



## **SAUDI ARABIA**

### **Shadow report**

**Report submitted to the Committee against Torture in the  
context of the second periodic review of Saudi Arabia**

**Alkarama Foundation – 31 March 2016**

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## **1. Introduction**

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The second periodic report of Saudi Arabia (CAT/C/SAU/2) was submitted to the Committee against Torture in January 2015, with a delay of over four years, and will be reviewed by the Committee at its 57<sup>th</sup> session.

Alkarama hereby submits this shadow report in which it evaluates the implementation of the Convention against Torture (UNCAT) in Saudi Arabia, highlighting its main concerns and addressing recommendations to the State party. This report is based on Alkarama's documentation of human rights violations in Saudi Arabia since 2004 – including of cases of torture – as well as on a review of the State report and replies to the Committee's List of Issues and provides an analysis of the relevant domestic laws and practices.

In this regard, Alkarama wishes to provide the Committee with a confidential list of 120 individuals (Appendix 1) who have all suffered from torture or other cruel, inhuman or degrading treatment or punishment, which demonstrates that this practice is widespread in the country.

## **2. Background: political and judicial system of Saudi Arabia**

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With virtually inexistent civil and political rights and a violent crackdown on civil society that has been increasing for the last decade, Alkarama is extremely concerned with the human rights situation in Saudi Arabia. The accession of Salman bin Abdulaziz al-Saud to the throne in January 2015 did not bring any fundamental changes to the political and human rights situation until this day.

### **2.1. Political system**

Saudi Arabia's political system is an absolute monarchy which does not have a formal constitution but a "Basic Law" that does not set clear fundamental guarantees. The only provision of the Basic Law that refers to human rights is its article 26, which provides that "the State shall protect human rights in accordance with the Sharia". In addition, clarity and legal certainty are undermined by the absence of a Criminal Code (CC), which leaves room for the Prosecution and judges – i.e. *in fine* to the Ministry of Interior – to define crimes and their sanctions in a discretionary manner. Thus, the legal definition of crimes and the severity of their punishments rest on the judge's discretionary interpretation of Sharia law, including in cases involving corporal punishment and capital punishment.

Moreover, all state powers are concentrated in the hands of the executive and especially the monarch and his close entourage. The Shura Council, which is supposed to fulfil the role of legislative power – along with the Council of Ministers – is composed of members appointed by the King – mainly from the Royal family – and is limited to an advisory role. Laws are ultimately ratified by Royal Decree and the King may dissolve and reconstitute both Councils.

### **2.1 Judicial system**

#### **2.1.1 General organisation**

Serious concerns can be raised regarding independence of the judiciary since the Saudi judicial system is marked by an overwhelming control of the executive. Although Article 46 of the Basic Law states that "[t]he Judiciary is an independent authority. The decisions of judges shall not be subject to any authority other than the authority of the Islamic Sharia", in practice the judiciary is under the tight control of the Ministry of Interior.

Moreover, article 52 of the Basic Law states that "[j]udges shall be appointed and discharged by Royal Decree, based on a proposal of the Supreme Judiciary Council"; which adds another obstacle to an effective independence of the judiciary, especially given that the Supreme Judiciary Council merely plays a formal role in the appointment of judges. The Supreme Judicial Council is in charge of inspecting judges' discipline, but the Ministry of Justice maintains financial and administrative control

over the judiciary, while the King appoints the heads of the Supreme Judicial Council and of the Supreme Court.

Before 2007, the law even provided a possibility for the executive to interfere directly in judicial proceedings<sup>1</sup> if the Minister of Justice “did not approve” of a decision issued by the Court of Appeals. In 2007, the executive enacted a new Law on the Judiciary, which restructured the judicial system. The new law establishes 13 courts of appeal (one for each region, instead of previously two for the whole country) and establishes a Supreme Court which is competent to review the following:

- “judgments and decisions issued or supported by courts of appeals relating to sentences of death, amputation, stoning, or *qisas* (*lex talionis* retribution) in cases of criminal homicide or lesser injuries”
- “judgments and decisions issued or supported by courts of appeals relating to cases not mentioned in the previous paragraph or relating to *ex parte* cases or the like without dealing with the facts of the cases whenever the objection to the decision is based upon the following: (a) Violating the provisions of *Sharia* or laws issued by the King which are not inconsistent with *Sharia*. (b) Rendering of a judgment by a court improperly constituted as provided for in the provisions of this and other laws. (c) rendering of a judgment by an incompetent court or panel. (d) An error in characterizing the incident or improperly describing it.”<sup>2</sup>

### 2.1.2 The Board of Grievances

The Board of Grievances is an administrative tribunal “directly linked to the King”<sup>3</sup> whose judges are appointed and destituted by the King and which was established to deal with complaints filed by individuals including against State agents for unlawful administrative decisions. Individuals can seek reparation for damages resulting from an unlawful act by a state agent.<sup>4</sup>

However, its founding law provides that the Board is not competent to hear cases of unlawful administrative decision if they are based on “sovereign rights of the ruler”.<sup>5</sup>

In 2007, a new law restructured the organisation of the Board in a three-leveled system composed of Administrative Courts, Administrative Appeals Courts and a Supreme Administrative Court.

As we will explain further in our report, Alkarama observed that in practice, families of individuals arbitrarily detained or tortured in detention who file administrative complaints with the Board do not obtain reparation.

### 2.1.3 The Bureau of Investigation and Public Prosecution (BIPP)

The Ministry of Interior is responsible for investigation and prosecution through the Bureau of Investigation and Public Prosecution, which was created in 1989<sup>6</sup> by a Royal Decree but effectively set up in 1995. Although the BIPP Decree states that “members of the Bureau are totally independent”,<sup>7</sup> in practice, the Bureau is under the control of the Ministry of Interior. In fact, the premises of the

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<sup>1</sup> Article 20 of the old Judiciary Law.

<sup>2</sup> Law on the Judiciary, article 11.

<sup>3</sup> Law of the Board of Grievances, article 1.

<sup>4</sup> *Ibid.*, article 8 (article 13 in new law).

<sup>5</sup> *Ibid.*, article 9 (article 14 in new law). For an example of a human rights violation in which the Board declined to hear a legal challenge, see Human Rights Watch, *Letter to King Abdullah Regarding the Illegal Imposition of Travel Bans*, 9 February 2007, <http://hrw.org/english/docs/2007/02/09/saudia15305.htm> (accessed on 28 March 2016).

<sup>6</sup> Law And Regulations Of the Bureau Of Investigation And Public Prosecution [1989] Royal Decree No. M/56, 24 Shawwal 1409 (29 May 1989), Umm al-Qura No. 3264, 20 Dhu al-Qadah 1409H.

<sup>7</sup> Law of the Board of Grievances, article 5.

prosecution services are within the Ministry of Interior<sup>8</sup> and the Chief Prosecutor is nominated by the Minister of Interior.<sup>9</sup>

The BIPP is endowed with a Bureau Administration Committee which supervises the work of the BIPP. The Ministry of Interior also chooses and appoints members of the Bureau Administration Committee and has the right to order this Committee to initiate investigations<sup>10</sup> and to decide on disciplinary measures against members of the Bureau.<sup>11</sup>

Article 3 of its founding Law sets the scope of the BIPP's jurisdiction which includes:

- a) Investigating crimes;
- b) Taking action with respect to an investigation through filing a case or taking no action in accordance with relevant regulations;
- c) Prosecuting before judicial bodies in accordance with the implementing regulations;
- d) Appealing of judgments;
- e) Supervising execution of criminal sentences;
- f) Monitoring and inspection of prisons, detention centers and any places where criminal sentences are executed, as well as hearing complaints of prisoners and detainees, insuring the legality of their imprisonment or detention and the legality of their remaining in prison or the detention centers after the expiry of the period, taking necessary steps to release those imprisoned or detained without a legitimate cause and applying the law against those responsible for such action. The Minister of Interior shall be informed of any relevant observations, and a report shall be submitted to him regarding the conditions of the prisoners and detainees every six months.
- g) Any other powers conferred upon it by the law, regulations issued pursuant to this Law, the resolutions of the Council of Ministers or the High Orders.

