source notes the Government’s affirmation that the court took the necessary measures to verify the allegations that Mr. Al Habib was subjected to torture to force him to confess, but that none of these claims was proven to be true, without providing any details about these measures. The source points out that the measures referred to by the State fall short of international standards. In the source’s view, these shortcomings are inconsistent with principle 3 (a) of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and breach article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

50. The source also refers to the claim by the Government that Mr. Al Habib’s initial arrest results from his irregular border crossing from Saudi Arabia to Kuwait. The source submits that this information is incoherent with the fact that Mr. Al Habib’s arrest took place at an official border crossing. The only evidence for the alleged escape attempt in the charge sheet is allegedly a confession by Mr. Al Habib. Yet, he was immediately detained by the Al Mabahith security forces following his arrest and was never presented before an administrative court in relation to the alleged offence of illegal border crossing.

51. The source refers to the concluding observations of the Committee on the Elimination of Racial Discrimination, of 2018, in which the Committee noted the lack of specific domestic legislation prohibiting direct and indirect racial discrimination in Saudi Arabia.¹ The Committee further expressed concern that “ethno-religious minorities face obstacles in freely practising their right to freedom of religion or belief, including the prohibition on constructing religious places of worship or conducting public worship. It is also concerned that certain ethno-religious minorities face discrimination in education, employment and the legal system.”²

52. The source affirms that the Shia religious minority in Saudi Arabia still faces systematic discrimination in the education system, in religious practice and in political participation. This systemic discrimination is also reflected by the fact that nearly all judges and prosecutors in Saudi Arabia are Sunni, and that there are reportedly no Shia citizens who have served as prosecutors or judges in criminal courts.

53. The source also recalls that the persecution and ongoing detention of Mr. Al Habib results from his advocacy against the discrimination experienced by Shia Saudi citizens.

Discussion

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

55. In determining whether Mr. Al Habib’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 established 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).

56. The source has submitted that the detention of Mr. Al Habib falls under categories I, II, III and V. The Government denies these allegations and argues that the arrest and subsequent detention of Mr. Al Habib was carried out in accordance with the national

¹ CERD/C/SAU/CO/4-9, para. 11.

² *Ibid.*, para. 23.

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.³

Category I

57. The source has submitted that Mr. Al Habib was arrested on 8 July 2016 and that no warrant was presented at the time of his arrest; nor was he informed of the reasons for his arrest. Although the Government had the opportunity, it has chosen not to respond to these allegations.

58. The Working Group has previously stated that, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.⁴ Indeed, the international law on deprivation of liberty includes 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.

59. The Working Group also recalls its previous jurisprudence concerning Saudi Arabia⁶ where it has consistently held that an arrest warrant, even assuming that it was issued by the Minister of the Interior or by delegated organs such as the General Directorate of Investigation (Al Mabahith), 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 reiterates its view that the Ministry of the Interior or its delegated organs cannot be considered as a competent authority in this respect. The Working Group once again stresses that any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial authority with oversight exercised by the judicial authority is arbitrary and lacks legal basis.

60. In the present case, Mr. Al Habib was arrested without a warrant; nor was he provided promptly with the reasons for his arrest or informed of the charges against him until he appeared before a court on 27 October 2016, more than 100 days after his initial arrest. The Working Group therefore concludes that a breach of articles 3 and 9 of the Universal Declaration of Human Rights took place.⁷

61. The source has further alleged that Mr. Al Habib was held incommunicado from the moment of his arrest for some four months, an allegation that the Government has chosen not to address.

62. The Working Group notes with concern that it has received numerous complaints about prolonged incommunicado detention in Saudi Arabia of Saudi citizens and foreign nationals by the General Directorate of Investigation (Al Mabahith) – the Ministry of the

³ Opinions No. 46/2011, No. 42/2012, No. 50/2017, No. 79/2017, No. 1/2018, No. 20/2018, No. 37/2018 and No. 50/2018.

⁴ See, for example, opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018 and No. 79/2018.

