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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March to 8 April 2022

Opinion No. 36/2022 concerning Hussein Abo al-Kheir (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,¹ on 29 November 2021 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Hussein Abo al-Kheir. The Government replied to the communication on 7 January 2022. 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,

* In accordance with paragraph 5 of the Working Group's methods of work, Priya Gopalan did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).

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. Hussein Abo al-Kheir is a national of Jordan, born in 1965. He usually resides in Aqaba, Jordan, and, prior to his detention, he worked as a driver.

a. Context

5. On 18 January 2021, the Human Rights Commission of Saudi Arabia announced an unofficial moratorium on the use of the death penalty for drug offences. Nevertheless, under the 2005 act on the control of narcotics and psychotropic substances, the death penalty remains a valid sentence in law for those who commit drug offences, including trafficking, with intent to supply.

6. On 10 June 2021, the King of Saudi Arabia reportedly issued royal directives to the General Directorate of Prisons, ordering officials to implement pardon procedures for individuals who were being detained for drug offences. The source adds that reports confirm that the new pardons will be applied to individuals detained for drug smuggling if it is their first offence and they have served half of their sentence, or they will have served half their sentence within nine months. Despite these developments, Mr. Abo al-Kheir reportedly remains at risk of execution.

7. The source also notes that special procedures of the Human Rights Council have previously engaged the Government of Saudi Arabia on Mr. Abo al-Kheir's case, in communications SAU 5/2015 and SAU 7/2017.²

b. Arrest and detention

8. On 18 May 2014, Mr. Abo al-Kheir was reportedly arrested by Saudi Arabia customs officials as he was crossing from Jordan into Saudi Arabia at the Durra border post. The border guards asked him to go into an office while they searched his car. After some time, they presented him with bags containing over 200,000 Captagon (amphetamine) pills that they claimed to have found in his car. The source notes that Mr. Abo al-Kheir denied any knowledge of the drugs.

9. The officials reportedly proceeded to arrest Mr. Abo al-Kheir. According to the public prosecutor, Captagon pills are illegal in Saudi Arabia under article 3 (1) of the act on the control of narcotics and psychotropic substances act. Thus, their discovery justified the arrest under article 112 of the Code of Criminal Procedure and article 142 of the Common Customs Law of the Arab States of the Gulf.

10. From 18 to 31 May 2014, Mr. Abo al-Kheir was allegedly held in incommunicado detention at an unknown location by the Durra counter-narcotics authority, under the auspices of the General Directorate of Narcotics Control within the Ministry of the Interior of Saudi Arabia. During this period, the authorities interrogated Mr. Abo al-Kheir and allegedly subjected him to various types of torture. They allegedly suspended him from his feet with his head facing down and proceeded to beat him on his stomach, head, feet, hands and face. They also insulted him and subjected him to degrading treatment. On 27 May 2014, he reportedly signed a document confessing to the crimes of which he was accused in order to make the torture stop. He was detained for another four days in incommunicado detention, and was only able to contact his family two weeks after his initial arrest.

11. Following his interrogation, Mr. Abo al-Kheir was subsequently held in pretrial detention in Tabuk prison from 31 May 2014 to 29 January 2015 by the General Directorate of Prisons, under the auspices of the Ministry of the Interior.

² Available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

12. On 29 January 2015, following an alleged grossly unfair trial (see paras. 25–28 below), Mr. Abo al-Kheir was sentenced to death for drug smuggling offences and subsequently placed on death row in Tabuk prison. At the time of the source's submission, he remained detained there.

13. The Supreme Court reportedly overturned the verdict on 1 July 2017. However, the Government requested a retrial. On 26 November 2017, Mr. Abo al-Kheir was again found guilty and re-sentenced to death. On 26 September 2019, Mr. Abo al-Kheir's family were made aware that the Supreme Court had upheld his death sentence, and that he had exhausted his appeal rights.

14. In the source's understanding, the authorities' reasons for keeping Mr. Abo al-Kheir detained between 31 May 2014 and 26 September 2019 were to investigate and prosecute him for the alleged smuggling of the Captagon pills allegedly found in his car, and then to hold him pending the appeal of his death sentence to the Court of Appeal and the Supreme Court.

15. Mr. Abo al-Kheir has reportedly thus been held in detention since 18 May 2014. The source presumes that the Bureau of Investigation and Prosecution, within the Ministry of the Interior, ordered the pretrial detention and death-row stages of his detention. The source submits that the conditions of his detention have not met the standards set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). In detention, he has reportedly been deprived of access to information about his case, legal advice, medical care and communication with his family.

c. Domestic remedies

16. Mr. Abo al-Kheir has reportedly exhausted his domestic remedies. The only option available to him is to apply for a reconsideration of his sentence under article 204 of the Code of Criminal Procedure. However, the source adds that this would require him to be legally represented. In this respect, the source notes that Saudi Arabia has not provided Mr. Abo al-Kheir with access to legal representation and neither his family nor the source have been able to secure legal representation for him because of the reported risks to lawyers working on this type of case in the country.

d. Medical condition

17. The source submits that Mr. Abo al-Kheir is in extremely bad health having not seen a doctor during his more than seven years of detention, and he is now nearly blind. He also continues to suffer from stomach pains and pain in his legs following the alleged brutal torture sustained during the incommunicado detention at the hands of the Saudi authorities between 18 and 31 May 2014. His ongoing detention reportedly places him at risk of permanent blindness and irreversible health conditions caused by untreated injuries.

