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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023

#### Opinion No. 27/2023 concerning Salma bint Sami bin Abdulmohsen al-Shehab and Nourah bin Saeed al-Qahtani (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 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 15 December 2022 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Salma bint Sami bin Abdulmohsen al-Shehab and Nourah bin Saeed al-Qahtani. The Government replied to the communication on 10 February 2023. 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).

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<sup>1</sup> [A/HRC/36/38](#).



## Submissions

### *Communication from the source*

4. Salma bint Sami bin Abdulmohsen al-Shehab is 34 years old. She is a national of Saudi Arabia and a PhD student at the medical school of the University of Leeds, United Kingdom of Great Britain and Northern Ireland. Ms. Nourah bin Saeed al-Qahtani is 47 years old and a national of Saudi Arabia.

5. According to the source, Ms. Al-Shehab is also a women's rights advocate and member of the Shia Muslim minority in Saudi Arabia. On her Twitter account, she has peacefully defended women's rights, called for the freedom of wrongfully detained human rights activists in Saudi Arabia and supported freedom for Palestine. Her Twitter account includes the following phrase and hashtags in the biography line: "Life is belief and struggle", "#Quds\_is\_Arabic", "#Stop\_Killing\_Women" and "#Freedom\_for\_prisoners\_of\_opinion". She has frequently reposted the tweets of a Saudi woman activist protesting against Loujain Alhathloul's harsh prison sentence and travel ban.<sup>2</sup> She has also posted tweets against the oppression of Arab women and in support of intersectional feminism. On 30 August 2019, she tweeted: "I reject injustice, and support the oppressed ... Freedom for prisoners of conscience and for all the oppressed in the world." On 20 December 2020, she tweeted: "Freedom for the inmates of patriarchy, shame on the jailer!"

6. On 15 January 2021, while on holiday in Saudi Arabia, Ms. Al-Shehab was called in for "questioning" at the Presidency of State Security facility in Dammam, without a lawyer being present. The officers of the Presidency of State Security questioned Ms. Al-Shehab about having retweeted in support of Ms. Alhathloul and about having watched a dissident's YouTube videos. Five officers tried to coerce her into stating support for the Muslim Brotherhood, a banned group in Saudi Arabia, by threatening her with violence, insulting her family members and verbally harassing her about being a Shia Muslim. After the questioning had concluded, they did not permit Ms. Al-Shehab to leave and confined her in a jail run by the Presidency of State Security in Dammam. The officers neither presented Ms. Al-Shehab with an arrest warrant nor informed her of the reason for her arrest or any charges against her. Officers of the Presidency of State Security told members of Ms. Al-Shehab's family not to worry, promising them that she would be released soon. Later, the officers of the Presidency of State Security searched Ms. Al-Shehab's home in Saudi Arabia without a search warrant.

7. For the first 13 days of her detention, Ms. Al-Shehab was denied any communication with the outside world and was kept separately from other detainees.<sup>3</sup> After this period, she was allowed to have phone calls and meet with her family members from behind a glass wall. Despite Ms. Al-Shehab's requests, she was not provided with a lawyer, informed of the charges or presented before a judge. Officers took advantage of Ms. Al-Shehab's depression by interrogating her in the middle of the night, shortly after she had taken her antidepressant and sleeping pills. The officers told her that nobody outside was asking about her and nobody cared about her. They continued to harass Ms. Al-Shehab in a similar manner to how she was treated during her initial questioning. She was regularly transferred between Dammam and Riyadh for interrogation and was not always allowed to inform her family about the transfers.

8. In October 2021, 10 months after being arrested, Ms. Al-Shehab was charged with a number of terrorist offences under the Law on Combating Crimes of Terrorism and their Financing (the "Anti-Terrorism Law"). A government lawyer was appointed to Ms. Al-Shehab, but the lawyer failed to communicate with her. Ms. Al-Shehab's family hired a private lawyer with whom she was to prepare for the trial. However, all their conversations were monitored, with officers able to see and hear them.

9. In October 2021, the trial before the Specialized Criminal Court began in closed court. Ms. Al-Shehab's government-appointed lawyer appeared in court, but Ms. Al-Shehab chose to proceed with her privately hired lawyer. The only evidence presented against Ms. Al-

<sup>2</sup> Opinion No. 33/2020, para. 100.

<sup>3</sup> According to documents submitted to the Specialized Criminal Court of Appeal, Ms. Al-Shehab stated that she had been held in solitary confinement for 285 days.

Shehab consisted of her Twitter activity – the activists she was following, and her retweets supporting them – and her statements during interrogation. Ms. Al-Shehab requested an opportunity to tell the judge in private about the threats of violence and verbal harassment that she had been subjected while being interrogated, so that Ms. Al-Shehab’s family member would not hear. However, the judge rejected the request and, as a result, Ms. Al-Shehab was not able to tell the Court what she had suffered during the initial phase of detention. At times, the dates of the hearings were changed at such short notice that Ms. Al-Shehab’s legal team was unable to properly prepare.

10. On 14 March 2022, the Specialized Criminal Court held that Ms. Al-Shehab was guilty of “giving a wider platform for terrorist messaging by spreading ‘false information’ that threatens national security and public order and endangers State and/or national stability” (in accordance with article 43 of the Anti-Terrorism Law). She was sentenced to six years in prison, and the judge ordered her phone to be confiscated and her Twitter account to be shut down permanently.

11. Both parties appealed the decision of the court of first instance. In his appeal, the Public Prosecutor demanded a maximum prison term in accordance with the charges and the cancellation of the SIM card of Ms. Al-Shehab’s phone. In her appeal, Ms. Al-Shehab argued that the conviction was based solely on her Twitter activity, denying any intention to destabilize the security of the State. She stated that she had been held in solitary confinement for 285 days before being brought before a judge, in violation of article 114 of the Code of Criminal Procedure and requested that the Court consider her need to care for her two children and sick mother. Before the sentencing on appeal, Ms. Al-Shehab was called before the Specialized Criminal Court of Appeal in closed court, only to be asked “if she was remorseful”, to which she responded affirmatively.