The Specialised Criminal Court of Riyadh, competent to hear case of terrorism will be discussed in Section 6.3 of this report.

### **3. Absence of adequate definition, criminalisation and absolute prohibition of torture in domestic law**

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#### **3.1 Absence of definition and criminalisation of torture**

The Convention requires States parties to include in its domestic legislation a definition of torture which includes *at least* all the elements enounced in article 1 of the Convention. As such, the definition should include the following elements:

- any act by which severe pain or suffering, whether physical or mental;
- is intentionally inflicted on a person;
- for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind;

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<sup>8</sup> *Ibid.*, **Article 1**: "Pursuant to this Law, an agency named "The Bureau of Investigation and Public Prosecution" attached to the Minister of Interior shall be established, with a budget within the budget of the Ministry. Its Headquarters shall be in the City of Riyadh. Necessary branches shall be established inside or outside Riyadh."

<sup>9</sup> *Ibid.*, **Article 10**: "The CHairman of the Bureau shall be appointed in the distinguished grade by Royal Order upon a nomination by the Minister of Interior from amongst those eligible to fill at least the position of Vice-CHairman. Filling other positions for Bureau members, as well as their transfer to other agencies shall be by Royal Order, pursuant to a decision by the Bureau Administration Committee and a recommendation of the Minister of Interior."

<sup>10</sup> *Ibid.*, **Article 4**: "The Bureau Administration Committee, in addition to the powers stipulated in this Law and its regulations, shall be empowered with the following: Reviewing of indictments related to cases where the death penalty, amputation or stoning are sought; Studying matters relating to investigation and prosecution, pursuant to an order of the Minister of Interior; Preparing the annual report of the Bureau with its observations along with suggestions regarding its work progress and its views with respect to the laws and procedures it applies. It shall submit the same to the Minister of Interior who shall in turn bring it before the Custodian of the Two Holy Mosques including his views thereon."

<sup>11</sup> *Ibid.*, Article 26.

- when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Despite the fact that, in its report, the State affirms that “[t]he legal regime in the Kingdom of Saudi Arabia embraces the concept of torture set out in article 1 of the Convention”,<sup>12</sup> Saudi legislation does not explicitly define torture in accordance with article 1 of the Convention, leaving a legal vacuum that renders the eradication of this practice difficult. This is due to the fact that the State party does not have a Criminal Code defining crimes and their sanctions. While the authorities affirm in their Replies to the List of Issues that they are currently working on the formulation of a draft Criminal Code, there is no mention of whether torture would be defined autonomously or under “general abuse of power” and whether it will integrate all elements of article 1 of the Convention.<sup>13</sup>

As such, the only legislative provision prohibiting torture is article 2 of the Law of Criminal Procedure of 2001, which states that “an arrested person shall not be subjected to any bodily or moral harm. Similarly, he shall not be subjected to any torture or degrading treatment.” Such a provision does not define torture and does not prescribe the punishment applicable for the offence or provides for the different modes of participation (i.e. complicity, instigation, order) in the crime. In addition to incriminating separately acts of torture, the law should provide adequate sanctions that reflect the seriousness of acts of torture.<sup>14</sup> Thus, this provision does not constitute an autonomous incrimination of torture as required under article 4 of the Convention. In its Replies to the List of Issues,<sup>15</sup> the State party indicated that agents who are found responsible of torture can be prosecuted and punished with up to 10 years under the Decree Law No.43 of 1958. However, this law does not provide for punishments that are specific to the crime of torture but for “abuse of power” and has not been applied so far to any case of torture.

Furthermore, even if the State party explains that torture is already defined and forbidden by Sharia law,<sup>16</sup> the latter does not define torture as there is no set definition of crimes under Sharia law. Sharia law leaves it to the judges to determine which actions may or may not constitute torture as well as the punishment that such acts should entail. This discretionary power is even more concerning when one considers the lack of independence of the judiciary *vis-à-vis* the executive which may hinder even more qualifications of acts of torture committed by states agents as such.

Without a definition of the crime, the State party does not provide for the imprescriptibility of the crime, nor does it provide for the different modalities of participation to the crime.

Lastly, Saudi Arabia explains in its report<sup>17</sup> and in its Replies to the List of issues<sup>18</sup> that all international instruments to which the State is party to are part of the domestic legal system, citing article 70 of the Basic Law. However, if Article 70 of the Basic Law states that “Laws, international agreements, treaties and concessions shall be approved and amended by Royal Decrees”, it does not mention any direct applicability of treaty provisions into the domestic system. As such, Alkarama was not able to find a single instance in which judges directly referred to the definition contained in the Convention to qualify acts falling under the definition.

### **3.2 Domestic law does not provide for the absolute prohibition of torture**

The Convention requires State parties to explicitly establish the absolute prohibition of torture and to exclude the defence of superior orders as a valid defense argument prosecution for acts of torture.

<sup>12</sup> Kingdom of Saudi Arabia, Consideration of reports submitted by States parties under article 19 of the Convention, Second Periodic Report, CAT/C/SAU/2, 7 January 2015, para.1. Hereinafter “State party report”.

<sup>13</sup> Answers of the Kingdom of Saudi Arabia to the List of Issues (CAT/C/SAU/Q/2/Add.1) in relation to the examination of the State party’s second periodic report (CAT/C/SAU/2), hereinafter “Replies to the List of Issues”, para. 3.

<sup>14</sup> General Comment No. 2, CAT/C/GC/CRP.1/Rev. 4, paras. 3 and 10.

<sup>15</sup> Replies to the List of Issues, para. 2.

<sup>16</sup> Replies to the List of Issues, para. 2.

<sup>17</sup> State party report, para. 24.

<sup>18</sup> Replies to the List of Issues, para. 3.

Under the Convention, torture is never justified: no state of war or emergency, internal political instability or any other threats to the State can be invoked as a justification for torture.<sup>19</sup>

Despite the fact that the State report mentions that “[t]he provisions of Islamic Sharia, from which the Kingdom derives its laws, prohibit acts of torture and the use of cruel or degrading treatment, whether in ordinary, exceptional or emergency circumstances”,<sup>20</sup> no provision in domestic law explicitly mentions that exceptional circumstances cannot be used to justify acts of torture.

It is all the more concerning that article 82 of the Basic Law states that: “No provision of this Law whatsoever may be suspended *except on a temporary basis, such as in wartime or during the declaration of a state of emergency*”. The wording of this article seems to allow for a general derogation to the Basic Law without explicitly prescribing that no derogation from articles protecting the right to life, prohibiting the use of torture or cruel, inhuman or degrading punishment, or those related to the right to liberty and the protection of fundamental freedoms.

#### *Defence of superior order*

Not only direct perpetrators of torture are not prosecuted but also those who order, instigate, consent or acquiesce to acts of torture are left unpunished which also violates the State party’s obligation to investigate and prosecute those responsible for these acts.

Even though the State party affirms that Sharia provisions prohibit torture and, thus that “an order from a superior officer may not be invoked as a justification for torture or the use of cruel or other such treatment in as much as they are designated as criminal offences”,<sup>21</sup> no provision in Saudi domestic law provides that an order from a superior officer or a public authority may not be invoked as a justification of torture.

In practice, this creates a climate of impunity for perpetrators of torture and to our knowledge, no law enforcement official has ever been prosecuted for acts of torture despite complaints from victims either directly to the judge, to the BIPP or to the Board of Grievances (See Section 10.1 of this report which discusses the lack of effective remedy).