18. Mr. Abo al-Kheir's mental health is also currently deteriorating, as he has been at risk of imminent execution since 26 September 2019 and does not know if or when he will be executed. The source notes that it seems likely that he is experiencing the death row phenomenon, which amounts to a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and which could lead to severe psychological harm. The uncertainty of his situation, and the false hope stoked by the informal assurances provided to him by prison guards, compound the effect of this situation on his mental health.

19. In August 2021, Mr. Abo al-Kheir was reportedly moved to a section of Tabuk prison where unwell and infirm inmates are held. According to the source, this demonstrates that the prison authorities consider him to have a low standard of physical health. These health conditions also compound the risk that he will develop severe illness if he is to contract the coronavirus disease (COVID-19) in prison.

e. Analysis of violations

20. In the light of the above, the source submits that the arrest and detention of Mr. Abo al-Kheir is arbitrary, falling under categories I, III and V.

i. Category I

21. According to the source, it is not clear if the basis for the deprivation of Mr. Abo al-Kheir's liberty is authorized by law.

22. First, Mr. Abo al-Kheir reportedly no longer knows the legal basis for his ongoing detention, and the conditions of his detention in Tabuk prison prevent him, his family or the source from establishing this. On 18 January 2021, the Human Rights Commission of Saudi Arabia announced a moratorium on the use of the death penalty for drug offences. The source adds that, to date, there has been no official indication that this moratorium has been brought into law (see para. 5 above). On 1 June 2021, Mr. Abo al-Kheir was able to call a family member, and conveyed that he understood that his death sentence had been suspended and that the sentence was being reviewed by the Ministry of the Interior. However, to date this has not been verified, and the legal basis for his ongoing detention therefore remains unclear.

23. Second, the source submits that the detention of Mr. Abo al-Kheir on death row has continued despite the emergence of the policy applicable to those in detention for drug offences (see para. 6 above). However, Mr. Abo al-Kheir reportedly did not feature on the lists of individuals pardoned by the King. The source adds that it follows that there is thus a lack of legal certainty around the position of Mr. Abo al-Kheir, an individual who has been sentenced to death for drug offences, in relation to this policy.

24. Finally, the source submits that while indefinite detention is not provided for by law in Saudi Arabia, it appears that Mr. Abo al-Kheir is being detained indefinitely. The source adds that the failure of Saudi Arabia to announce a plan for dealing with individuals on death row for drug offences, such as Mr. Abo al-Kheir, following the announcement of the moratorium on the use of the death penalty for drug offences, has the effect of rendering his detention indefinite and therefore arbitrary.

ii. Category III

25. The source submits that the international norms relating to the right to a fair trial have been completely ignored in Mr. Abo al-Kheir's case, rendering his ongoing detention on death row arbitrary.

26. Firstly, torture-tainted evidence was allegedly used to convict Mr. Abo al-Kheir and sentence him to death, in contravention with the right to a fair trial. As outlined in paragraph 10 above, between 18 May and 27 May 2014 he was reportedly brutally tortured into confessing to drug smuggling. The source notes that he retracted this confession before Tabuk Criminal Court on 15 December 2014 and again on 6 July 2017, stipulating that the authorities had tortured him into signing the confession with his fingerprint because he had been beaten so badly that he could not hold a pen. Mr. Abo al-Kheir's torture allegations have reportedly never been investigated, despite him presenting to the Court, on 6 July 2017, a request for a medical report on 6 July 2017.

27. Secondly, the source submits that Mr. Abo al-Kheir was never provided with legal representation in court, and was forced to represent himself in court, in clear contravention with the right to a fair trial in applicable international and domestic law.

28. Thirdly, the source submits that it appears that Mr. Abo al-Kheir was denied access to consular information on arrest. The source notes that this may amount to a violation of article 36 of the Vienna Convention on Consular Relations, to which Saudi Arabia is a party. Also, Mr. Abo al-Kheir's relatives report that he did not have access to his consulate before, during and after his capital trial. The source asserts that this failure runs counter to the principle, recognized by, inter alia, the Secretary-General of the United Nations, that access to consular assistance is a minimum fair trial guarantee in death penalty cases.³

iii. Category V

29. The source submits that both the reasons for and the conditions of Mr. Abo al-Kheir's ongoing detention amount to violations of the principle of non-discrimination on the grounds

³ The source refers to [A/HRC/27/23](#), para. 54.

of national origin, to which Saudi Arabia has committed to abide, and therefore contribute to the arbitrary character of his ongoing detention.

30. First, the source notes that Mr. Abo al-Kheir is one of a disproportionate number of foreign nationals sentenced to death for drug offences in Saudi Arabia. There is thus a presumption that the reasons for his detention may be linked to a discriminatory application of the death penalty for drug offences to foreign nationals. The source adds that while they make up only 32 per cent of the population, nationals of countries other than Saudi Arabia represent 73 per cent of those who have been executed for drug offences during the reign of the current King. These figures reportedly point to the discriminatory application of the death penalty for drug offences to foreign nationals, who are more likely to be coerced into acting as drug mules and arrested on borders. The source thus submits that Mr. Abo al-Kheir's detention on death row stems from a discriminatory application of the legal provision of the death penalty as a punishment for drug offences, which appears to be applied almost exclusively to foreign nationals in Saudi Arabia.

31. Second, the source submits that the current conditions of detention run counter to the principle of non-discrimination in the administration of prisons as provided for in the Nelson Mandela Rules, specifically rule 58, read in conjunction with rule 2. Mr. Abo al-Kheir is reportedly not able to communicate with his family at regular intervals. He is able to call them sporadically, several times a year, only for several minutes at a time. In order to use the telephone, he must pay, and he does not have any money. The source notes that this treatment differs from the treatment of nationals of Saudi Arabia in detention, who are able to speak with their family members on a weekly basis.

