

Legal Opinion and Report on the Legality of the September 2017 Arrests in the Kingdom of Saudi Arabia

A. Introduction

1. In September 2017, the authorities of the Kingdom of Saudi Arabia (KSA) carried out a wave of arrests and detentions. Reliable sources indicate that more than sixty individuals were detained, many of whom are believed to be ‘human rights defenders’ or political activists.

2. We have been asked by certain family members of those detained¹ to prepare a legal opinion addressing:
 - a. The legality of those arrests and detentions as a matter of international law;

 - b. Whether any violations of international law form part of a pattern of conduct on the part of KSA; and

 - c. Any relevant recommendations.

3. In order to prepare our opinion, we have interviewed various witnesses who wish to remain anonymous due to concerns for their safety and security. We have also interviewed Al Qst (an NGO advocating for human rights in KSA) who has gathered information from several sources in KSA, including persons in detention and family members of those detained. We have researched publically available material and information about the arrests and detentions, and various reports on the situation in KSA.

¹ And we have been assisted by the Arab Organisation for Human Rights in the UK (AOHR), a London based human rights NGO.

A. Executive Summary

4. The evidence we have reviewed demonstrates that the September 2017 arrests and detentions of more than sixty persons in KSA were arbitrary and in breach of international human rights law. Those detained have not been charged with any offence, and the information about the reasons for their arrests and circumstances of their imprisonment are very limited. There is cause for serious concern about the treatment of many of those detained, including Mr Salman Al-Awda who has recently been hospitalised and others who are, effectively, disappeared.
5. These violations should not be seen as a single event or unusual. Our research shows that they are part of a long-standing pattern of systemic human rights violations in KSA, in particular in the detention and mistreatment of individuals who are believed to have expressed criticism of the state.
6. Given that KSA's human rights record will be reviewed by the UN Human Rights Council this year, the Council is urged to consider this report and all others submitted, and to direct KSA authorities to release all those detained without charge in September 2017 and previously. States should use their influence and relations with KSA and take all possible measures to ensure that the Government of KSA complies with international human rights standards.
7. In particular, the evidence of human rights violations committed by KSA, as documented in this report and others, is now so compelling that the UN General Assembly should consider suspending KSA's membership of the UN Human Rights Council.

B. Legal Framework

8. As a matter of international law, KSA is obliged to observe fundamental human rights standards through its ratification of the Arab Charter on Human Rights, its accession to the Convention against Torture and by operation of customary international law.
9. We have assessed the evidence, materials and information that we have reviewed to prepare this legal opinion in accordance with these laws and standards. We have made determinations about whether these laws have been breached in light of the available evidence, with appropriate recommendations.

The Arab Charter on Human Rights

10. On 22 May 2004, the League of Arab States (of which KSA was one of the founder members) adopted the current text of the Arab Charter on Human Rights. The Charter entered into force in 2008. KSA ratified the Charter in 2009 and is thereby obligated to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set out in the Charter without discrimination on grounds including race, sex and religious belief.²
11. The Charter protects a comprehensive range of human rights. In particular, Article 8(1) provides that “no one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment”. Articles 11 and 12 provide that all persons are equal before the law and before the courts and tribunals. Article 13(1) provides that “everyone has the right to a fair trial that affords adequate guarantees before a competent independent and impartial court that has been constituted by law to hear any criminal charge against him”.

² Arab Charter on Human Rights, article 3(1).

12. Article 14(1) provides that “everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest, search or detention without a legal warrant.”

13. Article 14(1) is supported by the following detailed provisions:-

“2. No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby.

3. Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.

4. Anyone who is deprived of his liberty by arrest or detention shall have the right to request a medical examination and must be informed of that right.

5. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. Pre-trial detention shall in no case be the general rule.

6. Anyone who is deprived of his liberty by arrest or detention shall be entitled to petition a competent court in order that it may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

7. Anyone who has been the victim of arbitrary or unlawful arrest or detention shall be entitled to compensation.”

14. Moreover, Article 20(1) provides that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.
15. The Charter does not provide a mechanism to scrutinize individual (or inter-state) complaints of human rights violations but does provide for a monitoring mechanism under the auspices of the Arab Human Rights Committee.

The Convention against Torture

16. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) was adopted by UN General Assembly Resolution 39/46 and entered into force on 26 June 1987. KSA acceded to the Convention on 23 September 1997.
17. Article 2 of CAT provides that “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.³
18. Article 12 requires a “prompt and impartial” investigation wherever there are reasonable grounds to believe that an act of torture has been committed. Article 15 provides that statements made as a result of torture “shall not be invoked as evidence in any proceedings”.
19. Article 16 further obligated States to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture”.
20. Pursuant to Article 22, any State may make a declaration that it recognizes the competence of the Committee against Torture to consider individual communications claiming a violation of rights protected by CAT. KSA has made no such declaration. There is therefore no mechanism allowing an

³ Torture is defined in Article 1(1) as the intentional infliction of severe pain or suffering (physical or mental) for specified purposes at the instigation of or with the consent of a public official.

individual to complain that KSA has violated CAT. KSA is, however, subject to periodic reports of the Committee in the usual way.

Customary International Law

21. As a result of the above treaties, KSA is obliged to observe and protect the rights to freedom from torture, arbitrary detention and deprivation of liberty. In any event, each of those human rights is so fundamental and extensively recognised that they form part of customary international law.

22. In particular, the prohibition on torture is widely accepted as a rule of customary international law. Article 5 of the Universal Declaration of Human Rights provides that “no-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The right to freedom from torture appears in similar terms in Article 7 of the International Covenant on Civil and Political Rights (“ICCPR”) and in every major regional human rights instrument.⁴ CAT has itself been ratified by 162 States. The prohibition against torture forms part of customary international law in both international and non-international armed conflicts.⁵ Numerous courts have found that the prohibition of torture is part of customary international law including the International Court of Justice,⁶ the International Criminal Tribunal for the Former Yugoslavia⁷ and national courts.⁸ It is therefore beyond serious contention that the prohibition of torture binds KSA because it forms part of customary international law.

23. We note that it is widely recognised that the prohibition of cruel, inhuman and degrading treatment mandates that the State provide adequate medical care to

⁴ Article 3 of the European Convention on Human Rights, Article 5(2) of the American Convention on Human Rights, Article 5 of the African Charter on Human and Peoples’ Rights, Article 8(1) of the Arab Charter on Human Rights (as set out above).