12. On 19 August 2022, the Specialized Criminal Court of Appeal accepted the Public Prosecutor’s appeal and convicted Ms. Al-Shehab of “supporting those who seek to disrupt public order and destabilize security and the stability of the State” and of publishing tweets that “disturb public order and destabilize the security of society and the stability of the State”. The Specialized Criminal Court of Appeal sentenced Ms. Al-Shehab to 34 years in prison, followed by a travel ban of the same length (on the basis of articles 34, 38, 43 and 44 of the Anti-Terrorism Law and article 6 of the Anti-Cybercrime Law), and a discretionary 5-year prison term added by the presiding judge, based on the “charges levelled against her that do not have a set punishment”. The sentence also includes the closure of her Twitter account and the deactivation of her phone number. Ms. Al-Shehab’s lawyer was barred from attending the sentencing hearing.

13. According to the source, Ms. Al-Shehab’s legal team will appeal the sentence before the Supreme Court. They have also filed a request for clemency and a complaint to the Human Rights Commission of Saudi Arabia. Ms. Al-Shehab is currently being held in a prison run by the Presidency of State Security in Dammam, suffering from poor health and depression.

14. Her sentence has been condemned by the Office of the United Nations High Commissioner for Human Rights (OHCHR),<sup>4</sup> and several non-governmental organizations, among others. Since Ms. Al-Shehab’s detention, several other Saudi women’s rights activists have been detained because of their Twitter activity.

15. Before her arrest, Ms. Al-Qahtani regularly shared her views on social media on Saudi political affairs.

16. The source reports that Ms. Al-Qahtani was arrested by officers of the Presidency of State Security on 4 July 2021. Prior to her arrest, Ms. Al-Qahtani had been active on Twitter through two anonymous accounts, through which she advocated for human rights in Saudi Arabia, called for the release of political detainees and criticized human rights abuses committed by the Saudi authorities.

17. On 16 February 2022, Ms. Al-Qahtani was sentenced to 13 years in prison, with half of the sentence suspended, and to a 13-year travel ban by the Specialized Criminal Court, in

<sup>4</sup> OHCHR, “Comment by UN Human Rights Office spokesperson Liz Throssell after Saudi woman jailed for 34 years”, 19 August 2022.

accordance with articles 43, 46 and 53 (1) of the Anti-Terrorism Law. The Court also ordered, in accordance with article 58 of the Anti-Terrorism Law, that her phone be confiscated; that both of her Twitter accounts be shut down; and that her phone's SIM card be confiscated. Furthermore, the Court ordered that a book in her possession, authored by a detained Saudi scholar and prisoner of conscience, be confiscated.

18. On 10 March 2022, the Public Prosecutor filed an appeal, followed on 17 March 2022 by an appeal filed by Ms. Al-Qahtani's lawyer. The Public Prosecutor argued that Ms. Al-Qahtani should also be sentenced on the basis of the prison sentences provided for in article 6 of the Anti-Cybercrime Law and articles 30, 34, 35, 38, 43, 44 and 57 of the Anti-Terrorism Law.

19. The Public Prosecutor also argued that Ms. Al-Qahtani should be sentenced to an additional discretionary sentence for "insulting the symbols of the State and calling for the release of those detained in State security cases, in addition to possessing a banned book". Moreover, the Public Prosecutor called upon the Court to cancel the suspension of half of Ms. Al-Qahtani's sentence and to sentence her to the maximum prison term.

20. In the appeal, Ms. Al-Qahtani's lawyer called for the Court to drop all charges against her since her actions did not fall under the jurisdiction of the Specialized Criminal Court. The lawyer stated that most of the charges brought against Ms. Al-Qahtani related to her activity on Twitter. The lawyer asserted that Ms. Al-Qahtani, through her use of Twitter, had not taken any actions with intent to commit a terrorist act. The lawyer maintained that there was no evidence provided to the Court to indicate that Ms. Al-Qahtani had communicated with any terrorist entity, joined a terrorist organization, adopted any terrorist beliefs, incited people to join a terrorist entity or provided any aid to those seeking to threaten public order in Saudi Arabia. The lawyer also maintained that Ms. Al-Qahtani did not have a sufficient number of followers on Twitter to allow her to have any effect on society.

21. Ms. Al-Qahtani's lawyer added that the confiscated book that belonged to Ms. Al-Qahtani was not a political book and that she did not know that it had been banned in Saudi Arabia. The lawyer affirmed that the book was sold locally in Saudi Arabia and was available on the websites of Saudi booksellers.

22. On 9 August 2022, the Specialized Criminal Court of Appeal sentenced Ms. Al-Qahtani to 45 years in prison on the basis of the Anti-Cybercrime Law and the Anti-Terrorism Law.

23. The judges of the Specialized Criminal Court of Appeal upheld the initial prison sentence of Ms. Al-Qahtani and the order to shut down her Twitter accounts and confiscate her phone and SIM card, in accordance with article 58 of the Anti-Terrorism Law.

24. The Specialized Criminal Court of Appeal found her guilty of "preparing, sending and storing information, through the Internet, seeking to harm public order" and "seeking to disturb the social fabric, national unity, social cohesion and basic laws", thereby sentencing her to a total of 45 years in prison (in accordance with articles 30, 34, 35, 38, 43, 44 and 46 of the Anti-Terrorism Law and article 6 of the Anti-Cybercrime Law). The Specialized Criminal Court of Appeal also sentenced Ms. Al-Qahtani to a 45-year travel ban (in accordance with article 53 of the Anti-Terrorism Law).

#### Analysis of violations

##### i. Category I

25. The source submits that, in the case of Ms. Al-Shehab, officers of the Presidency of State Security did not invoke any legal basis at the time of her arrest on 15 January 2021. Ms. Al-Shehab was arrested without a warrant and without being informed of the reasons for her arrest. She was not promptly informed of the charges against her, being informed of them only in October 2021, some 10 months later. Therefore, she remained in custody for 10 months without any legal basis. Those failures contravene articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

26. The source recalls that, after Ms. Al-Shehab was arrested on 15 January 2021, she was held incommunicado for 13 days, not allowed to contact a lawyer or correspond with her family. After that period, she was not always allowed to inform her family about her transfers from Dammam to Riyadh and back. She was only granted access to a lawyer in October 2021. Those violations also undermine Ms. Al-Shehab's right to habeas corpus. By not allowing Ms. Al-Shehab to communicate with her family during the first 13 days of her pretrial detention and to regularly inform them of her transfers and by not allowing her access to a lawyer until October 2021, she was placed outside the protection of the law, contrary to article 6 of the Universal Declaration of Human Rights and principles 15, 16 (1) and 19 of the Body of Principles.