Response from the Government

32. On 29 November 2021, 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 28 January 2022, detailed information about the current situation of Mr. Abo al-Kheir 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.

33. In the Government's reply of 7 January 2022, it emphasizes that the communication includes false allegations and claims that are based on information from the source that is devoid of any evidence or proof. The Government explains the steps it has taken to investigate the allegations and to clarify all relevant facts, in line with its policy of cooperation with international human rights procedures.

34. The Government notes that it already indicated in its previous response⁴ to the joint communication SAU 5/2015 that the individual in question had been arrested on 18 May 2014, in accordance with articles 2 and 33 of the Code of Criminal Procedure, by customs officers at the Durra border post after the vehicle he was driving had raised suspicions. After the vehicle was put through the X-ray scanner, it was found that there were foreign objects in the fuel tank. Upon inspection by a customs officer, three bags holding 195 smaller bags were found, containing 292,000 pills banned under the act on the control of narcotics and psychotropic substances.

35. The Government rejects the source's claims relating to Mr. Abo al-Kheir's incommunicado detention at an unknown location, and to torture and ill-treatment, as untrue. As was explained in the response to the joint communication, the Embassy of Jordan in Riyadh was informed at the time of the arrest and detention and of the reasons for the detention, in line with the Vienna Convention on Diplomatic Relations. The Government states that this confirms that his family and the embassy of his country know where he is being detained and are aware of the measures taken against him. He is being held at Tabuk prison, which is a designated and well-known place of detention. There are no secret detention centres in Saudi Arabia. The Government refers to articles 2 and 37 of the Code of

⁴ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32459>.

Criminal Procedure. All prisons and detention centres in Saudi Arabia are subject to judicial, administrative, health and social inspections.

36. Mr. Abo al-Kheir was reportedly investigated by the public prosecution service and arrested on charges of having committed a serious offence that necessitated detention, in accordance with decision No. 2000 and based on article 112 of the Code of Criminal Procedure. His period in custody was subsequently extended in accordance with article 114 of the Code. An indictment was issued against him, and a memorandum of charges was filed that included a charge of smuggling 292,000 prohibited pills, an offence criminalized under article 3 (1) of the act on the control of narcotics and psychotropic substances, and a charge of customs evasion, under article 142 of the Common Customs Law of the Arab States of the Gulf. The public prosecution service referred the case file to the competent court, in accordance with articles 15 and 126 of the Code.

37. The Government further submits that Mr. Abo al-Kheir was not subjected to torture or ill-treatment. Of his own free will, he confessed to the charges against him before the investigating authorities, then confirmed that confession before the courts, in a manner consistent with article 101 (2) of the Code of Criminal Procedure. He did not plead coercion before the courts. The country's laws prohibit torture, provide for the punishment of perpetrators of torture, and contain a series of guarantees and measures aimed at ensuring that no detainee or prisoner is subjected to torture, ill-treatment or other cruel, inhuman or degrading treatment.

38. In the interest of further enhancing oversight and safeguarding the rights of prisoners and detainees, the Human Rights Commission may visit prisons and detention centres at any time without authorization from the competent authority, receive and verify human rights-related complaints and take corresponding legal measures. The National Society for Human Rights, a civil society association, also visits prisons and detention facilities and receives complaints. State institutions have a legal obligation to ensure that all individuals are treated fairly, regardless of their religion, race, gender or nationality. In the event of a violation, a number of mechanisms provide effective safeguards, including the courts and governmental and non-governmental human rights institutions.

39. The Government reaffirms that Saudi Arabia is committed to the human rights treaties that it has ratified, including the Convention against Torture, which are deemed to constitute part of national law.

40. Turning to the claims that Mr. Abo al-Kheir was sentenced to death for drug trafficking offences following an unfair trial, the Government submits that on 26 September 2019, his family was made aware that the Supreme Court had upheld his death sentence. The Government explains that the country's legislation provides all guarantees of a fair trial and due process consistent with the country's international human rights obligations, and that these were also applied in the case in question. The law provides for a number of procedural safeguards that regulate criminal proceedings, guarantee the rights of defendants and ensure that the latter are presumed innocent until found guilty under the terms of a final court judgment handed down in conformity with relevant requirements.

41. When the individual in question appeared at his trial, in the presence of the public prosecutor, the case for the prosecution was read out to him and he was provided with a copy. The trial continued and the court issued its judgment only after it had heard statements from all of the parties, after the submission of all oral and written defence pleas, after the parties had confirmed that they did not wish to make any additions thereto, after the evidence and the evidence-collection records had been examined, after the closing arguments had been presented in his presence, and after all relevant documentation had been scrutinized.

42. The case was heard by three judges in the court of first instance, in accordance with article 20 of the law on the judiciary. The court of first instance handed down the death sentence, in accordance with the act on the control of narcotics and psychotropic substances. Once the first instance judgment had been handed down, Mr. Abo al-Kheir was granted the right to challenge the judgment by filing a memorandum of appeal within 30 days of receiving a copy of the judgment, in accordance with article 192 (1) of the Code of Criminal Procedure.

43. The appeal was lodged, but the judges of the court of first instance upheld their original judgment. The case file was then referred to the Court of Appeal pursuant to article 196 of the Code of Criminal Procedure. The law states that, in the case of a death penalty, it is mandatory to submit the case file to the Court of Appeal, even if none of the parties submits such a request, in accordance with article 194 of the Code.