⁵ ICRC, Customary IHL Rules, Rule 90.

⁶ *Questions relating to the obligation to prosecute or extradite (Belgium v Senegal)*, Judgment 20 July 2012, para. 99.

⁷ *Prosecutor v Furundzija*, Trial Judgment, 10 December 1998, para. 153 (finding that the prohibition of torture is not only part of customary international law but also a peremptory norm of international law).

⁸ *R v Bow Metropolitan Stipendiary Magistrates ex p Pinochet (no3)*, [1999] 2 All ER 97.

individuals in its detention.⁹ The right to medical treatment in prison was expressly stated in the UN Standard Minimum Rules for the Treatment of Prisoners which were adopted by the General Assembly in 2015.¹⁰ In any event, in relation to KSA the right to medical treatment in prison must follow from the obligation to treat prisoners with humanity.¹¹

24. Moreover, in our view, the prohibition of arbitrary detention is also a rule of customary international law. Arbitrary detention is prohibited by Article 9 of the Universal Declaration of Human Rights, Article 9 of the ICCPR and all major regional human rights instruments.¹² 167 States have ratified the ICCPR and many of those States have transposed the prohibition of arbitrary detention into national law. Indeed, the prohibition of arbitrary detention also appears in the national law of States not party to the ICCPR including China, Qatar and the United Arab Emirates.¹³ Arbitrary detention is prohibited by customary international law in both international and non-international armed conflict.¹⁴ The International Court of Justice has described wrongful deprivation of liberty as “manifestly incompatible with the principles of the Charter of the United Nations”.¹⁵ The prohibition of arbitrary detention was recognised as a rule of customary international law by the UN Working Group on Arbitrary Detention¹⁶ and also in the United States Third Restatement of Foreign Relations Law.¹⁷

25. As to the definition of arbitrary detention, as a matter of international law detention is considered arbitrary where it is not justified by the national law of

⁹ See, for instance, *Mouisel v France*, App. No 67263/01.

¹⁰ UN General Assembly Resolution 70/175, Article 22.

¹¹ Article 20(1) of the Arab Charter of Human Rights.

¹² Article 5 of the European Convention on Human Rights, Article 7(1) of the American Convention on Human Rights, Article 6 of the African Charter on Human and Peoples’ Rights and Article 14 of the Arab Charter on Human Rights.

¹³ See UN Working Group on Arbitrary Detention, Deliberation No. 9 Concerning the definition and scope of arbitrary deprivation of liberty under customary international law, 24 December 2012, para. 46. A/HRC/22/44.

¹⁴ ICRC, Customary IHL Rules, Rule 99.

¹⁵ *United States Diplomatic and Consular Staff in Tehran (United States v Iran)*, ICJ Reports 1980, para. 91.

¹⁶ UN Working Group on Arbitrary Detention, Deliberation No. 9 Concerning the definition and scope of arbitrary deprivation of liberty under customary international law, 24 December 2012, para. 51. A/HRC/22/44.

¹⁷ 3rd Restatement of Foreign Relations Law, para. 702(e) referring to “prolonged arbitrary detention”.

the relevant State and / or is inconsistent with applicable norms of international law. In its Opinions, the United Nations Working Group on Arbitrary Detention has refined the definition further by elucidating five categories of arbitrary detentions:

- (1) where it is impossible to invoke any legal basis for the detention;
- (2) the detention results from the exercise of one of the rights and freedoms defined in Articles 7, 13, 14, 18 – 21 of the Universal Declaration of Human Rights (those being the right to equality before the law, freedom of movement, freedom of religion, freedom of expression and freedom of association);
- (3) there is a total or partial failure to observe the international normative requirements for a fair trial of such a gravity that the detention can be considered arbitrary;
- (4) prolonged administrative detention in the case of asylum seekers, refugees or immigrants (this category obviously does not apply to the cases under discussion); or
- (5) the deprivation of liberty violates international norms prohibiting discrimination.¹⁸

26. International human rights law has expressed particular concern about the legality of incommunicado detentions. That is because it is recognised that incommunicado detention both renders the detainee vulnerable to other serious human rights violations such as torture and prevents the detainee from asserting other human rights such as the right to legal representation. In 1992, referring to steps that States should take in order to protect against torture, the UN Human Rights Committee stated that “Provisions should also be made against incommunicado detention”.¹⁹ In 2003, that call was echoed by the UN Human Rights Council when it “Remind[ed] all States that prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture, and urges all States to respect the safeguards concerning the liberty,

¹⁸ These categories are conventionally set out at the beginning of every UN Working Group Opinion. See, for instance, *Opinion 67/2017* para. 3.

¹⁹ UN Human Rights Committee, CCPR General Comment No. 20, para. 11.

security and the dignity of the person”.²⁰ Significant periods of incommunicado detention have been found to violate human rights norms by *inter alia* the Human Rights Committee,²¹ the European Court of Human Rights,²² the Inter-American Court of Human Rights²³ and the African Court on Human and Peoples’ Rights.²⁴

27. Further, we note a growing recognition in international human rights law that the family members of those detained have a right to know their location. In part, that arises from the International Convention for the Protection of All Persons from Enforced Disappearances. Article 2 of the Convention defined enforced disappearance as the arrest or detention of an individual by a State “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” Further, the pre-amble to the Convention affirms the right “to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person”. Although KSA is not a party to that Convention, denying the truth to family members of those disappeared has also been held to violate their right to freedom from cruel, inhuman and degrading treatment.²⁵

28. We therefore conclude that, as a minimum, the prohibitions of torture and arbitrary deprivation of liberty are part of customary international law. The result is that, even if there is no directly applicable treaty obligation, all states - including KSA - are obliged as a matter of customary international law to obey those prohibitions. Further, in order to comply with those prohibitions, States including KSA should refrain from imposing prolonged periods of

²⁰ UN Commission on Human Rights Resolution 2003/32, para. 14.

²¹ See, for example, Communication No. 1126/2002, *Marlem Carranza Alegre v Peru*, 28 October 2005.

²² See, for example, *Aksoy v Turkey*, App No. 21987/93, Judgment 18 December 1996, paras 80-84.