27. The source reports that, after Ms. Al-Shehab's arrest on 15 January 2021, she was not presented before a judicial authority and was not given the opportunity to challenge her detention at any time during her pretrial detention. Therefore, her right to a prompt appearance before a judicial authority and her right to challenge her detention were violated in contravention of principles 11 (1), 32 (1) and 37 of the Body of Principles.

28. Ms. Al-Shehab and Ms. Al-Qahtani were prosecuted and sentenced on the basis of several articles contained in the Anti-Terrorism Law and the Anti-Cybercrime Law. The source submits that the vague and overly broad provisions used to prosecute them lack legal certainty and make it impossible to invoke any legal basis to justify their deprivation of liberty.

29. The source notes that their sentences mostly rely on provisions of the Anti-Terrorism Law, which contains a definition of a "terrorist crime" in article 1 that is, according to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism<sup>5</sup> and the Committee against Torture,<sup>6</sup> broad and vague and enables the criminalization of a wide spectrum of acts of peaceful expression and opinion.

30. According to the source, the same concerns apply to the other provisions of the Anti-Terrorism Law invoked against Ms. Al-Shehab and Ms. Al-Qahtani that stem from the imprecise definition enshrined in article 1 and the harsh penalties set out in articles 30, 34, 35, 38, 43 and 44 thereof. Those provisions target human rights defenders by designating criticism of the King and the Crown Prince that bring religion or justice into disrepute as terrorism and criminalizing free speech by containing disproportionate sentences.

31. Furthermore, the source notes that the respective prison sentences of Ms. Al-Shehab and Ms. Al-Qahtani also include a one-year prison sentence based on article 6 of the Anti-Cybercrime Law.

32. According to the source, the provisions contained in both the Anti-Terrorism Law and the Anti-Cybercrime Law allow the criminalization of peaceful expression (see also below under category II), enable arbitrary interpretation and make it difficult for individuals to determine how to act in order to comply with the law.

33. The source recalls that the principle of legality requires criminal courts to ensure that they do not punish acts that are not punishable under the laws cited in the charges. However, the presiding judge of the Specialized Criminal Court of Appeal added a discretionary five-year prison term for Ms. Al-Shehab, on the basis that the charges levelled against her did not have a set punishment, and a one-year prison term for Ms. Al-Qahtani. By applying the vague and overly broad provisions and by adding the discretionary one and five-year prison terms, the authorities violated the principle of legality, enshrined in article 11 (2) of the Universal Declaration of Human Rights, thus rendering the arrest and detention of Ms. Al-Shehab and Ms. Al-Qahtani baseless and arbitrary under category I.

<sup>5</sup> See communication SAU 12/2020, p. 6, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25726>.

<sup>6</sup> CAT/C/SAU/CO/2, para. 16.

## ii. Category II

34. The source submits that the detention of Ms. Al-Shehab and Ms. Al-Qahtani is arbitrary because it directly resulted from the exercise of their right to freedom of expression. Furthermore, because of their status as human rights defenders, the circumstances surrounding their detention should be afforded a “particularly intense review”.<sup>7</sup> Ms. Al-Shehab was arrested and detained for her retweets defending women’s rights and freedom of political opinion in Saudi Arabia, with the sole evidence presented against her consisting of her Twitter activity and the statements that she made during interrogation. Similarly, Ms. Al-Qahtani was convicted on charges that have a direct connection to her tweets on human rights issues. She was also convicted of being in possession of a banned book, written by Salman al-Odah, who has been in prison since 2017 after he called for peace on Twitter following the Saudi-led blockade of Qatar. The verdict issued by the Specialized Criminal Court of Appeal reveals the connection between the conviction and Ms. Al-Qahtani’s right to freedom of expression as the judges commented on the content that she had shared on Twitter and the accounts she followed on YouTube.

35. Furthermore, the source affirms that the sentences imposed on Ms. Al-Shehab and Ms. Al-Qahtani are not commensurate with the nature of the alleged offences. The source recalls that deprivation of liberty must be “in accordance with the applicable law and procedure” and be “proportional to the aim sought, reasonable and necessary”.<sup>8</sup> In addition, in accordance with article 29 (2) of the Universal Declaration of Human Rights, restrictions placed on the freedom of expression by way of deprivation of liberty can only be justified when the deprivation of liberty has a legal basis in national law, does not contradict international law and is necessary to ensure respect of the rights or reputations of others, or for the protection of national security, public order, public health or morals, and is proportionate to the pursued legitimate aims.<sup>9</sup> The source asserts that that criteria does not appear to have been met in the present cases.

36. According to the source, the present cases are more examples of Saudi authorities weaponizing the Anti-Terrorism Law and the Anti-Cybercrime Law to target, intimidate and retaliate against human rights defenders and dissidents. The present cases fall within a systematic pattern of denying Saudi human rights defenders their freedom of expression.<sup>10</sup>

37. The source recalls that Saudi Arabia has an extensive record of alleged espionage and cybersurveillance to spy on dissidents and systematically repress critics of the regime. The source affirms that there is a strong probability that the Twitter accounts of Ms. Al-Shehab and Ms. Al-Qahtani were discovered through unlawful and intrusive government surveillance, particularly in the light of article 6 of the Anti-Terrorism Law, which grants the Head of the Presidency of State Security the powers to monitor individuals’ communications without judicial oversight, and the fact that the judgments reference the phone numbers of Ms. Al-Shehab and Ms. Al-Qahtani multiple times.

38. The source thus concludes that the deprivation of liberty of Ms. Al-Shehab and Ms. Al-Qahtani resulted from the peaceful exercise of their right to freedom of expression and violated article 19 of the Universal Declaration of Human Rights, giving their detention an arbitrary character under category II.

## iii. Category III

39. As the deprivation of liberty of the two individuals directly resulted from the exercise of their right to freedom of expression, the source emphasizes that no trial should have taken place.

40. The source submits that Ms. Al-Shehab was not initially given access to a lawyer and was interrogated without one being present during her pretrial detention. She was only given access to a lawyer in October 2021 and their conversations could be heard by law

<sup>7</sup> Opinion No. 62/2012, para. 39.

<sup>8</sup> Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (A/HRC/22/44), para. 61.

<sup>9</sup> E/CN.4/2006/7, para. 43.