44. The Court of Appeal upheld the death sentence, and the case was referred to the Supreme Court pursuant to article 10 of the Code of Criminal Procedure. The case was examined and reviewed by five Supreme Court judges, in accordance with article 10 (4) of the law on the judiciary.

45. After reviewing the case and examining the case papers, the Supreme Court issued a judgment overturning the individual's conviction and returning the case to the court of first instance for reconsideration by different judges, in accordance with article 11 of the Code of Criminal Procedure. After the case was returned to the court that issued the original judgment for reconsideration by different judges, the same criminal proceedings were conducted, and a death sentence was again handed down.

46. The case file was submitted to the Court of Appeal, which ruled to uphold the sentence after reviewing it. The case file was then submitted to the Supreme Court, which also ruled to uphold the judgment.

47. Accordingly, all stages of the proceedings have been completed and the judgment has become final and enforceable, in accordance with article 210 of the Code of Criminal Procedure. The death penalty may not be executed against the convicted person until an order has been issued to that effect. The penalty has not yet been enforced.

48. The procedures followed and the guarantees provided in the case of the person concerned are consistent with international human rights law and standards, and with international legal procedures and fair trial standards. They are also consistent with the international safeguards guaranteeing protection of the rights of persons facing the death penalty, including the provisions of Economic and Social Council resolution 1984/50.

49. The Government further submits that the death penalty is imposed only for the most serious crimes and in extremely limited circumstances. It is not handed down or carried out until judicial proceedings in courts of all levels have been completed. Domestic legislation provides guarantees of a fair trial and due process that are consistent with the country's international human rights obligations. The Government also notes that in accordance with article 38 of the Basic Law of Governance, there can be no offence and no penalty save on the basis of sharia or statutory provisions.

50. The Government also argues that the right to challenge the legality of arrest or detention is a general principle of law in Saudi Arabia that is guaranteed to all arrested and detained persons, as set forth in article 115 of the Code of Criminal Procedure. In accordance with the law in Saudi Arabia, the public prosecution service is independent and part of the judiciary, and no one has the right to interfere in its work.

51. The Government further explains that any person whose rights have been violated may lodge a complaint using the available legal remedies. State institutions have a legal obligation to ensure that all individuals are treated fairly, regardless of their religion, race, gender or nationality. A number of mechanisms provide effective safeguards, including the courts and governmental and non-governmental human rights institutions.

52. The Government reiterates that the individual concerned was not prevented from appointing a lawyer to defend him during the investigation and trial stages, and he is still able to do so now. This was confirmed when the Human Rights Commission visited him. He is guaranteed this right in accordance with articles 4 (1) and 65 of the Code of Criminal Procedure. The Ministry of Foreign Affairs notified the embassy of his country of his arrest and informed it that it had the right to appoint a lawyer to defend its citizens.

53. The Government stresses that the claim that Mr. Abo al-Kheir is unable to obtain legal representation because of the risks to which lawyers are exposed in this type of case is unacceptable and incorrect.

54. All accused persons have the right to legal counsel and to appoint a legal representative or lawyer for the investigation and the trial, in accordance with article 4 (1) of the Code of Criminal Procedure. The Government also refers to article 139 of the Code. The job of lawyers in Saudi Arabia is to contribute to the attainment of justice and to defend the rights and freedoms that are guaranteed by law. Lawyers in the country enjoy independence, legal protection and the freedom to plead on behalf of others with no restrictions other than those envisaged in law. Lawyers may not be held accountable for statements they make in submissions before the court, in accordance with article 13 of the code of law practice. All judicial bodies and investigating authorities are required to provide lawyers with the facilities they require to perform their duties and must grant them access to the case files and enable them to be involved with the investigation. None of their requests may be rejected without legitimate justification.

55. According to the Government, just as other detainees and prisoners do, the individual concerned has the right to receive visits and to make domestic and international phone calls. He has been in regular contact with his family since his arrest. An international phone calling card was secured for him to enable him to contact his family, and he made a call to his son on 28 December 2021. He has also been given the right to receive visits, and his wife and children visited him previously and his wife visited him in 2019 before they returned to Jordan. He told the Human Rights Commission representatives, during a previous visit, that he had been granted the right to visits and telephone calls.

56. The Government argues that detainees and prisoners undergo a medical examination immediately after their placement in the general prison. Prisoners also undergo periodic medical examinations, and medical care is provided to all prisoners and detainees, in accordance with article 22 of the imprisonment and detention law.

57. All places of detention and prisons are subject to judicial, administrative, health and social inspections in accordance with article 5 of the Act. The Government also refers to article 39 of the Code of Criminal Procedure regarding complaints and article 12 of the imprisonment and detention law regarding the right to regular visits and telephone calls.

58. According to the Government, this is in line with relevant international standards, such as the Nelson Mandela Rules, in particular rules 1, 7, 24 (1), 56 (1) and 58 (1). Consequently, the conditions of his detention are found to be in compliance with the Nelson Mandela Rules.

59. In relation to the source's claim that the individual in question is in poor health, the Government submits that since his arrest, Mr. Abo al-Kheir has received the necessary medical care, as other detainees and prisoners do. He has diabetes and high blood pressure, and his condition is stable. He has regular check-ups at specialized medical clinics. He was transferred to wing No. 1, which houses detainees with chronic diseases, so that he could receive regular medical care. Like other detainees, he is also provided with appropriate food and meals. The Government also states that he has not contracted COVID-19.

60. With regard to the source's claim that the alleged violations amount to arbitrary deprivation of liberty under categories I, III and V, the Government submits that the claim is devoid of evidence and contrary to reality.