#### **Recommendations:**

1. Adopt a Criminal Code in order to define crimes in a precise, clear and predictable manner, in compliance with the principle of *nullum crimen nulla poena sine lege*;
2. Define and criminalise torture in full compliance with the Convention, ensuring that penalties are fixed in the law and commensurate with the gravity of the crime and including the different levels of participation;
3. Explicitly mention in the domestic legislation that no exceptional circumstances may be invoked as a justification of torture or any violation of fundamental non-derogable rights;
4. Explicitly mention in the domestic legislation that all those who order, perpetrate, acquiesce or tolerate torture will be held fully accountable and will be liable to prosecution, imprisonment and dismissal from office;
5. Explicitly mention in the domestic legislation that superior orders cannot constitute a defence for acts of torture.

## **4. Widespread and systematic practice of torture**

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### **4.1. Torture by the Bureau of Investigation and Public Prosecution**

<sup>19</sup> Articles 2§2 and 2§3 CAT; See also UNCAT General Comment N°2, CAT/C/GC/CRP.1/Rev. 4, paras. 5 and 26; See also UN Committee against Torture, *Concluding observations of the Committee against Torture on the United States of America*, 25 July 2006, UN Doc. CAT/C/USA/CO/2.

<sup>20</sup> State party report, para. 52.

<sup>21</sup> State party report, para. 53.



The Code of Criminal Procedure (CCP) states in its article 16 that the BIPP has jurisdiction to initiate and follow-up criminal action before the competent courts, in addition to initiate investigation and prosecution. As such, members of the BIPP are responsible for the "search for and arrest of criminal offenders and collection of information and evidence necessary for the investigation and indictment".<sup>22</sup>

Torture is routinely used by BIPP agents to obtain coerced confessions from the victim. Such practices stem from the weight forced confessions from the accused have in the State party's criminal procedure, which favours confession as mean of evidence.

The techniques used by the BIPP do not differ from those used by the General Intelligence. As such, they include *inter alia* the use of "falaqa", severe beatings and flogging, hanging, subjection to extreme temperature, food, sleep and light deprivation. The victim is told that he/she will only stop being tortured once he/she signs the confessions already prepared and written by the BIPP. Signatures take the form of a fingerprint of the victim who is usually not allowed to read the confessions beforehand.

When the victim is presented to the judge, claims that he/she has been tortured and retractions of his/her statements extracted under torture, are not taken into account by the judge (See Section 5.7).

One telling example of such practices is the case of **seven young men**,<sup>23</sup> who were sentenced to death for theft, after having robbed jewellery stores in different places at different times. They were all arrested in similar circumstances in Abha city on 10 January 2006 and charged with armed robbery of a jewellery store. On 6 August 2009, the seven men were sentenced to death after three years of pre-trial detention followed by an unfair trial by the General Abha Court in Asir. All seven were severely tortured during their detention and reported to Alkarama having been forced to stand for long hours, subjected to sleep deprivation and extreme temperatures in their cells. The interrogators also threatened to bring their mothers and other family members in for questioning. The men also reported that the prosecution file was solely based on confessions extracted under torture which were used by the judge to issue his decision, despite the fact that they claimed having been tortured during their hearings. Furthermore, the men were denied access to a lawyer in order to prepare their defence and the verdict was pronounced after a trial consisting in three brief *in camera* court sessions during which they were not assisted by a lawyer. The seven victims who were subsequently executed in 2013 were: **Sarhan b. Ahmad b. Abdullah Al Mashaikh**, aged 22 upon arrest; **Saeed b. Hassan b. Ahmad Al Omari Al Zahrani**, aged 22 upon arrest; **Ali b. Mohamed b. Hazzam Al Shahri**, aged 20 upon arrest; **Nasser b. Saeed b. Saad Al Qahtani**, aged 24 upon arrest; **Saeed b. Nasser b. Mohamed Al Yaala Al Shahrani**, aged 21 upon arrest; **Abdulaziz b. Saleh b. Mohamed Al Amri**, aged 23 upon arrest; **Ali b. Hadi b. Saeed Al Qahtani**, aged 24 upon arrest.

Today, the practice of extracting confessions under torture by the BIPP continues and heavy penalties – including capital punishment – are still being handed on the sole basis of coerced confessions. Lastly, it is worth noting that in several cases, testimonies from other persons incriminating the victim were also obtained through coercion by the BIPP.

## 4.2. Torture by the General Intelligence

The intelligence services or *Mabahith* have a large responsibility in the systematisation of violations like torture and arbitrary detention which occur in designated detention centres under their control (such as Al Ha'ir or Ulaysha), where detainees are kept outside the protection of the law. For the past ten years, Alkarama has received hundreds of cases of arbitrary arrests and detention followed by torture carried out by these intelligence services which are responsible for investigating "security

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<sup>22</sup> Article 24 CCP.

<sup>23</sup> Alkarama, *Saudi Arabia: Halt Imminent Execution of 7 young men sentenced to death for robbery*, 4 March 2013, <http://en.alkarama.org/component/content/article/33-saudi-arabia/communiqu/1056-saudi-arabia-halt-imminent-execution-of-7-young-men-sentenced-to-death-for-robbery> (accessed on 29 March 2016).

related” crimes. Cases show that torture is committed in an alarmingly systematic fashion in order to extract confessions during the investigation stage.

These services have large powers and operate in security related cases, but also in political cases since they also arrest peaceful dissidents and activists. The arrests and detentions carried out by these forces follow a specific pattern that has been documented through our case work: victims are arrested by officers dressed in civilian clothes who do not present an arrest warrant nor explain the reasons of the arrest. The victim is then taken to an unknown location where he is held in solitary confinement and *incommunicado* for often extended periods of time, i.e. up to a year in solitary confinement and several years *incommunicado* in some cases. Indefinite and prolonged solitary confinement in excess of 15 days amounts to cruel, inhuman or degrading treatment or punishment as confirmed by the Special Rapporteur on Torture.<sup>24</sup> During this period, the victim is subjected to torture, other forms of mistreatments and the denial of his fundamental rights such as the right to call his family, the right to legal assistance, the right to medical treatment and, if applicable, consular assistance.

The main forms of torture described in testimonies received by Alkarama include the following: hooding; hanging by hands and feet and beating on the sole of the feet (“*falaqa*”); severe beating and flogging; prolonged stressful positions; sleep, food and light deprivation; exposure to extreme temperatures; and use of prolonged solitary confinement and even in some cases electrical shocks. The following cases are few amongst many others documented by Alkarama, as shown in Appendix 1 which lists individuals who were severely tortured by the *Mabahith* with the previously mentioned techniques.

**Abdulaziz Al-Barahim**,<sup>25</sup> a Saudi national paralysed since birth, was arrested on 26 December 2005 by the *Mabahith* at his home in Al-Khadra (Al-Qassim Province) before being brought to Ulaysha Prison in Riyadh where he was detained *incommunicado* for the first few months. He was detained in solitary confinement in an environment unsuitable for his disability where he did not have access to the special treatment he required and was subjected to torture, including electric shocks. In June 2011, the prison authorities refused to allow his family to contact him, claiming that “he did not want to talk to them” and his family decided to file a complaint with the Board of Grievances in order to request Abdulaziz be placed under the protection of the law. As of 2011, he was still in detention without any legal proceedings.

**Khaled Al Khedairy**<sup>26</sup> was arrested in Al Salihiya District, Riyadh, by agents of the *Mabahith* on 4 July 2005. Mr Al Khedairy was not informed of the reason for his arrest. During the first three days of his detention, he was denied the right to inform his family of his arrest and was only able to talk to them for the first time eight months later. Until then, he had been tortured while detained *incommunicado* and in solitary confinement, a treatment which amounts to torture. The torture was used to extract confessions related to alleged contacts he had with terrorist suspects. In September 2006, Mr Al Khedairy was transferred to Al Ha’ir Prison, where he continued to suffer from torture and ill-treatment like repeated beatings or being forced to stand upright in the sun for several hours around noon. As of 2012, he had never been given the possibility to consult a lawyer nor charged.