<sup>10</sup> Opinions No. 10/2018, paras. 64–69; No. 71/2019, paras. 79–83; and No. 33/2020, paras. 80–83.

enforcement officers. At times, the dates of the hearings were changed at such short notice that Ms. Al-Shehab's legal team was unable to properly prepare. Those failures, along with the lack of prompt information about the charges against her, deprived Ms. Al-Shehab of adequate time and facilities to prepare for her defence. The State thus violated article 11 (1) of the Universal Declaration of Human Rights, principles 15, 17 and 18 of the Body of Principles, principles 1, 5, 7 and 8 of the Principles on the Role of Lawyers and 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.

41. The source argues that Ms. Al-Shehab was detained without charge for 10 months before her trial began in October 2021. During the trial, the only evidence presented against her was her Twitter activity and her statements made during interrogation, demonstrating that no thorough investigation had been carried out. The delay was not attributable to Ms. Al-Shehab, who was detained without access to a lawyer. By depriving Ms. Al-Shehab of her right to be tried within a reasonable time, the State contravened principles 38 and 39 of the Body of Principles.

42. The source submits that Ms. Al-Shehab's 13-day incommunicado detention and solitary confinement and the threats, insults and harassment that she endured during her interrogation constitute cruel, inhuman or degrading treatment, which impaired her ability to prepare for her defence. In addition, she was interrogated by using improper and inhuman methods, such as trying to make her incriminate herself, and interrogating her in the middle of the night shortly after she had taken her medication. Therefore, the State contravened article 5 of the Universal Declaration of Human Rights, principles 1, 6, 8 and 21 of the Body of Principles and articles 2, 13 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

43. According to the source, all the trial hearings in the cases of Ms. Al-Shehab and Ms. Al-Qahtani were held before the Specialized Criminal Court, a court established in 2008 to try cases of terrorism. Reportedly, since its establishment, the Specialized Criminal Court has suffered from undue influence by the executive, rendering it a tool of repression used to prosecute peaceful critics on trumped-up terrorism charges. Its judges are appointed by the Supreme Judicial Council. Under the Law of the Judiciary of 2007, the Supreme Judicial Council is comprised of a chair and 10 members – 7 of whom are directly appointed by the King – in addition to the Director of the Bureau of Investigation and Public Prosecution, which was replaced by the Public Prosecution Service in 2017. Because of the undue influence of the King and the Public Prosecutor over the Supreme Judicial Council, the Specialized Criminal Court is not an impartial or independent body.

44. The source submits that the recent appointment, by royal decree, of at least 10 detectives and prosecutors to serve as judges at the Specialized Criminal Court further illustrates this lack of independence. Moreover, the source recalls that the trials of Ms. Al-Shehab at the Specialized Criminal Court and the Specialized Criminal Court of Appeal were held in closed court with members of the public denied access. The officials did not justify why closed trials were necessary and proportionate in her case. Furthermore, there was no mechanism to observe or review the basis for the restrictions.

45. In view of the above, the source argues that the trials of Ms. Al-Shehab and Ms. Al-Qahtani before the Specialized Criminal Court and the Specialized Criminal Court of Appeal were not before independent courts, in violation of article 10 of the Universal Declaration of Human Rights.

46. Moreover, the State's failure to try Ms. Al-Shehab in a public trial contravenes article 10 of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles.

47. The source recalls that the right to a fair trial extends to how punishments are determined and which punishments may be imposed. The source argues that Ms. Al-Shehab and Ms. Al-Qahtani received disproportionately severe penalties; it can be expected that Ms. Al-Shehab will have served her full sentence by the time she reaches the age of 68 and in the case of Ms. Al-Qahtani the age of 90. They were also found guilty of crimes, such as "spread[ing] lies through tweets", that should not be criminalized in the first place.

48. According to the source, Ms. Al-Shehab was not tried within a reasonable time, was not informed of the reason for the arrest at the time of the arrest, was not promptly informed of the charges, was held incommunicado and in solitary confinement, was not provided with access to a lawyer and was threatened and harassed to obtain incriminating statements. Ms. Al-Shehab and Ms. Al-Qahtani were tried by courts that were not independent and were convicted based on vague or non-existent provisions. In addition, Ms. Al-Shehab's hearings were held in secret. Their right to be presumed innocent, enshrined in article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles, was violated.

49. The source thus concludes that their detention is arbitrary under category III.

iv. Category V

50. According to the source, the arrests, prosecution and treatment of Ms. Al-Shehab and Ms. Al-Qahtani are the direct result of their political opinions and status as human rights defenders. Their views and beliefs are clearly at the centre of this case and the authorities have displayed an attitude towards them that can only be characterized as discriminatory.

51. The source notes that Ms. Al-Shehab's calls for gender equality and her gender played a pivotal role in her treatment and deprivation of liberty. This is supported by the prevalent discrimination against women in Saudi Arabia, including the growing number of detentions of women's rights activists.<sup>11</sup> In addition, considering that Ms. Al-Shehab was harassed during her interrogations for being a Shia Muslim and that Shia Muslims are regularly persecuted in Saudi Arabia, she was further discriminated against based on her religion.<sup>12</sup>

52. The source concludes that the detention and treatment of Ms. Al-Shehab and Ms. Al-Qahtani fall within a pattern of discrimination against human rights activists, women and religious minorities and is contrary to articles 2 and 7 of the Universal Declaration of Human Rights and principle 5 (1) of the Body of Principles, rendering their deprivation of liberty arbitrary under category V.

### Response from the Government

53. On 15 December 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure, requesting a reply by 13 February 2023. Moreover, the Working Group called upon the Government of Saudi Arabia to ensure the physical and mental integrity of Ms. Al-Shehab and Ms. Al-Qahtani.

54. On 10 February 2023, the Government submitted its reply, in which it stated that it was cooperating with all United Nations human rights mechanisms and had responded to all queries and requests. The Government states that the claims presented in the communication are unfounded and based solely on information provided by the source and without supporting evidence. It adds that it has investigated the allegations with a view to clarifying all the facts, in line with its cooperation with international human rights mechanisms.

55. The Government submits that Ms. Al-Shehab was arrested pursuant to an arrest warrant issued by the competent authority in accordance with articles 2 and 5 of the Anti-Terrorism Law. It submits that she was not detained incommunicado, but rather at a known location, the General Investigation Prison in Dammam. Ms. Al-Qahtani was also arrested pursuant to an arrest warrant issued by the competent authority in accordance with articles 2 and 5 of the Anti-Terrorism Law. Both individuals' warrants were extended and they were informed of the reasons for their arrest in accordance with national law.