61. With regard to the source's submissions under category I, the Government submits that the arrest, detention, interrogation and trial of Mr. Abo al-Kheir were carried out in accordance with the law, and he was sentenced to death in accordance with the act on the control of narcotics and psychotropic substances of 2005, which is currently in force.

62. With regard to the submissions that the detention of the individual concerned is arbitrary and falls under category III, as the authorities are alleged to have ignored his right to a fair trial, the Government has already stated that Mr. Abo al-Kheir enjoyed a fair trial before a competent court. The allegations about the use of evidence extracted under torture are untrue. Of his own free will, Mr. Abo al-Kheir confessed to the charges against him before the investigating authorities, then acknowledged that confession before the courts. When confirming his confession before the court, he did not claim that it had been coerced.

63. However, during his trial Mr. Abo al-Kheir claimed that he had been subjected to torture. The court took the measures necessary to verify the allegations of torture, but the

claims proved to be untrue. As stated above, Mr. Abo al-Kheir was not subjected to torture, ill-treatment or other cruel, inhuman or degrading treatment. In making a judgment, the judge does not rely on confessions but on factual and presumptive evidence, arrest and search reports, witness testimonies and cross-examinations and statements heard during the trial proceedings. Measures taken by the judge in that context may comprise hearing witnesses, visiting and inspecting the scene of the offence and seeking the assistance of experts, including forensic medical examiners.

64. The trial, in fact, serves as the final investigation and therefore necessitates safeguards and protection for the parties involved. Article 161 of the Code of Criminal Procedure provides that if at any time accused persons confess to the charges against them, the court must hear their statements and question them on the details. It is a violation of sharia and domestic law to obtain evidence through torture and, under article 187 of the Code, any course of action contrary to sharia and applicable statutory law derived from sharia is invalid.

65. As has already been explained, Mr. Abo al-Kheir was not prevented from appointing a lawyer to defend him during the investigation and trial stages, and he is still able to do so now (see para. 52 above).

66. In respect of the claims that the reasons for his detention amount to a violation of the principle of non-discrimination on the basis of national origin, the Government submits that Mr. Abo al-Kheir was arrested in flagrante delicto committing a drug smuggling offence punishable under the law of Saudi Arabia. The country's laws apply to everyone without discrimination. Domestic laws prohibit any restriction of movement of individuals, detention or imprisonment save in accordance with the law, as established in article 36 of the Basic Law of Governance. Saudi Arabia complies with its international obligations, including those under the International Convention on the Elimination of All Forms of Racial Discrimination.

67. The Government further explains that the foregoing information clearly and effectively refutes the conclusion reached by the source that the detention of Mr. Abo al-Kheir amounts to arbitrary deprivation of liberty under categories I, III and V. That conclusion lacks sound legal foundations, being based as it is on illegitimate grounds and misinformation.

68. According to the Government, it is clear from the above that the allegations and claims contained in the Working Group's communication are untrue. The measures taken against this individual are consistent with international human rights standards and the country's obligations under international human rights law and the human rights conventions to which Saudi Arabia is a party, including the Convention against Torture.

69. The Government further explains that Saudi Arabia was one of the first States to take steps to counter the spread of COVID-19 in prisons and places of detention. Preventive steps and precautionary measures have been taken in prisons to prevent the spread of COVID-19, in line with the protocols and guidelines approved by the Ministry of Health for dealing with the pandemic.

70. In conclusion, 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. It also reminds the Working Group of the Code of Conduct for Special Procedure Mandate Holders of the Human Rights Council issued under Human Rights Council resolution 5/2, in particular articles 6 (a)–(c), 9 (a), (d) and (e), 12 (a) and (b) and 13 (a) and (b).

Further comments from the source

71. On 10 January 2022, the Government's reply was transmitted to the source for further comments. In its response of 24 January 2022, the source reiterates its original submissions.

Discussion

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

73. In determining whether the deprivation of liberty of Hussein Abo al-Kheir is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁵

74. The source submits that the arrest and detention of Mr. Abo al-Kheir is arbitrary under categories I, III and V, while the Government denies these allegations. The Working Group shall proceed to examine the submissions under each category in turn.

Category I

75. The source questions whether there is a legal basis for the deprivation of Mr. Abo al-Kheir's liberty, given that the Human Rights Commission of Saudi Arabia announced on 18 January 2021 that a moratorium was in place for the use of the death penalty for drug offences. The source adds that, to date, there has been no official indication that this moratorium has been brought into law. The source reports that Mr. Abo al-Kheir understands that his death sentence has been suspended and that the sentence is being reviewed by the Ministry of the Interior. However, to date this has reportedly not been verified, and the legal basis for his ongoing detention therefore remains unclear.

76. In its response, the Government does not directly address the issue of the moratorium, explaining merely that with regard to the facts, both substantive and procedural law justified the handing down of the death sentence for Mr. Abo al-Kheir, in accordance with the act on the control of narcotics and psychotropic substances (see paras. 42–47 above). The Government maintains that all stages of the proceedings have been satisfied and the judgment has become final and enforceable, in accordance with article 210 of the Code of Criminal Procedure. It adds that the final judgment has not yet been enforced.

77. The Working Group considers a deprivation of liberty as arbitrary under category I when it is impossible to invoke any legal basis justifying the deprivation of liberty, such as where a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her.

78. It is not clear to the Working Group if the announced moratorium on the death penalty on drug-related offences is in effect, nor what its scope is. The source expresses its concern about the lack of legal certainty around the position of Mr. Abo al-Kheir, an individual who has been sentenced to death for drug offences. The Government did not address the moratorium in its response. Instead, it explains the legal position under its procedural and substantive law that justified its actions and notes that Mr. Abo al-Kheir was sentenced to death on the basis of a law that is currently in place.