Finally, it is noteworthy that in its Replies to the List of Issues,<sup>27</sup> the State party explains that an online platform “window of communication” ([www.nafethah.gov.sa](http://www.nafethah.gov.sa)) allegedly lists the number of individuals detained by the *Al Mabahith*. However, the website offers no information on the places of detention of those individuals and therefore does not answer questions raised by the Committee. It

<sup>24</sup> UN News Centre, *Solitary confinement should be banned in most cases, UN expert says*, 18 October 2011, <http://www.un.org/apps/news/story.asp?NewsID=40097#.VvO2DMZEg2w> (accessed on 24 March 2016).

<sup>25</sup> Alkarama, *Saudi Arabia: Disabled person tortured in secret detention at Al-Qassim prison*, 2 November 2011, <http://en.alkarama.org/saudi-arabia/press-releases/828-saudi-arabia-disabled-person-tortured-in-secret-detention-at-al-qassim-prison> (accessed in 29 March 2016).

<sup>26</sup> Alkarama, *Saudi Arabia: Khaled Al Khedairy detained more than six years without charge*, 2 February 2012, <http://en.alkarama.org/saudi-arabia/press-releases/852-saudi-arabia-khaled-al-khedairy-detained-more-than-six-years-without-charge> (accessed on 29 March 2016).

<sup>27</sup> Replies to the List of Issues, paras. 17-19.

also provides no information on whether any *Al Mabahith* officers have been prosecuted for acts of torture or ill-treatment.

### 4.3. Torture by the Commission for the Promotion of Virtue and the Prevention of Vice

The Commission for the Promotion of Virtue and Prevention of Vice (CPVPV) is a religious police acting under the responsibility of the Ministry of Interior, regulated by a 1980 Law and which is invested with a broad mandate of "guiding and advising people to observe the religious duties prescribed by Islamic Sharia" and "to prevent them from committing prohibited acts, or adopting bad habits and traditions or heresies."<sup>28</sup>

In its Replies to the List of Issues,<sup>29</sup> the State party only provides a general description of the mandate of the CPVPV and does not give data on the number of arrests carried out by the Commission nor does it give any details on the investigation into violations its agents committed.

In practice, the CPVPV does not abide by the CCP although article 26 of the Code considers them as a law enforcement institution, meaning that they should thus follow the CCP procedures.<sup>30</sup> In practice, these forces arrest, interrogate and detain individuals outside the framework of the law, without any judicial oversight. In most cases, victims are not informed of the exact charges held against them and are not provided with rights guaranteed otherwise by the CCP.

Cases made public by various NGOs show that the CPVPV uses harsh beating to punish individuals or to force them to admit that they committed or were about to commit a proscribed act or had "heretic thoughts". In May 2007, two men were beaten up to death by CPVPV agents in two different circumstances. 51-year-old **Ahmad al-Buluwi** died of an apparent heart attack shortly after three religious police detained him for interrogation at their Tabuk center in May 2007. Relatives said that forensic doctors confirmed he was beaten there, according the daily *al-Watan* of 13 July 2007. Three religious policemen face charges from the incident. On 23 May 2007, 28-year-old **Salman al-Huraisi** was beaten up to death in in the Al Orajia district of Riyadh by four religious police officers in their offices after they searched his family home for alcohol.<sup>31</sup>

Public reports show that in 2007, CVPV agents were criminally prosecuted for murder and abuse of power for these deaths but the prosecution ended with an acquittal of the perpetrators while the victims' families were harassed and detained by the CPVPV in order to force them to refrain from testifying against the CPVPV members responsible for the death of their relative.<sup>32</sup> It is also important to note that the judges did not qualify the acts as "torture" which led to the death of the victim but as "abuse of power and murder", contradicting the State party's claims that judges can qualify acts of torture in application of the Convention.

After the investigation begun, the authorities repeatedly tried to defend the CPVPV members even stating that they were not responsible before the end of the investigation.<sup>33</sup> Eight members of the CPVPV were briefly detained during the investigation and then released after having been cleared of all the charges by the Riyadh's Summary Sharia Court in June 2007. According to the latest information available, the case is still ending awaiting appeal.<sup>34</sup>

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<sup>28</sup> Law of the Commission for the Promotion of Virtue and the Prevention of Vice, 22 January 1981, article 9.

<sup>29</sup> Replies to the List of Issues, paras. 24-25.

<sup>30</sup> Moreover, article 9 of the Law of the Commission for the Promotion of Virtue and the Prevention of Vice, states that CPVPV agents should "conduct seizure and arrest pursuant to the laws, orders, decisions and instructions pertaining to criminal procedures."

<sup>31</sup> Human Rights Watch, *Saudi Arabia: Hold Religious Police Accountable for Killing*, 24 July 2007, <https://www.hrw.org/news/2007/07/24/saudi-arabia-hold-religious-police-accountable-killing> (accessed on 28 March 2016).

<sup>32</sup> Arab News, *Commission Cleared in Huraisi Death*, 26 June 2007, <http://www.arabnews.com/node/297170> (accessed on 28 March 2016).

<sup>33</sup> *Ibidem*.

<sup>34</sup> Mansour al-Shehri, *Saudi Gazette, Commission Trial Cancelled, Judges on Vacation*, 16 April 2008, <http://www.sauress.com/en/saudiqazette/3393> (accessed on 28 March 2016).

## **5. Violations of the legal safeguards related to the deprivation of liberty**

In its General Comment No. 2 on the implementation of article 2 by States parties, the Committee recommended a non-exhaustive list of guarantees which should be provided to all persons deprived of their liberty in order to prevent torture, in addition to the guarantees provided by the letter of the Convention. These guarantees include, *inter alia*, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right to promptly receive independent legal assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and challenge the legality of their detention or treatment.<sup>35</sup>

Alkarama has witnessed and documented to the attention of the Special Procedures hundreds of cases in which individuals deprived of their liberty were denied every single guarantee set forth in the Convention. Furthermore, the insufficient guarantees included in the CCP are routinely ignored by the BIPP and judges. The constant and repetitive nature of these violations committed from the onset of the arrest, all the way through the detention, trial and imprisonment, suggests a systematic practice. The absence of legal safeguards such as, among others, the right to legal counsel, the right to contact a third party, the right to challenge the legality of detention and be tried within a reasonable time, rights during questioning, the right to minimum standards during detention creates a breeding ground for torture and other mistreatment and leads to a permissive environment in which fundamental rights are routinely disregarded and torture even encouraged.

Taking into account the elements provided by the State party in its Replies to the List of Issue, in particular the reform of the CCP, we will highlight the main legal flaws lacks as well as the patterns of violations illustrated with testimonies we gathered and submitted to the United Nations human rights mechanisms. Since the State party is not a party to the International Covenant on Civil and Political Rights (ICCPR), we will refer to the 1988 "Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment" (hereinafter "Body of Principles") that is considered as customary international law to identify legal safeguards which the authorities shall respect in order to prevent torture and ill-treatment of individuals deprived of their liberty.<sup>36</sup>

### **5.1 Violations from the onset of the arrest**

#### **5.1.1 Arbitrariness of arrests**

Article 35 of the CCP stated that "[i]n cases other than *flagrante delicto*, no person shall be arrested or detained except on the basis of order from the competent authority. Any such person shall be treated decently and shall not be subjected to any bodily or moral harm. He shall also be advised of the reasons of his detention and shall be entitled to communicate with any person of his choice to inform him of his arrest." As noted above in Section in 3.1, the CCP does not include a disposition that refers explicitly and autonomously to the prohibition of acts of torture as defined by the Convention.