56. Ms. Al-Shehab and Ms. Al-Qahtani were informed of their legal rights and confirmed, in writing, that they had the right to access legal representation. They were also appraised of their right to be informed of the charges against them, in accordance with article 101 (1) of the Code of Criminal Procedure. The Public Prosecution Service then concluded that the evidence was sufficient to charge the defendants under article 126 of the Code.

<sup>11</sup> Opinion No. 33/2020, paras. 95–97.

<sup>12</sup> Opinion No. 26/2019, paras. 108–110.



57. The Government submits that national law ensures that all lawyers can perform their professional functions without intimidation, harassment or improper interference. The Charter of the Saudi Bar Association contains numerous provisions to support lawyers in promoting and protecting human rights. Consistent with national law guarantees, Ms. Al-Shehab and Ms. Al-Qahtani were informed that, if they were unable to hire their own lawyers, they could request a court-appointed lawyer at the expense of the State. The requests of Ms. Al-Shehab and Ms. Al-Qahtani to appoint defence lawyers were granted. Both individuals thus exercised their right to legal representation.

58. The Government submits that the cases were examined by an independent and impartial court (the Specialized Criminal Court), which was established by a decree of the Supreme Judicial Council and which follows judicial procedures set out under the statutes of the judiciary, the Code of Criminal Procedure and the Code of Sharia Procedure. Judges are appointed pursuant to a decree of the Supreme Judicial Council that has been endorsed by royal order. Judges may only be appointed if they have obtained certain credentials and they are subject to certain conditions.

59. Ms. Al-Shehab and Ms. Al-Qahtani were informed of their right to challenge the judgment in accordance with article 192 (1) of the Code of Criminal Procedure. Both the Public Prosecutor and the defendants appealed. After the judgment was upheld by the court of first instance, the case was referred to the appellate court. In accordance with the law, the appellate court sentenced Ms. Al-Shehab to 34 years' imprisonment and sentenced Ms. Al-Qahtani to 45 years' imprisonment under both the Anti-Terrorism Law and the Anti-Cybercrime Law.

60. The parties subsequently lodged an appeal for cassation with the Supreme Court. The Supreme Court overturned the judgments and returned the case to the appellate court for reconsideration by different judges, in accordance with article 202 of the Code of Criminal Procedure. The Government notes that the case remains under judicial review.

61. The principles of legality, necessity and proportionality are upheld in Saudi law, meaning that national laws are formulated with sufficient precision and clarity, and punishments are proportionate to the nature of the crime committed and necessary to protect human rights and public order. Ms. Al-Shehab and Ms. Al-Qahtani were prosecuted in accordance with the Anti-Terrorism Law and the Anti-Cybercrime Law, which contain no ambiguities and were drafted with full respect for crime and punishment. National law also guarantees human rights to all defendants subject only to restrictions consistent with relevant international standards or sharia law.

62. The Government submits that Ms. Al-Shehab and Ms. Al-Qahtani have been treated in a manner that preserves their dignity and protects their rights. Both individuals have enjoyed the right to regular visits and communications. Ms. Al-Shehab has not been subjected to torture or ill-treatment. Furthermore, all prisons and detention facilities in Saudi Arabia are subject to oversight and inspection by the Human Rights Commission of Saudi Arabia and necessary measures are taken in the event of a violation of national law. Saudi Arabia is committed to the human rights instruments to which it is a party, including the Convention against Torture, and considers those instruments part of its national law.

63. The crimes committed by Ms. Al-Shehab and Ms. Al-Qahtani are unrelated to freedom of expression as they have been convicted of terrorism-related offences. In that context, the Government draws attention to Security Council resolution No. 1566 (2004), in which it recalled that terrorist offences could not be justified by political, philosophical, ideological, racial, ethnic, religious or other similar considerations. The Government also recalls the restrictions on the right to freedom of expression provided for in article 29 (2) of the Universal Declaration of Human Rights.

64. The Government submits that the trials of Ms. Al-Shehab and Ms. Al-Qahtani were public, and national law upholds the presumption of innocence and a number of procedural safeguards to ensure that due process is guaranteed. The penalties issued against Ms. Al-Shehab and Ms. Al-Qahtani were ordered by judicial ruling, supported by evidence and proportional to the crimes committed. Furthermore, the Government submits that all arrested and detained persons are guaranteed the right to challenge the lawfulness of their arrest or detention. All the proceedings in this case were based on existing national legislation, which

is consistent with international fair trial standards and the human rights instruments to which the country has acceded.

65. The Government submits that all persons are entitled to the equal protection of the law in accordance with article 47 of the Basic Law of Governance. The Government reiterates that Ms. Al-Shehab and Ms. Al-Qahtani were arrested on charges of terrorism, therefore, their arrests had nothing to do with their political opinions, gender or religion.

66. All procedures related to Ms. Al-Shehab and Ms. Al-Qahtani have been shown to be in accordance with international human rights standards and with the State's obligations under human rights instruments.

67. In conclusion, the Government notes that, in cooperation with the international human rights mechanisms, it responds to all letters, appeals and reports submitted to it. Saudi Arabia wishes to remind the Working Group of the Code of Conduct for Special Procedure Mandate Holders of the Human Rights Council.

*Further comments from the source*

68. The response of the Government was sent to the source for further comments, which were provided on 2 March 2023.

69. The source notes that the State primarily recalls the applicable legislation to contest the source's allegations. The source argues that it is not sufficient to state that a violation could not have taken place because national law prohibits it.

70. The source notes that the State has not demonstrated that Ms. Al-Shehab and Ms. Al-Qahtani were arrested on the basis of a warrant, that they were informed of the reasons for their arrest or that their right to be promptly informed of any charges was respected.

71. Furthermore, the Government does not provide sufficient information on its procedures in relation to fair detention or prison oversight, the criminal offences invoked against Ms. Al-Shehab and Ms. Al-Qahtani, safeguards against discretionary sentencing and the undue influence of the King on the Specialized Criminal Court and the judiciary. The Government fails to justify its use of closed trials or explain the precise nature of the threat posed by the complainants, or the necessity and proportionality of their detention and sentences.