79. The source notes that the King of Saudi Arabia issued royal directives to the General Directorate of Prisons, ordering officials to implement pardons procedures for individuals who were being detained for drug offences. The source adds that such directives have the status of a policy applicable to those in detention for drug offences, and that Mr. Abo al-Kheir did not feature on the lists of individuals pardoned by the King.

80. Based on the limited information available to it, the Working Group is unable to determine whether Mr. Abo al-Kheir's detention was arbitrary because of the announced moratorium.

81. The source also alleges that from 18 to 31 May 2014, Mr. Abo al-Kheir was held in incommunicado detention at an unknown location by the Durra counter-narcotics authority. During this period, Saudi authorities allegedly interrogated him and subjected him to various types of torture leading to his signing a document on 27 May 2014, confessing to the crimes of which he was accused. The source also alleges that Mr. Abo al-Kheir was subsequently held in incommunicado detention for another four days and was only able to contact his family two weeks after his initial arrest.

⁵ A/HRC/19/57, para. 68.

82. The Government of Saudi Arabia, however, rejects the claim by the source as untrue, insisting that the Embassy of Jordan in Riyadh was informed at the time of the arrest and detention of the reasons for his detention in line with the Vienna Convention on Diplomatic Relations. The Government adds that Mr. Abo al-Kheir's family and the embassy of his country know that he is being held at Tabuk prison, a designated and well-known place of detention. The Government maintains that there are no secret detention centres in Saudi Arabia.

83. The Working Group recalls that incommunicado detention means that the detainee is not permitted any contact with the world outside the place of detention or incarceration. This distinguishes incommunicado detention from secret detention or enforced disappearance, where the fate or whereabouts of the victim are unknown, and the detention not acknowledged. Although the Government states that the Embassy of Jordan was informed of Mr. Abo al-Kheir's detention, it does not contest that he was unable to contact his family and/or a lawyer for a period of two weeks. As the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court. The Working Group also notes the lack of information provided as to when Mr. Abo al-Kheir was initially brought before a judge or whether he was afforded the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention. Although the Government argues that the right to challenge the legality of an arrest or detention is guaranteed to all arrested and detained persons, as set forth in article 115 of the Code of Criminal Procedure, it does not specify whether this right was afforded to Mr. Abo al-Kheir and, if so, when.

84. In this regard, the Working Group is mindful that judicial oversight of detention is a fundamental safeguard of personal liberty⁶ and is essential in ensuring that detention has a legal basis. Given that Mr. Abo al-Kheir was unable to contact anyone, and especially his lawyer, which is an essential safeguard to ensure the ability of any detainee to personally challenge his or her detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights was violated. The Working Group also observes that he was not brought promptly before a judge within 48 hours of arrest, as is the international standard, barring absolutely exceptional circumstances.⁷ As he was unable to challenge the legality of his detention, his rights under article 10 of the Universal Declaration of Human Rights were also violated.

85. The source further alleges that following his arrest and interrogation, Mr. Abo al-Kheir was held in pretrial detention in Tabuk prison from 31 May 2014 to 29 January 2015 by the General Directorate of Prisons, under the auspices of the Ministry of the Interior. After his trial, he was sentenced to death. The Supreme Court overturned the verdict on appeal on 1 July 2017, prompting the Government to request a retrial. On 26 November 2017, he was again found guilty and re-sentenced to death. This was subsequently upheld by the Supreme Court. At the time of the source's submission of the complaint, he was still being held on death row in Tabuk prison.

86. According to the source, Mr. Abo al-Kheir has thus been held in detention since 18 May 2014 (see para. 15 above). The source presumes that the Bureau of Investigation and Prosecution, within the Ministry of the Interior, ordered the pretrial detention and death row stages of his detention.

87. In its response, the Government has pointed to a number of domestic laws and procedures to justify the pretrial detention. It states that Mr. Abo al-Kheir was investigated by the public prosecution service and arrested on charges of having committed a serious offence that necessitated detention, in accordance with decision No. 2000 and based on article 112 of the Code of Criminal Procedure. His period in custody was subsequently extended in accordance with article 114 of the Code of Criminal Procedure. An indictment was issued against him, and a memorandum of charges was filed. The public prosecution service referred the case file to the competent court, in accordance with articles 15 and 126 of the Code.

⁶ A/HRC/30/37, para. 3.

⁷ See opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; and No. 30/2019, para. 30.

88. The Working Group recognizes that States are the bearers of the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including liberty of person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international and regional instruments.⁸ Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and indeed obliged to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.⁹

89. Under international human rights law, pretrial detention must be the exception rather than the rule. Pretrial detention must be based on an individualized judicial determination that it is reasonable and necessary to prevent flight, interference with evidence or the recurrence of crime, and must be accompanied by consideration of whether alternatives, such as bail, would render detention unnecessary.¹⁰ In the present case, the source alleges that Mr. Abo al-Kheir's detention was imposed by the prosecution (see paras. 15 and 86 above). This allegation has not been refuted by the Government in its response, as it states that the detention was initiated and extended on the basis of articles 112 and 114 of the Code of Criminal Procedure, respectively. No information has been provided as to which authority initiated and subsequently extended his detention. The Government has also not specified if an individualized judicial assessment was conducted to determine whether the pretrial detention was indeed necessary, or whether alternatives to detention would have sufficed in this case.