²³ See, for example, *Suarez-Rosaro v Ecuador*, 12 November 1997, para. 51.

²⁴ Application No. 2/2013, *African Commission on Human and Peoples’ Rights v Libya*, Judgment In Default, 3 June 2016, paras 84-85.

²⁵ See for instance, *Janowiec and others v Russia*, App. No. 55508/07, Grand Chamber, 21 October 2013, para. 178.

incommunicado detention and should provide information to family members about the location of those detained.

Conclusion and Potential Remedies

29. The material set out above amply demonstrates that KSA is obligated to prohibit torture and arbitrary detention by the Arab Charter on Human Rights, by the Convention against Torture and as a matter of customary international law.
30. In contrast with these clear obligations, victims may find that there is no effective way to assert their rights in practice. There is, of course, no relevant regional human rights court. KSA has not acceded to human rights treaties (or the relevant parts of treaties) which grant an individual the right to submit a complaint. Save for the possibility of submitting a communication to the UN Working Group on Arbitrary Detention, whose findings cannot compel a State to take remedial action, the available enforcement mechanisms are limited.
31. Nevertheless, there are steps that could be taken against KSA at the international level including that KSA could be suspended from the United Nations Human Rights Council. KSA is a member of the Human Rights Council until its term expires in 2019.²⁶ In establishing the Council, the United Nations General Assembly decided that “*members elected to the Council shall uphold the highest standards in the promotion and protection of human rights [...]*”.²⁷ Moreover, if a member of the Council commits “*gross and systematic violations of human rights*” the UN General Assembly can, by a two-thirds majority, remove the right of membership from that State.²⁸ There is therefore a mechanism by which KSA’s membership of the Council could be suspended.

²⁶ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx>

²⁷ Resolution adopted by the General Assembly 60/251, para. 9. A/60.L.48.

²⁸ *Ibid.*, para. 8.

32. The suspension of membership rights is not simply a hypothetical possibility. On 25 February 2011, the Human Rights Council itself called for Libya to be suspended in the light of the ongoing allegations of significant human rights violations being perpetrated against civilians in the course of the uprising against the Gaddafi regime.²⁹ In March 2011, the General Assembly voted to suspend Libya's membership of the Council.³⁰ Although that was the first time that the General Assembly exercised its power to suspend membership, at various times, there have been calls to suspend other members including Burundi and Venezuela. Indeed in 2016, NGOs previously called for KSA's membership to be suspended in particular in relation to human rights violations in the course of the armed conflict in Yemen.³¹
33. We therefore conclude that KSA is obliged as a member of the Human Rights Council to uphold the highest standards in the protection of the above fundamental human rights. If it falls short of those standards, one potential outcome is that KSA's membership of that Council could be suspended.

²⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/HRCSpecialSessionLibya.aspx>

³⁰ <https://www.un.org/press/en/2011/ga11050.doc.htm>

³¹ See, for instance, <https://www.hrw.org/news/2016/06/29/un-suspend-saudi-arabia-human-rights-council>

C. Relevant Prior Determinations of Human Rights Violations

34. A number of United Nations Working Groups and other bodies have made relevant findings of human rights violations against KSA. In this section, we will summarise the relevant findings so that the context for the arrests in September 2017 is known, and to be in a position to consider, once we have outlined the evidence in respect of these arrests, whether there is sufficient evidence to suggest a pattern of violations that have continued with the arrests in September 2017.
35. The United Nations Working Group on Arbitrary Detention has made a series of relevant findings in cases involving KSA. We will set out a selection of the main Opinions adopted in the last five years:
- a. In Opinion 8/2012, the Working Group found that four Saudi nationals had been arbitrarily detained. The Government did not respond to the case. Similarities between the cases included that all were arrested without warrant, all experienced delay in being able to contact their family and there was a lack of access to lawyers or a court to determine the legality of the detention. Pre-trial detention was found to have continued for a period of years in all cases;³²
 - b. In Opinion 22/2012, the Working Group found that 12 Egyptian nationals had been arbitrarily detained. The Working Group found that they had been arrested without warrant and detained pre-trial over a period of years without being brought before a Court. Two alleged that they had been victims of torture or other inhuman behaviour whilst in detention. At least some of the individuals were held at Dhahban and Al Ha'ir;³³
 - c. In Opinion 52/2012, the Working Group found that Mohamed Al-Jazeiry, Al-Yazan Al-Jazeiry and Hathem Al Lahibi were arbitrarily detained. The

³² United Nations Working Group on Arbitrary Detention, *Opinion 8/2012*, adopted 2 May 2012, paras 25-26.

³³ UN Working Group on Arbitrary Detention, *Opinion 12/2012*, adopted 28 August 2012, paras 34-40.

primary complainant Mr Al-Jazeiry was detained for a period of nine years without formal charge or trial, initially at Mecca and subsequently at Dhahban. The other complainants were members of his family subsequently arrested in connection with his case, including a minor who was initially held at Al Ha'ir then transferred to Dhahban. There were allegations of mistreatment at both Al Ha'ir and Dhahban including beatings, being forced to stand for extended periods, being denied sleep and denial of medical treatment. Additional violations of the Convention on the Rights of the Child were found;³⁴

- d. In Opinion 32/2013, the Working Group found that Khalid Al Omeir had been arbitrarily detained. Mr Al-Omeir was arrested following an apparently peaceful demonstration in January 2009. After a trial in 2011, he was sentenced to eight years imprisonment by the Special Criminal Court in Riyadh for “illegally gathering and publishing information on the internet”. He was held at Al Ha'ir. The Working Group found that the duration of pre-trial detention and the denial of basic fair trial rights rendered his detention arbitrary;³⁵
- e. In Opinions 45 and 46/2013, the Working Group found that Mohamed Salih Al Bajadi and Abdulkarim Al Khodr had been arbitrarily detained. The Working Group considered that Mr Al Khodr was arrested due to his human rights activities and was arbitrarily detained for exercising his fundamental right to freedom of expression.³⁶ Identical conclusions were entered in relation to Mr Al Bajadi;³⁷
- f. In Opinion 14/2014, the Working Group found that Zakaria Mohamed Ali had been arbitrarily detained. He alleged that he was arrested without warrant or charge, held incommunicado and denied access to a lawyer. He

³⁴ UN Working Group on Arbitrary Detention, *Opinion 52/2012*, adopted 19 November 2012, paras 22-25 and 29.