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

⁶ See, for example, opinions No. 93/2017 and No. 10/2018.

⁷ Opinions No. 10/2015, para. 34; and No. 46/2019, para. 51.

Interior's domestic intelligence service doubling as a secret police agency – which has been nearly ubiquitous in the cases referred to the Working Group from Saudi Arabia for almost three decades, since the first appearance in a decision by the Working Group at its eighth session, in 1993.⁸

63. The Working Group recalls that incommunicado detention lacks any valid legal basis and is inherently arbitrary as it places the victims outside the protection of the law and deprives them of any legal safeguards, in violation of article 6 of the Universal Declaration of Human Rights.⁹ The Working Group thus finds a further breach of Mr. Al Habib's rights under articles 3, 6 and 9 of the Universal Declaration of Human Rights.

64. Moreover, as the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court.¹⁰ The Working Group notes that Mr. Al Habib 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 27 October 2016, which was more than 100 days after his arrest on 8 July 2016, an allegation which has not been contested by the Government. The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty¹¹ and is essential in ensuring that detention has a legal basis. Given that Mr. Al Habib was not able to challenge the legality of his detention, his rights under articles 8 and 10 of the Universal Declaration of Human Rights were also violated.

65. Furthermore, the Working Group observes that Mr. Al Habib was held in secret detention as well, an allegation that has not been rebutted by the Government. The Working Group recalls that "no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of law, without the possibility of resorting to legal procedures, including habeas corpus".¹² Indeed, the Human Rights Council in its resolution 37/3 stressed that no one shall be held in secret detention and called upon States to investigate all alleged cases of secret detention, including under the pretext of countering terrorism.¹³ The Working Group consequently finds a breach of articles 3, 8 and 9 of the Universal Declaration of Human Rights.

66. Finally, the Working Group observes that Mr. Al Habib was convicted and sentenced to five years of imprisonment on 26 August 2019 on the basis of article 6 of the Anti-Cybercrime Law, which is confirmed by the Government.

67. In that regard, the Working Group recalls its previous jurisprudence concerning this provision of Saudi law, where it found article 6 to be formulated in vague and broad terms, in breach of the principle of legal certainty.¹⁴ The Working Group reiterates that the principle

⁸ The Working Group found the deprivation of liberty of the person(s) concerned to be arbitrary in its decisions 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, No. 10/2018, No. 68/2018, No. 22/2019, No. 26/2019, No. 56/2019, No. 71/2019 and No. 33/2020. The Working Group did not find the detention of the person concerned to be arbitrary in opinion No. 44/2006, and it filed the case after the release of the detainee(s) in decision No. 37/1993 and opinions No. 22/2005 and No. 18/2014.

⁹ Opinions No. 56/2019 and No. 33/2020.

¹⁰ Opinions No. 28/2016, No. 79/2017, No. 93/2017 and No. 33/2020.

¹¹ 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), para. 3.

¹² A/HRC/16/47, para. 54.

¹³ Human Rights Council resolution 37/3, paras. 8–9; and A/HRC/13/42, paras. 18–23.

¹⁴ Opinions No. 10/2018, para. 52; and No. 71/2019, para. 73.

of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law, and regulate their conduct accordingly.¹⁵

68. 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 such laws have the potential for abuse, including the arbitrary deprivation of liberty.¹⁶ Consequently, the Working Group finds that the detention and sentencing of Mr. Al Habib under the *lèse-majesté* provisions in article 6 (1) of the Anti-Cybercrime Law expressly violates international human rights law, as well as the principle of legal certainty, and, as such, lacks a legal basis.¹⁷

69. The Working Group thus considers that Mr. Al Habib's arrest and detention violate articles 3, 6, 8, 9 and 10 of the Universal Declaration of Human Rights, lack a legal basis and are thus arbitrary, falling under category I.