90. The Working Group thus finds that the Government of Saudi Arabia has not demonstrated that the international requirements in relation to pretrial detention were met. The pretrial detention of Mr. Abo al-Kheir was not constituted in accordance with article 9 of the Universal Declaration of Human Rights and principles 11, 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

91. For the reasons set out above, the Working Group finds that the deprivation of liberty of Mr. Abo al-Kheir lacks a legal basis and is thus arbitrary and falls under category I.

Category III

92. The source alleges that international norms relating to the right to a fair trial have been completely ignored in Mr. Abo al-Kheir's case, rendering his ongoing detention on death row arbitrary. The Government, in turn, explains that legislation in Saudi Arabia provides all guarantees of a fair trial and due process consistent with the country's international human rights obligations, and that these were also applied in the case in question.

93. The source submits that Mr. Abo al-Kheir, a foreign national, was never provided with legal representation, and was forced to represent himself in court, in clear contravention of the right to a fair trial as set out in applicable international and domestic law. In its response, the Government states that he was not prevented from appointing a lawyer to defend him during the investigation and trial stages, and he is still able to do so now. This was reportedly confirmed when the Human Rights Commission visited him. The Government adds that all accused persons have the right to legal counsel and to appoint a legal representative or lawyer for the investigation and the trial, in accordance with article 4 (1) and 65 of the Code of Criminal Procedure. It also notes that the Ministry of Foreign Affairs notified the Embassy of Jordan of the arrest and informed it that it had the right to appoint a lawyer to defend its citizens. The Government further dismisses the claim that Mr. Abo al-Kheir is unable to

⁸ See, inter alia, General Assembly resolution 72/180 and Human Rights Council resolutions 41/2, 41/6, 41/17, 43/26, 45/19, 45/20 and 45/29. See also opinions No. 18/2019, para. 24; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

⁹ See, inter alia, opinions No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

¹⁰ [A/HRC/19/57](#), paras. 48–58; and opinion No. 33/2020, para. 76.

obtain legal representation because of the risks to which lawyers are exposed in this type of case (see para. 16 above).

94. The Working Group considers legal representation a core facet of the right to a fair trial. Legal assistance should be available at all stages of criminal proceedings, namely before trial, during trial and at the appellate stages, to ensure compliance with fair trial guarantees.¹¹ Any denial of access to lawyers substantially undermines and compromises an accused individual's capacity to defend himself or herself in any judicial proceedings.

95. Principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 61 (1) of the Nelson Mandela Rules stipulate that defendants must have access to legal counsel without delay. 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 a counsel of their choice at any time during their detention, including immediately after apprehension, and must be promptly informed of this right upon apprehension. Access to legal counsel should not be unlawfully or unreasonably restricted.

96. The Working Group reiterates that it is not enough for a government to have laws on its statute book that guarantee the right to legal representation in conformity with international fair trial standards. The right to a counsel of one's choice in its many permutations must be observed in practice. In this respect, the Working Group underlines that the right to legal assistance is even more pertinent in a death penalty case involving a foreign national, and it notes that the court should not have proceeded without legal representation for the individual on trial, even if he for whatever reason might not have asked for it.

97. The Working Group therefore considers that the absence of a legal counsel for Mr. Abo al-Kheir 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.

98. The source also alleges that torture-tainted evidence was used to convict Mr. Abo al-Kheir and to sentence him to death, in violation of the right to a fair trial. Reportedly, between 18 May and 27 May 2014 he was brutally tortured into confessing to drug smuggling. He allegedly retracted this confession before the Tabuk Criminal Court on two occasions, stipulating that the authorities had tortured him into signing the confession with his fingerprint. The source adds that Mr. Abo al-Kheir's torture allegations have never been investigated, despite him presenting to the Court, on 6 July 2017, a request for a medical report.

99. The Government submits in response that Mr. Abo al-Kheir was not subjected to torture or ill-treatment. He freely and voluntarily confessed to the charges against him before the investigating authorities, then confirmed that confession before the courts. The Government notes that he did not plead coercion before the courts. However, it adds that Mr. Abo al-Kheir claimed during his trial that he had been subjected to torture. The court took the measures necessary to look into the torture allegations, which proved to be untrue, but the Government does not provide any further details. Additionally, the Government submits that the country's laws prohibit torture, provide for punishment of perpetrators of torture and contain a series of guarantees and measures aimed at ensuring that no detainee or prisoner is subjected to torture, ill-treatment or other cruel, inhuman or degrading treatment (see paras. 37–39 above).

100. The Working Groups recalls that international human rights law requires that detainees should be protected from any practices that violate their right to be free from pain or suffering, whether physical or mental, and which are inflicted intentionally on a person. This has been clearly stated in the Convention against Torture. The Committee against

¹¹ A/HRC/45/16, paras. 50–55.

Torture has noted that the right to freedom from torture and other ill-treatment or punishment is absolute.¹²

101. Any statement made as a result of torture cannot be invoked as evidence, in accordance with article 15 of the Convention against Torture. Where allegations or suspicions arise that a statement was obtained as a result of violations of human rights, authorities are required to give the accused and the court information about the circumstances in which it was obtained. The source adds that the court must then assess the issue in a separate hearing before the evidence is admitted to trial. Consistent with the presumption of innocence, the prosecution bears the burden of proving beyond reasonable doubt that the evidence was obtained lawfully.

102. In the present case, the Working Group notes with serious concern the allegations that the Saudi authorities interrogated Mr. Abo al-Kheir and subjected him to various types of torture, including suspending him from his feet with his head facing down and beating him on his stomach, head, feet, hands and face. The source also referred to insults and degrading treatment directed at him. This reportedly forced him into signing a confession. In its response, the Government merely denies such allegations and points to its internal law and procedures designed to curb torture. It does not provide any specific details as to what steps the judicial and other authorities undertook to investigate the torture allegations.