The State party mentioned in its Appendix to its Replies to the List of Issues that this article has been modified. However the modification merely consists in a division of article 35 in two different articles. Article 35 now reads as follow: "In cases other than *flagrante delecto*, no person shall be arrested or detained except on the basis of order from the competent authority." The new article 36 of the CCP reads as follow: "Any detained person shall be treated decently and shall not be subjected to any bodily or moral harm. He shall also be advised of the reasons of his detention and shall be entitled to communicate with any person of his choice to inform him of his arrest."

<sup>35</sup> Committee against Torture, General Comment No. 2, 23 November 2007, CAT/C/GC/CRP.1/Rev.4, para.13.

<sup>36</sup> "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment" adopted by the United Nations General Assembly Resolution 43/173 on 9 December 1988.

This amendment does not guarantee any additional right to individuals arrested or detained and the new article 36 cannot be considered as a provision prohibiting torture *per se*. Furthermore, in practice, Alkarama observed that arrests are carried out without warrants and without explaining the reasons of the arrest to the individual. All cases presented in this report carry the same pattern of arrest without any legal basis. Furthermore, in cases of arrests by the General intelligence – or *Mabahith* –, they are systematically carried out without any warrant (See Sections 4.2 and 6).

Principle 36 of the Body of Principles provides that “[a] detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law.” In this regard, former article 34 of the CCP<sup>37</sup> stated that “the criminal investigation officer shall immediately hear the statement by the accused” but added that the accused had to prove his innocence, reversing the burden of proof from the prosecution to the defence, in violation of the principle of presumption of innocence.

The State also mentions that this article has been modified and now reads as follow: “The agent of the judicial police in charge shall take statements the detainee without delay, and if he finds sufficient evidence to indict him, should put the detainee before the investigating authority, which shall question him within 24 hours, after which he shall issue a warrant of arrest or release”. However, to this date, we have not received information on the implementation of this new disposition.

### 5.1.2 Violations of the right to be informed of the reasons of the arrest and charges

Principle 10 of the “Body of Principles” identically provides that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

It is important to note that the BIPP is in charge of both investigation and prosecution which means in practice that the same agents would issue the arrest order and carry out the arrest and questioning. As a result, agents of the BIPP would not necessarily wait for a warrant to be issued to proceed with the arrest. Furthermore, the CCP gives to the investigator the power to summon any person for investigation or to arrest any person if “investigation circumstances warrant it” without indicating what conditions or circumstances need to be met in order to carry out the arrest, which leaves an open door to arbitrary arrests.<sup>38</sup> The summons does not need to mention the reasons<sup>39</sup> of its issuance but merely states the identity of the person summoned and the date at which he/she is requested to appear. Equally, the arrest warrant does not have to be reasoned.<sup>40</sup>

This is all the more considering that such summons can be issued “even if the incident is of such kind for which the accused should not be detained”.<sup>41</sup> It should be noted that qualification of acts as crimes

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<sup>37</sup> **Article 34:** “The criminal investigation officer shall immediately hear the statement by the accused. If the accused fails to establish his innocence, the officer shall, within twenty-four hours, refer him, along with the record of the Investigator who shall within twenty-four hours, interrogate the accused under arrest and shall order either that the accused be detained or release

<sup>38</sup> **Article 103:** “In all cases, the Investigator may, as the case may be, summon any person to be investigated, or issue a warrant for his arrest whenever investigation circumstances warrant it.”

<sup>39</sup> See United Nations Human Rights Committee, *Willy Wengalombe and Nsii Luanda Shandwe vs Democratic Republic of the Congo*, CCPR/C/86/D/1177/2003, 16 May 2006, para. 6.2: “[...] it was not sufficient simply to inform the authors that they were being arrested for breach of State security, without any indication of the substance of the complaint against them. In the absence of any pertinent information from the State party which would contradict the authors’ allegations, the Committee considers that the facts before it reveal a violation of article 9, paragraph 2, of the Covenant.”

<sup>40</sup> **Article 104:** “Each summons shall specify the full name of the person summoned, his nationality, occupation, place of residence, date of the summons, the time and date for his appearance, name and signature of the Investigator and the official seal. In addition, the arrest warrant shall instruct the public authority officers to arrest and bring the accused promptly before the Investigator in the event he refuses to appear voluntarily. Furthermore, the detention warrant shall instruct the detention center officer to admit the accused into detention center after explaining the offense with which he is charged and the basis thereof.”

<sup>41</sup> **Article 107:** “If the accused fails to appear without an acceptable cause after having been duly summoned, or if it is feared that he may flee, or if he is caught “*flagrante delecto*”, the Investigator may issue a warrant for his arrest and appearance even if the incident is of such kind for which the accused should not be detained.”

punishable by prison is a prerogative of the Ministry of Interior, under which control the BIPP as well as the *Mabahith* operate.<sup>42</sup>

If the CCP states in its article 116<sup>43</sup> that any arrested person has the right to be “be promptly notified of the reasons for his arrest or detention”, in practice Alkarama observed that individuals arrested are kept in detention without being informed of the reasons ranging from several weeks to several years.

It should also be highlighted that the Prosecutor can modify the charges at any moment during the investigation or the trial which means that *in fine* even if the defendant is informed promptly of the charges, the latter can change, making the right to be informed of the charges void of certainty (See Section 5.9).

## 5.2 Violation of the right to legal counsel

In its Replies to the List of Issues,<sup>44</sup> the State party refers to the right to legal counsel as stipulated by the CCP, claiming that this right is granted from on the onset of the arrest. The CCP states in its article 4 that “[a]ny accused person shall have the right to seek the assistance of a lawyer or a representative to defend him during the investigation and trial stages”. If this article does guarantee the right to a lawyer, it does not provide however for an exact timeframe on when the detainee is allowed to have access to legal counsel and fails to precise that this right should be granted from the onset of the arrest. This is all the more important considering that the first interrogation should be carried out by the investigating officer within the first 24 hours of detention.

However, practice shows that this right is not upheld and that it often takes weeks or up to several months for lawyers to be granted access to their defendants and to such an end, the lawyer has to file a request with the BIPP to be allowed to represent his defendant. Furthermore, it should be noted that the CCP does not contain any disposition which obliges the arresting authorities to inform the detainee of his rights, including his right to legal counsel.

Although the CCP states that the defendant should not be separated from his lawyer during investigation, the intervention of the lawyer is subjected to the permission of the investigator<sup>45</sup> by stating that the defence lawyer “shall not intervene in the investigation except with the permission of the Investigator”.

It is also important to note that all exchanges between detainees and their lawyers are systematically monitored by guards who stay in the meeting room, making it impossible for accused persons to denounce cases of torture to lawyers or to deny any confession that might have been made under torture.

Indeed, the CCP only states that the Investigator “may not seize any piece of paper or document that has been delivered by the accused to his representative or attorney in connection with the performance of the service entrusted to him, nor the correspondence exchanged between them in the case.” The disposition does not guarantee explicitly the confidentiality of written communications as it does not say that it cannot “be read” but only that it cannot be “seized”.<sup>46</sup> Furthermore, telephone

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<sup>42</sup> **Article 112:** “The Minister of Interior shall, upon a recommendation by the Director of the Bureau of Investigation and Prosecution, specify what may be treated as a major crime requiring detention.”

<sup>43</sup> **Article 116:** “Whoever is arrested or detained shall be promptly notified of the reasons for his arrest or detention, and shall be entitled to communicate with any person of his choice, to inform him (of his arrest or detention), provided that such communication is under the supervision of the criminal investigation officer.”

<sup>44</sup> Replies to the List of Issues, paras. 8-16.