³⁵ UN Working Group on Arbitrary Detention, *Opinion 32/2013*, adopted 30 August 2013, paras 23-24.

³⁶ UN Working Group on Arbitrary Detention, *Opinion 46/2013*, adopted 18 November 2013, paras 17 and 24.

³⁷ UN Working Group on Arbitrary Detention, *Opinion 45/2013*, adopted 15 November 2013, paras 23-28.

was initially held at an unknown location in Riyadh then transferred to Dhahban. The Working Group found, in the absence of response from KSA, that he was detained due to his exercise of his right to freedom of expression and that fundamental rights to be able to challenge detention and to a fair and public hearing before an impartial tribunal had been violated;³⁸

- g. In Opinion 32/2014, concerning Tahir Ali Abdi Jama, the Working Group concluded that the prolonged detention of Mr Jama without trial and grave violations of the right to a fair hearing amounted to arbitrary detention. Further, the Working Group held the view that there was “reliable evidence on a possible situation of physical abuse and mistreatment”;³⁹
- h. In Opinion 13/2015, the Working Group concluded that Majid Al Nassif was arbitrarily detained. The Working Group concluded that he was arrested for organizing peaceful protests and publishing material on the internet. It held that there were numerous violations of international law in the course of his detention and trial. He was subjected to psychological torture, insults and was coerced into confessions.⁴⁰
- i. In Opinion 38/2015, the Working Group concluded that nine Saudi nationals had been arbitrarily detained and that their detention was a reprisal for their work protecting and defending human rights. They were held at locations including Al Ha’ir and Buraydah. One, Mr Al-Manasif alleged torture and ill-treatment and this allegation was referred to the Special Rapporteur;⁴¹
- j. In Opinion 61/2016, the Working Group found that three minors had been arbitrarily detained because they were convicted by the Specialised Criminal Court of crimes which had only been enacted two years after

³⁸ UN Working Group on Arbitrary Detention, *Opinion 14/2014*, adopted 30 April 2014, paras 14 and 17.

³⁹ UN Working Group on Arbitrary Detention, *Opinion 32/2014* adopted 28 August 2014, paras 15-17.

⁴⁰ UN Working Group on Arbitrary Detention, *Opinion 13/2015*, adopted 27 April 2015, paras 19-26.

⁴¹ UN Working Group on Arbitrary Detention, *Opinion 38/2015*, adopted 4 September 2015, paras 69-71 and 81.

their arrest. They were held at Al Ha'ir where it was alleged that they were incommunicado for a period of time and then denied basic hygiene and medical care. The Working Group additionally concluded that the three were deprived of their liberty because of their exercise of the fundamental right to freedom of expression. Further, the allegations of torture were "consistent and detailed" and convictions were based on confessions apparently obtained under torture;⁴²

k. In Opinion 10/2017, the Working Group found that detention of Mr Abu Abdullah was arbitrary, expressed particular concern about a period of six months' incommunicado detention and additionally referred the allegations of torture in that case to the Special Rapporteur;⁴³

l. In Opinion 63/2017, the Working Group found that Jabe bin Saleh Hamdan Aal Suleiman al-Amri was arbitrarily detained. Mr Al-Amri was arrested in April 2014 after publishing a You Tube video which was critical of the government and called for the release of his brother. It was claimed that he was detained incommunicado for three months then charged, convicted and sentenced before the Specialised Criminal Court. He was reported to be detained at Al Ha'ir. The UN Working Group concluded that his arrest and prolonged detention lacked any legal basis, criminalized peaceful free expression and violated his fair trials rights.

36. In many of these Opinions, the Working Group has expressed grave concern that the cases formed part of a pattern of violations. For instance, in Opinion 8/2012, the Working Group noted a "consistent pattern of arbitrary arrests and detention in KSA", citing to 15 previous opinions over the period 2008-2011.⁴⁴ The pattern has continued. The above selection of Opinions shows that there have been multiple findings of arbitrary arrest and detention against KSA every year over the past five years. Thus in Opinion 63/2017, the Working Group noted "*with concern the consistent pattern of arbitrary arrests*

⁴² UN Working Group on Arbitrary Detention, *Opinion 61/2016*, adopted 25 November 2016, paras 49-50, 53, 56-58.

⁴³ UN Working Group on Arbitrary Detention, *Opinion 10/2017*, adopted 20 April 2017, paras 23-27.

⁴⁴ *Opinion 8/2012 (cited above)*, para. 28.

and arbitrary detention in KSA” and highlighted the “practically ubiquitous” presence of al-Mabahith al-Amma (the domestic intelligence service of the Ministry of the Interior) in cases brought to the attention of the Working Group.

37. In our opinion, it is worth drawing attention to two further features of the pattern of cases before the Working Group. First, a significant number of the cases concern individuals who were detained for exercising the right of freedom of expression or for defending human rights. The Working Group has also identified this trend; in Opinion 32/2013, it drew attention to the significant number of cases of arbitrary arrest and detention involving “protestors, human rights activists and defenders”.⁴⁵ Further in Opinion 46/2013 it highlighted its concern that there was a “*consistent pattern of arrest and detention of persons exercising their basic human rights, in particular their right to freedom of opinion, expression and association*”.⁴⁶ Second, a significant number of these cases include additional allegations of torture or inhuman and degrading treatment in detention. Those allegations have not been dismissed by the Working Group as unreliable or incredible.

38. The Committee against Torture has also expressed concern about serious abuses in KSA. In its Concluding Observations on the Second Periodic Report of KSA, adopted on 10 May 2016, it was “deeply concerned” at “numerous” reports of torture or other ill-treatment in detention centres (particularly those associated with al-Mahabith).⁴⁷ Further, the Committee expressed concern about whether safeguards against arbitrary detention were effective in practice,⁴⁸ recommended that the State take effective measures against coerced confessions⁴⁹ and sought detailed information about the number and location of al-Mahabith detainees.⁵⁰

⁴⁵ *Opinion 32/2013* (cited above), para. 19.

⁴⁶ *Opinion 46/2013* (cited above), para. 23 citing back to its earlier Opinion 42/2011.