72. While the Government claims that the detentions of Ms. Al-Shehab and Ms. Al-Qahtani are non-discriminatory, their detention resulted from the active exercise of civil and political rights. Thus, there is a strong presumption that it constitutes a violation of international law on the grounds of discrimination based on political or other views. Ms. Al-Shehab advocated for women's rights and was harassed for being a Shia Muslim, therefore, she was discriminated against based on her gender and religion.

**Discussion**

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

74. In determining whether the detention of Ms. Al-Shehab and Ms. Al-Qahtani 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 law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>13</sup> Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>14</sup>

75. In the present case, the source argues that the detention of the two individuals is arbitrary under categories I, II, III and V. The Government denies these allegations. The Working Group will proceed to examine the allegations in turn.

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<sup>13</sup> A/HRC/19/57, para. 68.

<sup>14</sup> Ibid.

*Category I*

76. The source alleges that Ms. Al-Shehab was arrested without a warrant and without immediately being informed of the reasons for her arrest. She was not promptly informed of the charges against her, being informed of them 10 months later. The Government avers that Ms. Al-Shehab was arrested on terrorism charges, pursuant to an arrest warrant issued by the competent authorities under articles 2 and 5 of the Anti-Terrorism Law. She was detained at the General Investigation Prison in Dammam and her arrest warrant was extended, as permitted by law. The Government submits that Ms. Al-Shehab and Ms. Al-Qahtani were informed of the reasons for their arrest and that they signed a document confirming that they had been informed of their legal rights.

77. The Working Group has previously stated that, 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 the legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant or arrest order (or equivalent document).<sup>15</sup> The reasons for the arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>16</sup>

78. The Working Group considers that Ms. Al-Shehab was not arrested in flagrante delicto, when the opportunity to obtain a warrant would not be typically available. The Working Group notes the response from the Government that arrest warrants may have been issued, but the Government has not indicated whether the warrant was shown to Ms. Al-Shehab at the time of her arrest. Furthermore, as observed by the source, the Government does not mention the specific authority that issued the arrest warrants or the date of issuance. The Government does not specify when Ms. Al-Shehab was informed of the reasons for her arrest and the charges against her, nor when the case was filed before the competent court or when the prosecution was provided with a copy of the charge sheets. In the absence of that information, the Working Group considers that the Government failed to demonstrate that Ms. Al-Shehab was presented with the arrest warrant and informed of the reasons for her arrest, at the time of arrest, and of the charges against her promptly, in contravention of article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles.

79. The Working Group has repeatedly asserted that holding persons incommunicado violates their right to contest the legality of their detention before a court or tribunal. Judicial oversight of any detention is a central safeguard for personal liberty<sup>17</sup> and is critical in ensuring that detention has a legitimate basis.

80. The source alleges that, after Ms. Al-Shehab was arrested on 15 January 2021, she was held incommunicado for 13 days, during which time she was not allowed to contact a lawyer or correspond with her family. After this period, she was not always allowed to inform her family about her transfers from Dammam to Riyadh and back. She was only granted access to a lawyer in October 2021. In its response, the Government makes no reference to incommunicado detention but states instead that, when Ms. Al-Shehab was arrested, she was detained at the General Investigation Prison in Dammam, where her arrest warrant was extended, as permitted by law. The Government states that Ms. Al-Shehab was entitled to visits and contacts periodically and regularly starting from the date of her detention.

81. The Working Group notes that the Government had custody of Ms. Al-Shehab throughout the relevant period and should therefore be able to discern from its records the interaction between her and the outside world. The Government should have therefore provided in its response an indication of the visitors and persons Ms. Al-Shehab interacted with, as well as the nature and frequency of such contact. In the absence of such specific information, the Working Group considers that the Government failed to rebut the source's submission that Ms. Al-Shehab was held incommunicado for 13 days, subsequently unable to regularly inform her family of her transfers and not allowed to have access to a lawyer until October 2021, which placed her outside the protection of the law, contrary to article 6

<sup>15</sup> Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

<sup>16</sup> Opinions No. 30/2017, paras. 58 and 59; No. 85/2021, para. 69; and No. 79/2022, para. 58.

<sup>17</sup> A/HRC/30/37, para. 3; and CAT/C/VNM/CO/1, para. 24.

of the Universal Declaration of Human Rights and principles 15, 16 (1) and 19 of the Body of Principles.

82. Moreover, at no point during Ms. Al-Shehab's pretrial detention, was she able to challenge her detention before a court and thus her right to an effective remedy under article 8 of the Universal Declaration of Human Rights was violated. Furthermore, considering the Government's failure to rebut the source's claim that Ms. Al-Shehab was not brought promptly before a judicial authority, the Working Group finds that she was not afforded the right to bring proceedings before a court for it to decide without delay about the lawfulness of her detention, in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles.

83. The source submits that Ms. Al-Shehab and Ms. Al-Qahtani were prosecuted and sentenced on the basis of several articles contained in the Anti-Terrorism Law and the Anti-Cybercrime Law. The source submits that the provisions used to prosecute both individuals lack legal certainty. The Government argues that the laws of Saudi Arabia are formulated with precision and clarity and that they are published on governmental and other websites and are subject to constant review.

84. The Working Group has stated that vaguely and broadly worded provisions, such as the Anti-Cybercrime Law and the Anti-Terrorism Law, which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.<sup>18</sup> The two former Special Rapporteurs on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed concern that the definition of "terrorist crime", as contained in article 1 of the Anti-Terrorism Law, did not restrict the acts that it criminalized to violent acts. Similar concerns were raised by the Committee against Torture.

85. The Working Group is of the view that, by applying vague and overly broad provisions of the Anti-Terrorism Law and the Anti-Cybercrime Law and by adding the discretionary one and five-year prison terms to the sentences of Ms. Al-Shehab and Ms. Al-Qahtani, the authorities violated the principle of legality, as enshrined in article 11 (2) of the Universal Declaration of Human Rights.

86. For the reasons set out above, the Working Group finds that the Government failed to establish a legal basis for the arrest and detention of Ms. Al-Shehab and Ms. Al-Qahtani and that their deprivation of liberty is arbitrary under category I.

#### *Category II*

87. The source submits that the detention of Ms. Al-Shehab and Ms. Al-Qahtani is arbitrary because it directly results from the exercise of their right to freedom of expression and should be afforded a "particularly intense review because of their status as human rights defenders". Specifically, the two individuals were convicted on charges directly related to using Twitter accounts, which they allegedly used as platforms for their human rights activism.