<sup>45</sup> **Article 70:** “The Investigator shall not, during the investigation, separate the accused from his accompanying representative or attorney. The representative or attorney shall not intervene in the investigation except with the permission of the Investigator. In all cases, the representative or attorney may deliver to the Investigator a written memorandum of his comments and the Investigator shall attach that memorandum to the file of the case.”

<sup>46</sup> **Article 84:** “The Investigator may not seize any piece of paper or document that has been delivered by the accused to his representative or attorney in connection with the performance of the service entrusted to him, nor the correspondence exchanged between them in the case.”

communications and consultations have to be undertaken under the supervision of the criminal investigation officer.<sup>47</sup>

### 5.3 Absence of prompt and independent medical assistance

The CCP does not provide for the right to have a prompt access to an independent medical assistance. As a result, when detainees have been tortured, they cannot have the acts of torture they suffered from attested by a doctor to support their claim to the judge. In addition, persons who suffer from pre-existing medical conditions or detainees who need medical treatment during their detention due to torture and poor condition of detention cannot have access to the necessary medical care.

For example, **Khaled Al-Twijri**,<sup>48</sup> a Saudi Arabian national, was arrested in Jordan in July 2008 and extradited to Saudi Arabia on 25 January 2009. His family was neither informed of his arrest nor of his extradition and they were only allowed to visit him nine months after the initial arrest. He reported to have been severely tortured both during his detention in Jordan as well as in Saudi Arabia. Due to his deteriorating physical health and the denial of appropriate medical care, he was hospitalised in the emergency ward for several days. In November 2013, he was sentenced under the Anti-Terrorism by the Specialised Criminal Court to 18 years imprisonment. Throughout the legal proceedings, Mr Al Tawijri was denied access to legal counsel.

### 5.4 Practice of *incommunicado* and secret detention

It is extremely common that arrested people are denied any contact with the outside world – i.e. families, lawyers, doctors or a judicial authority – for long periods, after they have first been taken into custody. Alkarama has most commonly witnessed the use of *incommunicado* detention during the investigation stage for the purposes of interrogation and the extraction of confessions under torture. Such detention without access to the outside world facilitates torture and depending on the circumstances, can itself constitute torture or other cruel, inhuman or degrading treatment.

Article 35 of the CCP provides that anyone arrested or detained “shall be entitled to communicate with any person of his choice to inform him of his arrest,” but fails to set a timeframe, specifying only that such communication should occur promptly after arrest or after the transfer between detention facilities.

*Incommunicado* detention is facilitated by dispositions such as article 119 of the CCP which provides that “the investigator shall be entitled to stop the accused from communicating with any other accused or detainee, and to stop any visit to such accused for a period not exceeding sixty days whenever that is deemed necessary, without prejudice to the right of the accused to communicate with his representative or attorney.”

**Saleh bin Awad bin Saleh Al Hweiti**<sup>49</sup> is a stateless person of Bedouin origin (also known as ‘Bidoon’) who published several poems on the situation of Bidoons in the country. On 30 April 2003, after some of his poems were recited on a radio station, Mr Al Hweiti was arrested in his brother’s house in Riyadh by members of the Intelligence and Security Agency of the Ministry of Interior. He was detained *incommunicado* until July 2003, when he was allowed to call his family and inform that he had been sentenced to 11 months imprisonment for defamation of the government authorities. Mr Al Hweiti remained in prison for nearly four years, until 23 April 2007, when he was released. However, six days later, on 29 April, he was rearrested. In September

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<sup>47</sup> **Article 116:** “Whoever is arrested or detained shall be promptly notified of the reasons for his arrest or detention, and shall be entitled to communicate with any person of his choice, to inform him (of his arrest or detention), provided that such communication is under the supervision of the criminal investigation officer.”

<sup>48</sup> Alkarama, *Saudi Arabia: Arbitrary detention of Mr. Khaled Al-Twijri for more than two years*, 4 July 2011, <http://en.alkarama.org/saudi-arabia/press-releases/778-saudi-arabia-arbitrary-detention-of-mr-khaled-al-twijri-for-more-than-two-years> (accessed on 28 March 2016).

<sup>49</sup> Alkarama, *Saudi Arabia: Arbitrary detention since 2004 of the engaged poet Saleh Al Hweiti*, 18 July 2008, <http://en.alkarama.org/libya/124-saudi-arabia-arbitrary-detention-since-2004-of-the-engaged-poet-saleh-al-hweiti> (accessed on 28 March 2016).



2009, Mr Hweiti was sentenced to five years imprisonment. While in detention, Mr Hweiti was ill-treated, being put in overcrowded cells, subjected to long periods of isolation and to severe beatings, as well as being denied communication with his family. Mr Hweiti was not allowed to appoint a lawyer or to appeal his convictions.

Even more concerning are the provisions of the new Law on “terrorist crimes and their financing” of 31 January 2014 as its article 6 authorises the holding of a detainee without any contact to the outside world for a period of up to 90 days, which can also be renewed with the authorisation of a judge (See Section 6). Thus, *incommunicado* detention is now specifically permitted by the law, thus providing an open-ended catalogue of “legalised violations” of fundamental guarantees.

## 5.5 The absence of the right to *habeas corpus*

The Saudi CCP does not guarantee the right to challenge the lawfulness of one’s detention before a court. Indeed, as per article 39 of the CCP,<sup>50</sup> the prolongation of a detention remains a discretionary decision of the BIPP and the law does not oblige prosecutors to provide evidence to support such a decision. As such, the legal timeframe provided does not grant the right to the detainee to challenge his or her detention since even after the six-month limit specified by the CCP, detainees are still unable to challenge their detention.

If the Board of Grievances is competent to hear cases in which the administrative authority refuses to, or abstains from taking a decision<sup>51</sup> – e.g. to release a detainee after the completion of his sentence – , we have never documented a case in which where the Board declared the detention arbitrary, ordered the release of the victim and where the BIPP did comply with the decision.

## 5.6 Right to be brought promptly before a judicial authority

Article 114 of the CCP<sup>52</sup> provides for a period of custody which can go as long as six months “for interrogation or investigation”, i.e. without any charges. While the initial detention shall not exceed five days, the BIPP Investigator can order an extension of up to 40 days subjected to the approval of the Chairman of the local branch of the BIPP. In cases that require detention for a longer period, it is the Director of the BIPP that can order an extension for a maximum of six months. As such, the initial detention is not extended by an independent judicial authority, but by members of the the BIPP which is under the control of the Ministry of Interior. This constitutes a violation of the fundamental rights of detainees to be promptly informed of the charges held against them; have the right to challenge the legality of the detention and to promptly be brought before a judge. What is more, Alkarama documented a systematic pattern of custody that often extensively exceeds the six months limitation.

In its Replies to the List of Issues<sup>53</sup> regarding prolonged periods of pre-trial detention, the State party merely cites the provisions of the CCP and mentions that it opened offices of the BIPP, the Commission for Human Rights and the National Society for Human Rights in prisons as a measure

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<sup>50</sup> **Article 39:** “Whoever has any information that a person is unlawfully or improperly imprisoned or detained, or is imprisoned or detained in a place not intended for imprisonment or detention, shall notify the Bureau of Investigation and Prosecution. Upon notification, the competent member of the Bureau of Investigation and Prosecution shall immediately proceed to the place where the prisoner or detainee is kept and shall conduct the necessary investigation. If it is found that such imprisonment or detention is unlawful, he shall order the release of the prisoner or detainee. A note to that effect shall be entered into the record and submitted to the competent authority which shall implement whatever action required by the laws in respect to the persons causing the same.”

<sup>51</sup> Law of the Board of Grievances, article 13.