⁴⁷ United Nations Committee against Torture, Concluding Observations on Second Periodic Report of KSA, 10 May 2016, para. 7.

⁴⁸ *Ibid.*, para. 15.

⁴⁹ *Ibid.*, para. 24.

⁵⁰ *Ibid.*, para. 27.

39. Specific concerns have also been identified about the application of counter-terrorism laws in KSA. On 4 May 2017, following a visit to KSA, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism published preliminary findings which included that “the Special Rapporteur strongly condemns the use of counter terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association or assembly ... [N]on-violent criticism of the State or any of its institutions, including the judiciary, cannot be made a criminal offence in any society governed by the rule of law”.⁵¹ The Special Rapporteur also expressed “serious concern over the fact that allegations of torture or other forms of ill-treatment made by terrorism suspects, lawyers and human rights defenders do not appear to systemically result in rapid and thorough investigations”.⁵² Following that visit, a new Penal Law for Crimes of Terrorism and its Financing was introduced by KSA on 1 November 2017. The new Penal Law has already been criticised by NGOs for retaining a broad definition of terrorism, which remains capable of applying to peaceful human rights activists and defenders.⁵³ The final report of the Special Rapporteur will be delivered to the Human Rights Council in March 2018.

40. The UN Committee on the Rights of the Child also expressed concern about various aspects of the treatment of children in its most recent report on KSA. In particular, it expressed concern that “interrogation techniques amounting to torture are still authorized in the State Party and reportedly frequently used to coerce juveniles into signing confessions”.⁵⁴ It expressed numerous concerns about the administration of juvenile justice including the possibility of children being detained as adults for up to six months without being able to

⁵¹ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to KSA, 4 May 2017, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21584&LangID=E>.

⁵² Ibid.

⁵³ Human Rights Watch, KSA: New Counterterrorism law enables abuse, 23 November 2017, <https://www.hrw.org/news/2017/11/23/saudi-arabia-new-counterterrorism-law-enables-abuse>

⁵⁴ Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of KSA, para. 26. CRC/C/SAU/CO3-4.

challenge their detention, lack of legal assistance and the trial and sentencing (including to death) of children involved into detentions before the Specialised Criminal Court.⁵⁵

41. Well known international NGOs and certain States have also produced reports addressing KSA's human rights record. The most recent US State Department Report, KSA Human Rights Report 2016, noted "a lack of judicial independence and transparency that manifested itself in denial of due process and arbitrary arrest and detention", "abuses of detainees" and "detaining, prosecuting and sentencing lawyers, human rights activists and antigovernment reformists" amongst other human rights problems reported.⁵⁶ The report notes that human rights organisations and the UN Human Rights Committee reported cases in which the Specialised Criminal Court based its decisions on confessions allegedly obtained through torture or coercion and that former detainees alleged abuse in detention facilities run by al-Mahabith.⁵⁷ In relation to arbitrary detention, the report notes "authorities held persons for months and sometimes years without charge or trial and reportedly failed to advise them promptly of their rights".⁵⁸

42. The Human Rights Watch World Report 2017 notes in relation to KSA that "Saudi authorities also continued their arbitrary arrests, trials and convictions of peaceful dissidents."⁵⁹ It continued that "detainees, including children, commonly face systematic violations of due process and fair trial rights, including arbitrary arrest."⁶⁰ Similarly, the Amnesty International Report, 2016-2017 states that "the authorities severely curtailed the rights to freedom of expression, association and assembly, detaining and imprisoning critics, human rights defenders and minority rights activists on vaguely worded

⁵⁵ Ibid., para 43.

⁵⁶ US State Department Report, Country Reports on Human Rights Practices for 2016, KSA, Executive Summary p1.

⁵⁷ Ibid., p. 5.

⁵⁸ Ibid., p. 9.

⁵⁹ Human Rights Watch, World Report 2017, p. 510. Available at https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf

⁶⁰ Ibid., p. 514.

charges. Torture and other ill-treatment of detainees remained common”.⁶¹ It added specifically that “the authorities continued to carry out numerous arbitrary arrests and held detainees for prolonged periods with referring them to a competent court [...] detainees were frequently incommunicado during interrogation and denied access to lawyers”.⁶²

43. The material set out above demonstrates that a pattern of arbitrary detention, particularly of human rights defenders or those exercising the right to freedom of expression, can readily be observed in the UN Working Group on Arbitrary Detention’s Opinions in relation to KSA. That pattern is wholly consistent with the concerns that have been expressed by the Committee against Torture, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, the US State Department and various international NGOs.

⁶¹ Amnesty International Report 2016-2017, The State of the World’s Human Rights, p. 312. Available at <https://www.amnesty.org/en/countries/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia/>

⁶² Ibid., p. 314.

D. The September 2017 Arrests and Detentions

44. In this section, we will set out the facts which are known about the September 2017 arrests in KSA. We will begin by setting out relevant publically available material about the September 2017 arrests, derived primarily from respected and well known NGOs. We will then set out the information that we have gathered from our interviews with relevant individuals and, in particular, from certain family members of those detained.

Public Material and Information about the September 2017 Arrests

45. On 10 September 2017, Reuters reported that KSA had arrested prominent clerics including Salman Al-Awda, Awad Al-Qarni and Ali Al-Omari.⁶³

46. The arrests were apparently confirmed by an official statement from the Saudi Press Agency on 12 September 2017 which read:

“An official source said that the State Security Presidency has been able during the past period to monitor the intelligence activities of a group of people for the benefit of foreign parties against the security of the kingdom and its interests, methodology, capabilities and social peace in order to stir up sedition and prejudice national unity. They were neutralized and arrested concurrently. They are Saudis and foreigners. They are being investigated to find out the full facts about their activities and those associated with them. Any future developments in this regard will be announced.” (emphasis added)

47. That official statement makes it clear that a number of individuals (“a group of people”) have been detained (“neutralized and arrested”). It does not, however, confirm the names of those detained or even the number of people who were imprisoned, let alone where they are held in custody.