88. The Government avers that it respects and supports the right to freedom of opinion and expression unless it breaches or exceeds the bounds of public order or the norms and precepts applicable to society and its members. Those restrictions are consistent with the relevant international standards, in particular article 29 (2) of the Universal Declaration of Human Rights. The Government contends that there was evidence that Ms. Al-Shehab and Ms. Al-Qahtani had committed serious terrorist crimes.

89. The Working Group has considered a number of cases concerning deprivation of liberty by the Government under the provisions of the Anti-Terrorism Law and the Anti-Cybercrime Law, whereby the individuals were deprived of their liberty for online comments expressing their political views. The Working Group has found prosecution and

<sup>18</sup> Opinions No. 71/2019, para. 73; and No. 30/2022, para. 80.

imprisonment under these laws to be arbitrary when they result from the legitimate exercise of fundamental human rights.<sup>19</sup>

90. The Working Group recalls that holding and expressing opinions, including those that are critical of, or not in line with, government policy, are protected by article 19 of the Universal Declaration of Human Rights. The Working Group considers that the dissemination of human rights messages by Ms. Al-Shehab and Ms. Al-Qahtani on Twitter falls within the right to freedom of opinion and expression protected under article 19 and that they were detained for exercising that right.

91. Furthermore, article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations on the exercise of that right must be for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. According to the established practice of the Working Group, restrictions placed on freedom of expression can only be justified when it is shown that the deprivation of liberty has a legal basis in national law, does not violate international law and is necessary to ensure respect for the rights or reputation of others, or for the protection of national security, public order, public health or morals, and is proportionate to the pursued legitimate aims.<sup>20</sup> In the view of the Working Group, the Government failed to demonstrate that the detention of Ms. Al-Shehab and Ms. Al-Qahtani was necessary or proportionate.

92. Moreover, the criticism of government policy by Ms. Al-Shehab and Ms. Al-Qahtani through their commentary on social media concerned matters of public interest. The Working Group thus considers that they were detained for exercising their right, under article 21 (1) of the Universal Declaration of Human Rights, to take part in the conduct of public affairs.<sup>21</sup> The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

93. The Working Group finds that the detention of Ms. Al-Shehab and Ms. Al-Qahtani resulted from the peaceful exercise of their rights or freedoms guaranteed under articles 19 and 21 (1) of the Universal Declaration of Human Rights. Their deprivation of liberty is arbitrary under category II.

### *Category III*

94. Given its finding that the deprivation of liberty of Ms. Al-Shehab and Ms. Al-Qahtani is arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, the trials did take place and Ms. Al-Shehab was sentenced to 34 years of imprisonment and a travel ban for the same period and Ms. Al-Qahtani to 45 years of imprisonment.

95. The source submits that, following her arrest on 15 January 2021, Ms. Al-Shehab was held incommunicado for 13 days. It was only in October 2021, after 10 months of detention without charge, that she was presented for the first time before a judicial authority and subsequently tried in a closed trial. The Working Group notes that, in its response, the Government provided general information about her arrest, detention and subsequent trial, without providing any specific information about the duration of the proceedings or any explanation for the delay.

96. Given the above, the Working Group considers that the pretrial detention of Ms. Al-Shehab for more than 10 months without an individualized judicial determination of its lawfulness undermined her presumption of innocence as guaranteed under article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles. The time during which Ms. Al-Shehab was deprived of her liberty before being brought before a judge is a violation of her right to be tried without undue delay, as guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principle 38 of the Body of Principles.

<sup>19</sup> See opinions No. 63/2017, No. 71/2019 and No. 30/2022.

<sup>20</sup> Opinions No. 33/2020, paras. 81 and 82; and No. 30/2022, para. 88.

<sup>21</sup> See, for example, opinions No. 44/2019, No. 45/2019, No. 15/2020, No. 16/2020 and No. 33/2020.

97. The source submits that Ms. Al-Shehab could not initially access a lawyer and that she was interrogated without an attorney during pretrial detention. In October 2021, her requests for a defence lawyer were granted, but her conversations with the lawyer could be heard by law enforcement officers. Sudden changes to the trial schedule of Ms. Al-Shehab also deprived her and her legal team of adequate time and facilities to prepare her defence. The Government submits that Ms. Al-Shehab had access to legal representation and that her requests to appoint a lawyer were granted. However, the Working Group notes that the Government's response in this regard was general and did not provide information regarding Ms. Al-Shehab's access to legal representation prior to October 2021 or specify the conditions of confidentiality applicable to her communications with the lawyer.

98. The Working Group thus considers that the Government violated Ms. Al-Shehab's right to legal assistance at all times, which is inherent in the right to liberty and security of person, and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 10 and 11 of the Universal Declaration of Human Rights and principles 15, 17 and 18 of the Body of Principles. The Working Group considers that this violation substantially undermined and compromised her capacity to defend herself in the judicial proceedings.

99. The source submits that Ms. Al-Shehab's 13-day incommunicado detention and solitary confinement and the threats, insults, harassment and improper methods used during her interrogation constitute cruel, inhuman or degrading treatment that impaired her ability to prepare her defence. In its reply, the Government merely states that national legislation prohibits the use of violence against prisoners or detainees and provides for punishment of public officials who inflict ill-treatment or torture.

100. The Working Group notes that the response from the Government is broad and does not answer the specific allegations raised by the source. The Working Group considers that the source has presented a credible *prima facie* case that Ms. Al-Shehab was subjected to cruel, inhuman or degrading treatment, contrary to article 5 of the Universal Declaration of Human Rights. The Working Group also recalls that, according to the Committee against Torture, the right to freedom from torture and other ill-treatment or punishment is absolute and applies in all circumstances; it may never be restricted.<sup>22</sup> No exceptional circumstances whatsoever, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment.

101. The Working Group considers that torture or ill-treatment of detainees seriously undermines the fundamental principles of a fair trial as it can compromise their ability to defend themselves by violating the right not to be compelled to testify against themselves or to confess guilt.<sup>23</sup> 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.