Category II

70. The source submits that Mr. Al Habib's deprivation of liberty is a direct consequence of the exercise of his fundamental rights to freedom of thought, conscience and religion, in conjunction with his right to freedom of expression. The source argues that the charges against Mr. Al Habib refer to acts that clearly fall within his right to freedom of thought, conscience and religion, as well as his right to freedom of opinion and expression, enshrined in articles 18 and 19 of the Universal Declaration of Human Rights. Although the Government had the opportunity to address these allegations, it has failed to do so, as it does not provide any explanation in its response as to what actions of Mr. Al Habib constituted a criminal act and how they amounted to such an act.

71. The Working Group observes that Mr. Al Habib was charged with violating the terms of the pledge given in 2012 not to give sermons that could be considered objectionable. Although initially acquitted of the charge, he was ultimately sentenced by the Specialized Criminal Court, an allegation not addressed by the Government.

72. The Working Group recalls that the present case is yet another case where it has been asked to examine deprivation of liberty by the Government under the provisions of the Anti-Cybercrime Law.¹⁸ The individuals in these prior cases, like Mr. Al Habib in the current one, were deprived of their liberty for peaceful expression of their views and also for giving sermons. For this reason, the Working Group has in the past found prosecution and imprisonment under the Anti-Cybercrime Law, as well as under the counter-terrorism law, to be arbitrary when they result from the legitimate exercise of fundamental human rights.¹⁹

73. The Working Group recalls that 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 those that are imposed for the purposes of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society. The Working Group notes the failure of the Government to explain how the actions of Mr. Al Habib required the imposition of any restrictions under the justifications listed in article 29 (2) of the Universal Declaration of Human Rights. In fact, the Working Group is not convinced that the arrest, detention and sentencing of Mr. Al Habib was necessary or proportionate.

74. Furthermore, the Working Group notes that Mr. Al Habib was arrested as he was attempting to cross the border into Kuwait, an allegation confirmed by the Government. The Working Group recalls that article 13 of the Universal Declaration of Human Rights protects

¹⁵ See, for example, opinion No. 41/2017, paras. 98–101; see also opinion No. 62/2018, paras. 57–59.

¹⁶ Opinion No. 10/2018, para. 55.

¹⁷ Opinions No. 71/2019, para. 75; and No. 4/2019, para. 49.

¹⁸ See, for example, opinions No. 63/2017, No. 93/2017, No. 10/2018, No. 68/2018, No. 26/2019 and No. 71/2019.

¹⁹ Opinions No. 63/2017, paras. 54–63; and No. 71/2019, para. 82.

the right of everyone to leave any country, including his own. In the present case, the Government has not presented any legitimate reasons as to why the attempted crossing of the border by Mr. Al Habib would warrant the need to detain him, and the Working Group therefore finds that his arrest resulted from his legitimate exercise of rights under article 13 of the Universal Declaration of Human Rights.

75. Noting all the above, the Working Group concludes that the deprivation of liberty of Mr. Al Habib is arbitrary, falling within category II, as it violates articles 13, 18, 19 and 20 of the Universal Declaration of Human Rights. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

Category III

76. Given its finding that the deprivation of liberty of Mr. Al Habib is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, the trials did take place and Mr. Al Habib has been sentenced. Therefore, the Working Group will now consider whether the alleged violations of the right to a fair trial and of due process were of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

77. The source has alleged that Mr. Al Habib did not have access to a lawyer until 16 November 2016, which is a considerable time after he was arrested on 8 July 2016. The source also alleges that he was interrogated during this time, in the absence of a lawyer. While the Government has argued that Mr. Al Habib had access to legal counsel in accordance with the law, it has failed to provide any further details as to when and how this access was ensured.