⁶³ “Saudi clerics detained in apparent bid to silence dissent”, Reuters, 10 September 2017, <https://www.reuters.com/article/us-saudi-security-arrests/saudi-clerics-detained-in-apparent-bid-to-silence-dissent-idUSKCN1BL129>

48. On 15 September 2017, Human Rights Watch reported that “dozens” of people had been arrested “in what appears to be a coordinated crackdown on dissent”.⁶⁴ On the same day, Amnesty International reported that “more than 20 prominent religious figures, writers, journalists, academics and activists” had been detained in the preceding week.⁶⁵ Amnesty named Salman Al-Awda, Abdullah Al-Maliki and Essam Al-Zamel as among those detained.
49. On 18 September 2017, Amnesty International also reported the further arrests of Abdulaziz al-Shubaily and Issa al-Hamid, who were founding members of the Saudi Civil and Political Rights Association.⁶⁶
50. On 29 September 2017, Amnesty International issued further information in relation to Abdulaziz al-Shubaily. It indicated that he was arrested at Onaizah police station on 17 September 2017 and transferred to Onaizah General Prison, apparently in connection with an eight year prison sentence imposed on him by the Specialised Criminal Court in May 2016.⁶⁷
51. We note that some academics have also concluded that the arrests were part of a broader attempt to eradicate dissent in KSA. In particular, Reuters quoted Professor Madawi Al-Rasheed as saying that “There is a general climate of being hypersensitive and almost paranoid. There is no room for any kind of dissent at the moment.”⁶⁸ On another occasion, Professor Al-Rasheed

⁶⁴ Human Rights Watch, ‘KSA: Prominent Clerics Arrested’ (News Release) (15 September 2017) <<https://www.hrw.org/news/2017/09/15/saudi-arabia-prominent-clerics-arrested>> accessed 6 November 2017.

⁶⁵ Amnesty International, ‘KSA: Wave of Arrests Targets Last Vestiges of Freedom of Expression’ (News Release) (15 September 2017) <<https://www.amnesty.org/en/latest/news/2017/09/saudi-arabia-wave-of-arrests-targets-last-vestiges-of-freedom-of-expression/>> accessed 6 November 2017.

⁶⁶ Amnesty International, KSA: Arrest of Two Prominent Activists a deadly blow for human rights, 18 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/saudi-arabia-arrest-of-two-prominent-activists-a-deadly-blow-for-human-rights/>

⁶⁷ Amnesty International, ‘KSA: Further Information: KSA’s Human Rights Defender Imprisoned: Abdulaziz Al-Shubaily’, 29 September 2017, <https://www.amnesty.org/en/documents/mde23/7161/2017/en/> .

⁶⁸ Reuters, Saudi clerics detained in apparent bid to silence dissent, 10 September 2017, <https://www.reuters.com/article/us-saudi-security-arrests/saudi-clerics-detained-in-apparent-bid-to-silence-dissent-idUSKCN1BL129>

expressly linked the detentions to the suppression of internal dissent about KSA's actions against Qatar.⁶⁹

52. In the meantime, in November 2017, KSA arrested and / or detained a substantial number of officials ostensibly due to an investigation into corruption. Press reports initially put the number of people detained at 201.⁷⁰ Reports one month later suggested that 159 people remained detained at a hotel in Riyadh.⁷¹ Allegations quickly followed that the real intention of the detentions was to “weed out dissent”.⁷² We are not specifically asked to consider the November 2017 arrests and detentions. However, it seems to us that they provide a further illustration of the government's sweeping powers to detain a broad group of people in unorthodox detention centres without charge in secretive circumstances for a sustained period of time.

53. On 7 January 2018, Human Rights Watch released an updated report which states that Salman Al-Awda had by then been detained for four months without charge. It added that he had only been allowed one telephone call (lasting 13 minutes) to his family.⁷³

54. On 17 January 2018, Amnesty reported that Salman Al-Awda had been hospitalised in Jeddah.⁷⁴ No further details about his condition or the circumstances in which he came to need hospital treatment are known.

⁶⁹ The New Arab, 20 September 2017, <https://www.alaraby.co.uk/english/indepth/2017/9/20/saudi-crackdown-on-dissent-linked-to-failed-qatar-boycott>

⁷⁰ The Guardian, 9 November 2017, KSA: 201 people held in \$100 billion corruption inquiry, <https://www.theguardian.com/world/2017/nov/09/saudi-arabia-201-people-held-in-100bn-corruption-inquiry>

⁷¹ The Guardian, 5 December 2017, Saudi purge sees 159 business leaders held in Riyadh hotel, <https://www.theguardian.com/world/2017/dec/05/saudi-purge-sees-159-business-leaders-held-in-riyadh-hotel>

⁷² The Guardian, 9 November 2017, KSA: 201 people held in \$100 billion corruption inquiry, link as above.

⁷³ Human Rights Watch, KSA: Cleric held for 4 months without charge, 7 January 2018: <https://www.hrw.org/news/2018/01/07/saudi-arabia-cleric-held-4-months-without-charge>

⁷⁴ Amnesty, Cleric hospitalised after five months in solitary confinement must be released, 17 January 2017, <https://www.amnesty.org/en/press-releases/2018/01/saudi-arabia-cleric-hospitalized-after-five-months-in-solitary-confinement-must-be-released/>

55. We are not aware of any further public statements by officials of KSA either to confirm the identities of those detained, to announce criminal charges or to explain the justification for the detentions.

Our Investigations

56. There are obvious difficulties in obtaining first-hand accounts about the September 2017 arrests. Most of those arrested remain in detention and hence cannot be interviewed. In many cases, their friends and family members are also located in KSA and are unwilling to provide witness statements, for fear of reprisals. Nevertheless, we have been able to speak to certain persons and family members of those detained on condition of anonymity and we will set out below the information that we have been provided with.

57. In order to confirm the number and identity of the individuals who were detained in September 2017, we interviewed Al Qst, an NGO specialising in KSA's detentions. Al Qst provided us with a list of individuals who, through their research, they believe to have been detained in KSA between September and October 2017.