103. The Government also submits that Mr. Abo al-Kheir's confessions were entirely voluntary. However, the Working Group has already established, and the Government has not contested, that the confessions were provided while he was being held incommunicado, without access to a lawyer, during interrogations without a lawyer. As the Working Group has previously stated, the presence of legal counsel during interrogations is an essential safeguard in ensuring that any admissions by an individual are given freely. The Working Group considers that confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.¹³

104. In the present case, it appears that not only was Mr. Abo al-Kheir subjected to torture and ill-treatment while he was being interrogated in the absence of his lawyer, but the court took no action when he retracted his confession before the Tabuk Criminal Court on 15 December 2014 and again on 6 July 2017, stipulating that the authorities had tortured him into signing the confession with his fingerprint. 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 support the verdict.¹⁴ The burden is on the Government to prove that statements were given freely, but in this case it has not done so.

105. The Working Group therefore finds a violation of Mr. Abo al-Kheir'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 notes that the use of a confession extracted through ill-treatment is tantamount, if not equivalent, to torture and may constitute a violation by Saudi Arabia of its international obligations under article 15 of the Convention against Torture. Furthermore, principle 21 of 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. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

106. The source further submits that Mr. Abo al-Kheir was denied access to consular information on arrest. The source notes that this may amount to a violation of article 36 of the Vienna Convention on Consular Relations, of which Saudi Arabia is a party. Also, Mr.

¹² General comment No. 2 (2007).

¹³ [A/HRC/45/16](#), para. 53. See also opinions No. 40/2012, No. 1/2014, No. 14/2019 and No. 59/2019; and [E/CN.4/2003/68](#), para. 26 (e).

¹⁴ 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.

Abo al-Kheir's relatives report that he did not have access to his consulate before, during and after his capital trial. The source asserts that this failure runs counter to the principle, recognized by, *inter alia*, the Secretary-General, that access to consular assistance is a minimum fair trial guarantee in death penalty cases.¹⁵

107. According to the Government, the Embassy of Jordan was informed at the time of Mr. Abo al-Kheir's arrest and detention and also of the reasons for his detention, in line with the Vienna Convention on Diplomatic Relations. However, the Government does not address the allegation that he did not have access to his consulate before, during and after his capital trial. With reference to its previous jurisprudence, the Working Group finds that Saudi Arabia has violated Mr. Abo al-Kheir's right to consular assistance as stipulated in article 36 of the Vienna Convention on Consular Relations and principle 16 (2) of the Body of Principles.¹⁶ The Working Group recalls that such consular assistance is even more pertinent in a death penalty case involving a foreign national.

Category V

108. The Working Group notes that the source has also argued, and the Government has contested, that the deprivation of liberty of Mr. Abo al-Kheir falls within category V. The Working Group did not find sufficient elements to make any determination in this respect. It notes that some of the allegations have already been addressed under category III.

Concluding remarks

109. The Working Group expresses its concern for the well-being of Mr. Abo al-Kheir, who has now been detained for over eight years. He is currently on death row and may be experiencing the death row phenomenon, which itself can amount to torture or cruel, inhuman or degrading treatment.¹⁷ With reference to its finding that the detention of Mr. Abo al-Kheir is arbitrary following an unfair trial, the Working Group urges the Government to quash his death sentence and to immediately and unconditionally release him and ensure that he receives medical care. In this respect, the Working Group refers to its recent study on arbitrary detention relating to drug policies, where it stated that imposing the death penalty for drug-related offences is incompatible with international standards on the use of the death penalty.¹⁸ The Working Group refers the case to the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

110. In its 30-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in over 65 cases.¹⁹ The Working Group reiterates its 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 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.²⁰

¹⁵ Reference is made to [A/HRC/27/23](#), para. 54.

¹⁶ See, *inter alia*, [A/HRC/39/45](#), paras. 50–58.

¹⁷ [A/67/279](#), paras. 42–51 and [A/HRC/30/18](#), paras. 30–31. See also opinion No. 4/2021, para. 110.

¹⁸ [A/HRC/47/40](#), paras. 41–43. See also opinions No. 14/1996, No. 4/2016, No. 90/2018 and No. 72/2019.

¹⁹ 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, No. 33/2020, No. 86/2020, No. 92/2020, No. 34/2021, No. 59/2021 and No. 72/2021.

²⁰ [A/HRC/13/42](#), para. 30; and opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 51/2017, para. 57; and No. 56/2017, para. 72.

111. The Working Group welcomes the voluntary pledges pursuant to General Assembly resolution 60/251 concerning the Human Rights Council by Saudi Arabia.²¹ In particular, the Working Group lauds the expressed willingness of the Government to cooperate with the Council and its various mechanisms, including the special procedures. In the light of this, and recalling its request for a country visit, reiterated on 24 August 2021 and 4 February 2022, the Working Group would welcome the opportunity, at the Government's earliest convenience, 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 regarding instances of arbitrary deprivation of liberty.

Disposition

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

The deprivation of liberty of Hussein Abo al-Kheir, being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

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

114. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Abo al-Kheir immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global 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 unconditional release of Mr. Abo al-Kheir.

115. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Abo al-Kheir and to take appropriate measures against those responsible for the violation of his rights.

116. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

Follow-up procedure

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

²¹ See [A/75/377](#).

(e) Whether any other action has been taken to implement the present opinion.

119. 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.

120. 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.

121. 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.²²

[Adopted on 8 April 2022]

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