78. The Working Group therefore considers the allegations put forward by the source as credible and finds that the absence of legal counsel for Mr. Al Habib during his interrogations and up until 16 November 2016 violated his right to legal assistance as part of his right to a fair trial and due process under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This was also a violation of principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

79. Furthermore, the Working Group expresses its concern at the allegations of the treatment that Mr. Al Habib was subjected to, including solitary confinement, which according to the source amounted to torture and was directed at extracting a confession. The Working Group notes that the Government has merely stated that these allegations were found to be untrue, without providing any specific details as to what steps the judicial and other authorities undertook to investigate the allegations of torture and ill-treatment of Mr. Al Habib. The Working Group also notes that the Government did not contest the source's submissions that all attempts to obtain the evidence showing the ill-treatment and torture that Mr. Al Habib was subjected to during the interrogations were rejected by the authorities. The Working Group considers that the source has established a prima facie case that Mr. Al Habib was subjected to treatment that could amount to torture, and in the light of this finds a violation of article 5 of the Universal Declaration of Human Rights and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

80. Moreover, the Working Group has already established that Mr. Al Habib was interrogated repeatedly in the absence of legal counsel and while in incommunicado detention. As the Working Group has stated previously, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.²⁰ Furthermore, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to

²⁰ A/HRC/45/16, para. 53. See also opinions No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; No. 73/2019, para. 91; and No. 41/2020, para. 70; and E/CN.4/2003/68, para. 26 (e).

support the verdict.²¹ The burden is on the Government to prove that the statements were given freely,²² but in this case it has not done so.

81. The Working Group therefore finds a violation of Mr. Al Habib's fundamental fair trial rights, including the right to be presumed innocent and the right not to confess guilt, under articles 10 and 11 of the Universal Declaration of Human Rights. The Working Group also notes that the use of a confession extracted through ill-treatment that is tantamount if not equivalent to torture may also constitute a violation by Saudi Arabia of its international obligation under article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment specifically prohibits taking undue advantage of the situation of detention to compel confession or incriminating statements (see principle 21). The Working Group is particularly concerned at the failure of the judiciary to take action when presented with credible allegations of ill-treatment and torture, and as well as at the actions of prosecutors²³ in erasing the interrogation records. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

82. The Working Group will now turn to the source's allegations that the second trial against Mr. Al Habib amounted to a violation of the principle of *non bis in idem*. The charge of "endeavouring to shake the societal fabric and national unity by supporting protests inciting riots in Al-Qatif Governorate" levelled against him on 30 April 2018 reportedly refers to facts for which he had already been convicted on appeal on 4 January 2018. While the Government had the opportunity to address these allegations, it has merely summarily rejected them, and argues that Mr. Al Habib and his lawyer were free to contest the sentencing as stipulated in the national legislation which also upholds the principle of *non bis in idem* (see para. 33 above). The Working Group cannot accept this as a response addressing the allegations from the source and recalls that it falls to the Government to provide a clear and detailed response to allegations made. Therefore, the Working Group concludes that the fundamental due process principle of *non bis in idem* appears to have been violated, as Mr. Al Habib was tried and convicted twice for the same factual circumstances in breach of article 10 of the Universal Declaration of Human Rights.

83. The Working Group observes that Mr. Al Habib was tried by the Specialized Criminal Court, an allegation not contested by the Government. In this regard, the Working Group recalls its earlier jurisprudence concerning this court which established it to be insufficiently independent of the Ministry of the Interior.²⁴ To this end, the Working Group notes that the Specialized Criminal Court, which tried, convicted and sentenced Mr. Al Habib, is a court of exception with jurisdiction over terrorism cases that is not composed of independent judges but of a panel appointed by the Ministry of the Interior. The Committee against Torture has also expressed concern that this Court is insufficiently independent of the Ministry of the Interior.²⁵ The Working Group further notes the assessment of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism that the recent power realignment and governmental reorganization has placed the Ministry's investigatory powers directly under the authority of the Public Prosecution and the Presidency of State Security, both of which report directly to the King, and that concerns regarding the lack of independence of the Court therefore remain undiminished.²⁶

84. The Working Group has already stated previously²⁷ that the Specialized Criminal Court cannot be considered an independent and impartial tribunal that complies with the presumption of innocence and guarantees necessary for defence, and it remains of the same

²¹ Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

²² See, for example, opinions No. 48/2018, No. 52/2018, No. 79/2018 and No. 41/2020.