58. In summary, Al Qst have identified sixty one (61) people who have been detained. Thirty (30) of that number have been directly confirmed by their sources within KSA to be imprisoned: Abdul Aziz Al-Shubaily, Issa Al Hamed, Salman Al-Awda, Essam Al-Zamil, Abdullah al-Maliki, Mostafa El Hassan, Jameel Farsi, Mubark bin Zuair, Aisha al Marzug, Ruqia al Muhareb, Awad al Qarni, Ali Al Aomri, Aadel BaNaaimah, Ali Badhadah, Ibrahim Al Harthy, Gurom Albeshi, Jamal Al-Najem, Khaled Al-Awda, Hassan Farhan al-Maliki, Alabbas Hassan al-Maliki, Sami al Majed, Menawer al Abdali, Ziad Ben Nahit, Mohamed Mouse El Sherif, Rabee Hafez, Khaled al-Ojaimi, Fahad Al Sunaidi, Ibrahim Al-Nasser, Dr Mohammad al Bisher and Malek Al Ahmad.

59. The remaining thirty one (31) are believed by Al Qst to have been detained but confirmation has not been obtained: Walid al Huwairini, Hamoud Ali Al

Amri, Mohammed Al-Shnar, Abdulmohsen Al Ahmad, Mohammed al-Khudairi, Mohamed Al-Habdan, Yousef Al-Ahmad, Abdul Aziz Al Abdul Latif, Ibrahim Al Fares, Abdulaziz Al-Zahrani, Ahmad al Sawian, Mouse al Ganami, Mosad al Kathiri, Mohammed al Barrak, Senhat al Otaibi, Habeeb al Loiheq, Saad Mater al Otaibi, Idris Mohamed Abker, Khaled Al Mahoushi, Yousef Al-Mohaus, Yousuf al Mulhem, Ali Abu al Hassan, Ahmed Al-Amira, Fawzan al Ghazlan, Sami al Thubaiti, Abdullah al Suailem, Razin al Razin, Yousef al Farraj, Salem al Daiini and Khaled al Alkami.

60. We note that Al Qst believes that Ziad Ben Nahit was released on 20 December 2017. The remaining sixty individuals are believed to remain in detention.

61. We have tried to verify the contents of Al Qst's list. We note that some corroboration is provided by the fact that all of the individuals specifically mentioned by Human Rights Watch or Amnesty in the above reports also appear on this list. Moreover, we have been able to speak to family members of some of the individuals who appear on this list, and persons who know them, under condition of anonymity. They too confirm that the list is accurate.

62. The importance of this list is that it suggests that the total number of individuals who were detained is significantly higher than the "dozens" or "more than twenty" which international NGOs were able to verify. Moreover, at least the first eight individuals on the list are identified by Al Qst as human rights defenders or supporters, suggesting a possible explanation for the detentions.

63. We have also been able to speak to a number of family members and friends of those detained and others. None of those individuals wish to be named in this report, however we are able to summarise their evidence without revealing their identities.

64. It has been confirmed that Salman Al-Awda was arrested at his home address in Riyadh on 7 September 2017 by uniformed members of the State Security Forces. No arrest warrant or decision was produced. No charges have yet been laid against him. On its face, his detention is therefore arbitrary because it falls into category (i) of the types of arbitrary detention defined by the UN Working Group. For the same reason, it violates Article 14(3) of the Arab Charter on Human Rights.
65. In a similar vein, there is no known reason for the detention of Malik Al-Ahmad. He is a media expert and was involved with the press for many years. But he is not a political activist. As far as we are aware, no arrest warrant has been issued and no charges have been laid against him. Prima facie, his detention is therefore also arbitrary because it too falls into category (i) of the types of arbitrary detention defined by the UN Working Group and violates Article 14(3) of the Arab Charter on Human Rights.
66. It has further been confirmed that, as reported by Human Rights Watch (above), Salman Al-Awda has only been allowed to make one short telephone call to his family. In that telephone call, he said that he was detained at Dhahban prison. It is unknown if he was held in Dhahban for a substantial period; other reports suggest that he was held at Al Ha'ir.
67. Salman Al-Awda was arrested shortly after tweeting that he encouraged the Saudi and Qatari authorities to reconcile with each other - a statement which is, of course, contrary to the official policy of KSA. No other explanation for his detention has been put forward by KSA. It therefore appears that he was detained for exercising his right to freedom of expression. In the circumstances, the UN Working Group on Arbitrary Detention would likely also regard this as being a category (ii) case of arbitrary detention.
68. We received reports, confirmed by the above Human Rights Watch report, that family members of Salman Al-Awda have been the subject of illegitimate pressure from state authorities. One family member, Khalid Al-Awda was

reportedly arrested for tweeting about Salman Al-Awda's arrest. Another 17 members of Mr Al-Awda's family have had travel bans imposed on them.

69. It is clear that the individuals are not all being detained at the same location. Salman Al-Awda said in October 2017 that he was at Dhahban prison. One other detainee, Sami Al-Majid is believed to have been transferred to Dhahban. Others are believed to be detained at Al Ha'ir. The location of many other individuals is unknown. KSA has not officially identified where it is detaining many of them. For example, it is not known where Malik Al-Ahmad and others are being held, which will plainly be a source of additional anxiety to family and friends.

70. Dhahban prison is located 19km to the North of Jeddah. It is a large high-security facility. It has been used by KSA to hold other high profile human rights defenders such as Dr Saud Mukhtar al-Hashimi. Allegations of mistreatment have previously been made in relation to Dhahban prison, not least in the UN Working Group on Arbitrary Detention Opinion 52/2012.

71. Al Ha'ir has a similar profile. It is the largest prison or detention centre in Saudi Arabia. It is located 29km South of Riyadh. Allegations of mistreatment of prisoners have also been made in relation to Al Ha'ir, notably in the UN Working Group on Arbitrary Detention Opinions 52/2012 and 61/2016.

72. We note that the detainees are also being treated differently. Some have apparently been allowed to contact their families. Others have not. We have been told, for instance, that Ali Al Aomri has not been heard from at all since his detention in September 2017 (now five months ago). Salman Al-Awda was allowed one telephone call in October 2017 (therefore after being detained for around one month) but no further contact has been permitted. Others, including Khalid Al-Awda and Sami Al-Majed have been allowed at least one short family visit. This differential treatment reinforces the impression of arbitrariness because there is no obvious reason to allow some

detainees to contact their families but not to accord the same basic right to others.