102. According to the source, the hearings in the cases of Ms. Al-Shehab and Ms. Al-Qahtani were held before the Specialized Criminal Court. The source adds that the Specialized Criminal Court's lack of impartiality was previously highlighted by the Committee against Torture, which found it to be "insufficiently independent", particularly because of its refusal to act on claims made by defendants facing terrorism charges that they had been subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession.<sup>24</sup> The Government does not dispute that Ms. Al-Shehab and Ms. Al-Qahtani were tried by the Specialized Criminal Court.

103. The former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism found, during a visit to Saudi Arabia in 2017, that governmental reorganization had placed the investigatory powers of the Ministry of the Interior under the authority of the Public Prosecution and the Presidency of State

<sup>22</sup> Committee against Torture, general comment No. 4 (2017), para. 8.

<sup>23</sup> Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

<sup>24</sup> CAT/CO/2, para. 17.

Security, both of which reported directly to the King, and that concerns regarding the lack of independence of the Specialized Criminal Court therefore remain unresolved.<sup>25</sup>

104. The Working Group reiterates 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.<sup>26</sup> The Working Group thus concludes that the authorities violated the right of Ms. Al-Shehab and Ms. Al-Qahtani to be tried before an independent and impartial tribunal, contrary to articles 10 and 11 of the Universal Declaration of Human Rights.

105. The source submits that the trials of Ms. Al-Shehab at the Specialized Criminal Court and the Specialized Criminal Court of Appeal were held in closed court with access denied to members of the public. The Government states that all such trial hearings were public in accordance with national law. The Working Group recalls that mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>27</sup> The Working Group thus finds that the source has established a credible prima facie case, insufficiently refuted by the Government, that the trial hearings of Ms. Al-Shehab were held in closed courts, contrary to article 10 of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles.

106. The source recalls that the right to a fair trial extends to how punishments are determined and which punishments may be imposed. The source argues that Ms. Al-Shehab and Ms. Al-Qahtani received disproportionately severe penalties, including penalties for acts, such as "spread[ing] lies through tweets", which should not be criminalized in the first place. The Government denies that the penalties issued against the two individuals were disproportionate to the crimes committed but does not provide further information on the matter. The Working Group recalls that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of national law by the judiciary.<sup>28</sup> Nevertheless, the Working Group expresses its concern about the lengthy and disproportionate prison sentences imposed on Ms. Al-Shehab and Ms. Al-Qahtani, especially in view of its findings under category II.

107. The Working Group concludes that the violations of the right to a fair trial noted above are of such gravity as to render the detention of Ms. Al-Shehab and Ms. Al-Qahtani arbitrary under category III.

#### *Category V*

108. According to the source, the arrest, prosecution and treatment of Ms. Al-Shehab and Ms. Al-Qahtani are the direct result of their political opinions, which led to their unequal treatment before the law. The source also submits that Ms. Al-Shehab and Ms. Al-Qahtani were arrested and detained for their human rights advocacy on Twitter and were tried before the Specialized Criminal Court and the Specialized Criminal Court of Appeal on terrorism charges despite their activism having nothing to do with terrorism. The source refers to the findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism showing that, since 2010, the Specialized Criminal Court has been used increasingly for the prosecution of human rights and political activists.<sup>29</sup> In particular, the source notes that Ms. Al-Shehab's calls for gender equality and her gender played a pivotal role in her deprivation of liberty. Given that she was also harassed for being a Shia Muslim, there is evidence that she was discriminated against based on her religion.<sup>30</sup>

<sup>25</sup> [A/HRC/40/52/Add.2](#), para. 47.

<sup>26</sup> 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.

<sup>27</sup> [A/HRC/19/57](#), para. 68.

<sup>28</sup> Opinions No. 49/2019, para. 58; No. 58/2019, para. 64; No. 60/2019, para. 125; and No. 5/2021, para. 38.

<sup>29</sup> [A/HRC/40/52/Add.2](#), para. 30.

<sup>30</sup> Opinion No. 26/2019, paras. 108–110.

109. The Government denies that the detention of Ms. Al-Shehab and Ms. Al-Qahtani was premised on political views, gender, religion or other grounds and references the International Convention on the Elimination of All Forms of Racial Discrimination and its incorporation into national law in support of the assertion that it applies the principle of equality to all its citizens. The Working Group recalls that mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.

110. In the discussion above concerning category II, the Working Group established that the detention of Ms. Al-Shehab and Ms. Al-Qahtani resulted from the peaceful exercise of their fundamental rights. When detention has resulted from the active exercise of civil and political rights, as is the case here, 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.

111. The Working Group notes that the political views and human rights advocacy of Ms. Al-Shehab and Ms. Al-Qahtani are clearly at the centre of the present case and that the authorities have displayed an attitude towards them that can only be characterized as discriminatory. The arrests, treatment and lengthy sentences of Ms. Al-Shehab and Ms. Al-Qahtani indicate that they were discriminated against for their human rights activism and for sharing their views peacefully on social media, as well as on the basis of gender and religion in the case of Ms. Al-Shehab.

112. The Working Group therefore finds that the deprivation of liberty of Ms. Al-Shehab and Ms. Al-Qahtani contravenes articles 2 and 7 of the Universal Declaration of Human Rights and principle 5 (1) of the Body of Principles, and is arbitrary under category V.

### **Disposition**

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

The deprivation of liberty of Salma bint Sami bin Abdulmohsen al-Shehab, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

The deprivation of liberty of Nourah bin Saeed al-Qahtani, being in contravention of articles 2, 3, 7, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

114. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Ms. Al-Shehab and Ms. Al-Qahtani without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights. The Working Group recommends that the Government ratify the International Covenant on Civil and Political Rights.

115. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Al-Shehab and Ms. Al-Qahtani immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the 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 Ms. Al-Shehab and Ms. Al-Qahtani.

116. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Al-Shehab and Ms. Al-Qahtani and to take appropriate measures against those responsible for the violation of their rights.

117. The Working Group requests that the Government revise its laws, particularly the Anti-Terrorism Law, to meet the requirements of due process and a fair trial, in conformity with the findings in the present opinion and with its obligations under international law.

118. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special



Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

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

120. 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 Ms. Al-Shehab and Ms. Al-Qahtani have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Al-Shehab and Ms. Al-Qahtani;
- (c) Whether an investigation has been conducted into the violation of rights of Ms. Al-Shehab and Ms. Al-Qahtani 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.

121. 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.

122. 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.

123. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>31</sup>

*[Adopted on 3 April 2023]*

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<sup>31</sup> Human Rights Council resolution 51/8, paras. 6 and 9.