²³ Opinion No. 47/2017, para. 29; and the Guidelines on the Role of Prosecutors, guideline 16.

²⁴ Opinion No. 10/2018, para. 73.

²⁵ CAT/C/SAU/CO/2, para. 17.

²⁶ A/HRC/40/52/Add.2, para. 47.

²⁷ See, for example, opinions No. 22/2019, para. 74; No. 26/2019, para. 102; No. 56/2019, para. 86; and No. 71/2019, para. 44.

view in the present case. The trial before the Court thus contravenes article 10 of the Universal Declaration of Human Rights. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

85. Furthermore, the Working Group notes that the Government has failed to address the allegations by the source that the house of Mr. Al Habib's relatives was searched on 21 July 2016 without a warrant, that various items, including electronic devices, were seized, and that the evidence extracted from such search was later used in the proceedings against Mr. Al Habib. The Working Group considers that whatever evidence, if any, was obtained through this search should not have been used in proceedings against Mr. Al Habib as it was improperly obtained without a search warrant.²⁸ Mr. Al Habib's right to a fair trial under article 10 of the Universal Declaration of Human Rights was thus further violated.

86. Given all the above considerations, the Working Group concludes that the violations of Mr. Al Habib's right to a fair trial and due process are of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

Category V

87. The Working Group will now examine whether the deprivation of liberty of Mr. Al Habib was arbitrary under category V, as submitted by the source. In this regard, the Working Group first of all notes the submissions by the Government that everyone in Saudi Arabia is treated equally and that no discrimination is permitted in law, which were made citing numerous legal provisions as well as submissions that it had made to various United Nations bodies.

88. The Working Group notes that the source has presented a credible case of a nearly decade-long discriminatory attitude by the Saudi authorities against Mr. Al Habib as a member of the Shia minority. The present case is only the last in a series of cases and allegations against him, and the Working Group is particularly mindful of the pledge that he was required to give in 2012. The Working Group notes the failure of the Government to address these specific allegations.

89. The Working Group also notes that the views and beliefs of Mr. Al Habib are clearly at the centre of the present case and that the authorities have displayed an attitude towards him that can only be characterized as discriminatory. Indeed, he has been the target of persecution and there is no explanation for this other than his exercise of the right to express such views and beliefs. The Working Group recalls that when detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.²⁹

90. For these reasons, the Working Group considers that the deprivation of liberty of Mr. Al Habib constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights on the grounds of discrimination based on religion, aimed at and resulting in ignoring the equality of human beings. Mr. Al Habib's deprivation of liberty therefore falls under category V.

91. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of religion or belief.

92. In its 29-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in over 60 cases.³⁰ The Working Group reiterates its

²⁸ Opinions No. 36/2018, No. 78/2018, No. 79/2018, No. 83/2018, No. 31/2019, No. 33/2019 and No. 83/2019.

²⁹ Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; and No. 15/2020, para. 82.

³⁰ 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.

concern that this indicates a widespread or systemic problem of 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 systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.³¹

93. The Working Group welcomes the voluntary pledges pursuant to General Assembly resolution 60/251 concerning the Human Rights Council by Saudi Arabia.³² 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

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

The deprivation of liberty of Sheikh Mohammad bin Hassan Al Habib, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 13, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

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

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

97. 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 Habib and to take appropriate measures against those responsible for the violation of his rights.

98. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; (b) the Special Rapporteur on the independence of judges and lawyers; (c) the Special Rapporteur on freedom of religion or belief; and (d) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

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.

³¹ A/HRC/13/42, para. 30; and opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011; para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

³² See A/75/377.

99. The Working Group encourages the Government to become a State party to the International Covenant on Civil and Political Rights.

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

Follow-up procedure

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

102. 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.

103. 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.

104. 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.³³

[Adopted on 26 November 2020]

³³ Human Rights Council resolution 42/22, paras. 3 and 7.