73. The lack of any or any substantial contact with family members and the unknown location of many of those detained is a source of serious concern. It suggests violations of the prohibition against prolonged incommunicado, arbitrary detention and the right of family members to know the truth about what has happened to their relatives. Moreover, it leaves those individuals vulnerable to further mistreatment including torture and cruel, inhuman or degrading treatment.
74. In that light, it is particularly concerning that it has been confirmed that, as reported by Amnesty, Salman Al-Awda has been hospitalised. We understand that his family members have sent official requests to try to find out what has happened to him but there has been no official response from KSA authorities. They have not been allowed to visit him in hospital. In the absence of an official explanation from KSA, his family and others will draw the inference that the cause of his hospitalisation could be as a result of his detention.
75. Sources told us that a number of those detained suffer from serious medical conditions. In particular, Mostafa el Hassan is believed to suffer from an advanced stage of cancer. Further, we have medical notes from July 2016 confirming that Sami Al-Majed had a benign growth on his skull which required monitoring by medical professionals. He was not allowed medical treatment, at least during his initial detention prior to his transfer to Dhahban.
76. It was also confirmed that detainees including Sami Al-Majed, Salman Al-Awda, and others have been held in solitary confinement.
77. Family members and friends have also expressed more general concerns that when they were allowed to see the detainees, they had noticeably lost weight, they had been treated poorly or that they feared ill-treatment.

E. Conclusions and Recommendations

78. The research that we have been able to conduct, and the information gathered, suggests that many more persons have been detained in September 2017 than has been conceded by the KSA authorities. It also shows that persons who are opponents of the regime have been targeted for arrest and then detained indefinitely without charge. The fact that so little is known about their arrests and detentions is disturbing in and of itself. The conduct of the authorities has been highly secretive and some of the persons detained are, in effect, disappeared.

79. In our opinion these detentions are arbitrary and unlawful, and in breach of the treaties cited herein and customary international law. For the avoidance of doubt, the facts summarised above lead to the conclusion that the detentions are arbitrary because:

- a. No warrant of arrest was produced at the time of detention. No criminal charges have been brought against those detained. So far as we are aware, none of those detained have been brought before a Court. There is thus no justification for the detentions under national law and international law;
- b. In the case of Salman Al-Awda and others, the detention appears to result from their peaceful exercise of their fundamental right to freedom of expression;
- c. In many cases the imposition of incommunicado detention and solitary confinement are sufficiently severe to provide a further basis for holding that the detentions are arbitrary.

80. We are deeply concerned that detaining individuals in this way leaves them vulnerable to further human rights violations, including torture. We note that allegations of torture and mistreatment have been made against KSA, including at the very prisons where some of the victims are believed to be

detained. The risk to those individuals is heightened by the evidence that we have been provided with of the denial of medical treatment, loss of weight and general poor treatment.

81. The responsibility for these violations lies with the State authorities of KSA. These are acts perpetrated by the State and its organs and officials as part of a policy to repress all forms of opposition and prevent freedom of thought, expression, and association.

82. Our study of the Opinions of the Working Group on Arbitrary Detention shows that the wave of arrests and detentions in September 2017 forms part of a long established pattern of violations and abuse by the national authorities. According to that pattern, individuals who have defended human rights or exercised their right to free expression have often been detained (usually by Al-Mabahith), there are credible reports of mistreatment or torture during their detention and the arrests are subsequently deemed to be arbitrary by the UN Working Group on Arbitrary Detention.

83. We note that on 2 January 2018, the United Nations Special Rapporteurs on the Situation of Human Rights Defenders, on the Right to Freedom of Opinion and Expression, on Freedom of Religion and Belief and on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and the Chair-Rapporteur of the United Nations Working Group on Arbitrary Detentions responded to this wave of arrests by “*deplor[ing] KSA’s continued use of counter-terrorism and security-related laws against human rights defenders, urging it to end the repression and release all those detained for peacefully exercising their rights*”.⁷⁵ Such statements are very helpful but on their own cannot provide a sufficient response to the pattern of arbitrary detentions in KSA.

84. The Human Rights Council is scheduled to complete its Universal Periodic Review of KSA in November 2018 and stakeholder submissions must be filed

⁷⁵ UN Experts decry KSA’s persistent use of anti-terror laws to persecute peaceful activists, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22570&LangID=E>

by 23 March 2018. We are aware that the victims' families and NGOs intend to submit the present legal opinion and report to the UN Human Rights Council as part of that process. We urge the Human Rights Council to consider this report because it summarises evidence of serious human rights violations from a variety of sources, including witness testimony, and, further, shows that these are not isolated incidents but part of a pattern of abuses that has persisted unchecked for at least the last ten years.

85. We invite the Human Rights Council to:

- a. Condemn the violations of fundamental human rights in KSA, including those documented in this report;
- b. Call for the immediate release of those arbitrarily detained in September 2017 and all those held in prison unlawfully;
- c. Recommend, again, that KSA accede to the International Covenant on Civil and Political Rights (ICCPR); and
- d. Refer the matter to the UN General Assembly for action to be taken against KSA for the continuing violations to hold the KSA authorities to account, and for remedies to be provided to the victims.

86. In particular, this report should be brought to the attention of the UN General Assembly in order that it may consider whether KSA's rights of membership of the UN Human Rights Council should be *suspended* pursuant to paragraph 8 of General Assembly Resolution 60/251. We noted above that NGOs have already called for KSA's membership to be suspended. This report can only add further weight to those calls. In particular, the number of arbitrary detentions carried out in September 2017, coupled with the clear pattern of similar detentions in the Opinions of the UN Working Group on Arbitrary Detentions, justifies the conclusion that the violations of human rights in KSA are *gross* and *systemic*. The General Assembly would therefore be justified in suspending KSA's membership rights.

87. We urge all States to consider and investigate the evidence of torture committed by officials in KSA, in order that they may exercise universal jurisdiction over those crimes, subject to the confines of their national law, when relevant officials travel to their jurisdictions. These allegations should be properly investigated by national police forces, and where there is sufficient evidence, the alleged perpetrators should not be permitted to enter States outside of KSA without being prosecuted. States should use their influence and relations with KSA to ensure that the authorities comply with international human rights law.
88. The confidential information gathered for the preparation of this legal opinion and report can be provided to international bodies and national authorities, as required for these purposes, with the permission of those persons concerned.

Lord Macdonald of River Glaven Kt QC
Matrix Chambers

Rodney Dixon QC
Temple Garden Chambers

London
31 January 2018