<sup>52</sup> **Article 114:** “The detention shall end with the passage of five days, unless the Investigator sees fit to extend the detention period. In that case, he shall, prior to expiry of that period, refer the file to the Chairman of the branch of Bureau of Investigation and Prosecution in the relevant province so that he may issue an order for extending the period of the detention for a period or successive periods provided that they do not exceed in their aggregate forty days from the date of arrest, or otherwise release the accused. In cases that require detention for a longer period, the matter shall be referred to the Director of the Bureau of Investigation and Prosecution to issue an order that the arrest be extended for a period or successive periods none of which shall exceed thirty days and their aggregate shall not exceed six months from the date of arrest of the accused. Thereafter, the accused shall be directly transferred to the competent court, or be released.”

<sup>53</sup> Replies to the List of Issues, paras. 55-56.



to avoid prolonged detention. However, no further details are provided on how complaints are dealt with by these institutions.

**Badr Halal Jasem Al Taleb**<sup>54</sup> was arrested in 2013 and severely tortured in order to extract confessions while he was detained *incommunicado*. After almost three years in detention without being ever presented before a judicial authority and denied access to a lawyer, he was finally presented to a judge on 21 February 2016 and is currently being tried for “espionage.” Mr Al Taleb, who was arrested by members of the General Investigation on 17 March 2013, was detained *incommunicado* for two months, during which he was severely tortured by being beaten up, burned with cigarettes and subjected to long periods of solitary confinement.

Detained for over three years without charges and without being presented before a judicial authority, Mr Al Taleb was first presented to the Specialised Criminal Court in Riyadh on 21 February 2016, together with 31 other people, 28 Saudi citizens belonging to the Shia minority, one Afghani and one Iranian. All men were then accused of “establishing a spying ring together with members of the Iranian Intelligence” and “sending Saudi military information to Iran” as well as “sabotaging Saudi economic interests”, “undermining community cohesion and inciting sectarian strife”. During the hearing, the Public Prosecutor requested that all accused be sentenced to death. Their trial is still ongoing at the time of writing of this report.

Mr **Suleyman b. Nasser b. Abdullah Al-Alouane**,<sup>55</sup> a teacher and author of around 20 books of reference on Islamic Sciences, was arrested at his home by agents of the *Mabahith* on 28 April 2004 for allegedly “criticising the actions and policies of the U.S. in the Arab World, particularly the 2003 invasion of Iraq.” Mr Al Alouane was not presented with a warrant and with no reason being given to justify the arrest. His home was searched without a judicial warrant on the same day. Taken to the premises of the Services of the Ministry of the Interior, he was tortured and insulted for having made public comments critical of the policy of the United States in the Arab world and in particular for having denounced the U.S. invasion of Iraq. He was then transferred to Al Ha’ir prison, south of Riyadh where he has been, thus far, detained in complete isolation and totally cut off from the outside world for over a year. He continues to suffer ill-treatment in prison. He was detained for more than seven years without being formally charged or without having been presented to a judge or given the opportunity to challenge his detention. He is still detained to date despite Opinion No. 22/2008 of the Working Group on Arbitrary Detention (WGAD) calling for his immediate release.

Finally, we recall that in its 2009 List of Issue Prior to Reporting,<sup>56</sup> the Committee expressed concern over the lack of judicial guarantees for those detained by the *Mabahith*, especially regarding the cases of Mr **Walid Lamri**, Mr **Fayçal Al Majed**, Mr **Fouad Ahmed Al Farhan**, Dr **Saoud Mukhtar Al Hashmini**, Mr **Mahmoud Hozbor**, Mr **Abdulrahim Al Murbati** and Mr **Khaled Gharmallah Ouda Al Zahrani**. In this regard, it is worth noting that apart from the release of Mr Walid Al Amri, Mr Fayçal Al Majed and Mr Fouad Ahmed Al Farhan, the situation of Dr Saoud Mukhtar Al Hashimi and Mr Abdulrahim Al Murbati has not changed nor improved, as both men remain in detention. Alkarama was unable, to this day, to obtain updated information on the cases of Mr Mahmoud Hozbor and Mr Khaled Gharmallah Ouda Al Zahrani.

**Dr Bachr bin Fahd Al-Bachr**,<sup>57</sup> an outspoken professor of Religious Science at a University in Riyadh, was arrested by the *Mabahith* on 15 March 2007 in Riyadh. Without being shown a warrant or being informed of the reason for his arrest, he was taken to an unknown location. Despite numerous attempts to get information regarding Dr Al-Bachr's fate and whereabouts from the

<sup>54</sup> Alkarama, Saudi Arabia: after three years detained without charges and an unfair trial, Badr Halal Jasem Al Taleb may face death penalty, 9 March 2016, <http://en.alkarama.org/2065-saudi-arabia-after-three-years-detained-without-charges-and-an-unfair-trial-badr-halal-jasem-al-taleb-may-face-death-penalty> (accessed on 24 March 2016).

<sup>55</sup> Saudi Arabia: Mr Suleyman Al Alouane, arbitrarily detained for over five years, 26 February 2009, <http://en.alkarama.org/saudi-arabia/press-releases/192-saudi-arabia-mr-suleyman-al-alouane-arbitrarily-detained-for-over-five-years> (accessed on 24 March 2016).

<sup>56</sup> Para. 9.

<sup>57</sup> Alkarama, Saudi Arabia: Saudi Professor detained without charge for nearly four years, 23 December 2010, <http://en.alkarama.org/saudi-arabia/press-releases/607-saudi-arabia-saudi-professor-detained-without-charge-for-nearly-four-years> (accessed on 24 March 2016).

Saudi authorities, his family was left with no news for the following nine months. It is only in December 2007 that Dr Al-Bachr was allowed to receive a single visit from his family. Detained in Al Ulaysha prison, he was subjected to ill-treatment and held in prolonged solitary confinement. After this one visit, his family was again unable to directly communicate with Dr Al-Bachr for months. During this period, his detention conditions further deteriorated. He continued to be detained in isolation and was transferred to a freezing underground cell. He was kept handcuffed and blindfolded for long periods of time. Despite his alarming health condition, Dr Al-Bachr never received appropriate medical treatment. In December 2010, Dr Al-Bachr was transferred to Al Ha'ir prison where he was allowed to receive monthly visits from his family, but was not granted access to legal counsel, or brought before a judge since his arrest. As of 2010, he had been detained for 3 years and 9 months without being charged. To our knowledge, he remains in detention in Al Ha'ir to date but due we have been unable to contact his family to be informed of his current state.

Lastly, in December 2015, Alkarama calculated the proportion of detainees who were in pre-trial detention based on the database provided by the State party on its website: <https://www.nafethah.gov.sa/>.

The State party refers to this website in its report and in its Replies to the List of Issues and explained that the website contained the information on each detainee in the *Mabahith* prisons. The list called "list of inmates" indicates the initials of the detainee (their names are kept confidential), as well as the date of arrest and the current stage of the proceedings.<sup>58</sup> The website does not precise however the location of the detention centres. Based on the information last accessed on 24 December 2015, we calculated the proportion of individuals under each category on a total of 5075 individuals listed:

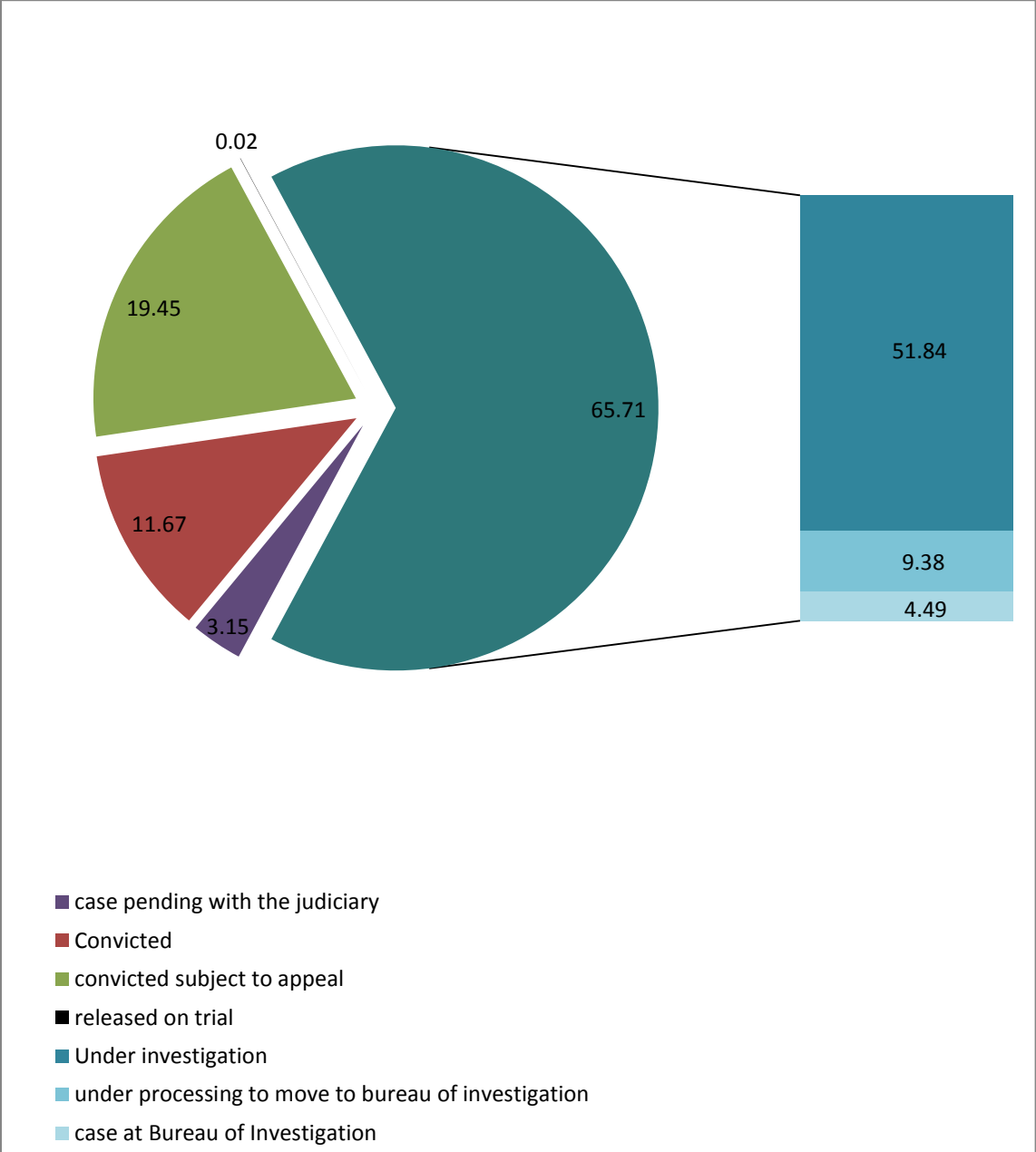
- 476 were listed under "under processing to move to the Bureau of Investigation (BIPP)" (9.38%);
- 228 were listed under "having their case at the Bureau of Investigation (BIPP)" (4.49 %);
- 2631 were listed under "under investigation" (51.84%);
- 160 were listed under "case pending with the judiciary" (3.15% );
- 987 were listed under "convicted subject to appeal" (19.45 %);
- 592 were listed under "convicted" (11.67 %);
- 1 was listed under "released on trial" (0.02 %).

If the categories are not explained on the website by the State party, our understanding is that the first three categories "under processing to move to Bureau of Investigation", "having their case at the Bureau of Investigation" and "under investigation" correspond to individuals who are in pre-trial detention, which corresponds to a total of 3335 individuals on a total of 5075 (i.e. 65.71 % of the total number of detainees), while only 592 detainees (11.67%) were serving a sentence following a trial. The following graph shows in percentage the proportions of each category and demonstrates that the majority of detainees are held in pre-trial detention.

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<sup>58</sup> Replies to the List of Issues, para. 17.

**Repartition of detainees by category**



*Values expressed are percentages of detainees.*

## 5.7 Extraction of confessions under torture and violation of the exclusionary rule

### 5.7.1 Extraction of confessions under torture

The Saudi CCP fails to explicitly state that statements obtained under torture are inadmissible in court. Article 102 does not mention torture nor the inadmissibility of statements made under duress and merely states the following: "The interrogation shall be conducted in a manner that does not affect the will of the accused in making his statements. The accused shall not be asked to take an oath nor shall he be subjected to any coercive measures. He shall not be interrogated outside the location of the investigation bureau except in an emergency to be determined by the Investigator".

One of the most concerning provision of the CCP in relation to the exclusionary rule is article 162<sup>59</sup> which states: "If the accused at any time confesses to the offense of which he is charged, the court shall hear his statement in detail and examine him. If the court is satisfied that it is a true confession and sees no need for further evidence, it shall take no further action and decide the case." This article is a cornerstone of the Saudi criminal procedure as investigators and judges alike rely heavily on confessions to expedite the process and sentence the defendants. This issue has been already raised by the UN Special Rapporteur on the Independence of Judges and Lawyers which highlighted this practice in the State party after his visit to the country in 2002, affirming that this "reliance on confessional evidence exacerbates the problems of prolonged detention, placing pressure on the investigator to obtain a confession from the accused."<sup>60</sup> In the case of Saudi Arabia, such pressure translates into a systematic use of torture and other ill-treatment to obtain such confessions.

In practice, although the State party mentions in its report<sup>61</sup> that there are numerous safeguards surrounding the interrogation of accused persons, Alkarama notes with concern that interrogations of suspects are still not video or audio taped which renders the practice of torture more likely. In its Replies to the List of Issues,<sup>62</sup> the State party mentions that it has entered in the first phase of video and audio taping of interrogations without giving further explanation as to who will monitor the recordings.

**Hamdelneil Abu Kasawi Mohamed El Nour Ahmed** is a Sudanese citizen who was arrested in May 2004 while transiting in Saudi Arabia on his way from Damascus to Khartoum. Mr Ahmed was taken from Jeddah International Airport, blindfolded and handcuffed, and brought to an unknown detention facility, where he was kept in a small cell without toilet for the next seven months. While detained *incommunicado*, he was severely tortured by being interrogated for long hours, sleep deprived, severely beaten and forced to stay in stressful positions during interrogations. After this period, Mr Ahmed started a hunger strike to protest against his treatment, after which he was finally allowed to call his relatives who resided in Saudi Arabia; however, he was only allowed to directly contact his family in Sudan 18 months after his arrest. Although he was never charged with any offence, Mr Ahmed remained in detention for almost ten years, until 2013. During the whole time he was in detention, he was severely tortured and asked to confess to different accusations made by the detaining authorities. He was transferred to different prisons, before being taken to the Dhahban Central Prison in Jeddah in 2006. In 2013, Mr Ahmed was charged with acts of "terrorism" on the basis of confessions under torture. After being sentenced to one month imprisonment in first instance, Mr Ahmed was acquitted by the Court of Appeal and released shortly after. Despite his release, Mr Ahmed was prevented from leaving the country for several months. After spending a week in the Sudanese consulate in Jeddah Mr Ahmed was allowed to go back to Sudan on 18 December 2013.

<sup>59</sup> Article 162 of the CCP becomes article 161 under the new CCP (See Replies to the List of Issue, para 141).

<sup>60</sup> Commission On Human Rights, Report by the Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Kumaraswamy, *addendum, Report on the Mission to the Kingdom of Saudi Arabia*, (20-27 October 2002) E/CN.4/2003/65/Add.3, 14 January 2003, para. 100.

<sup>61</sup> State party report para. 99.

<sup>62</sup> Replies to the List of Issues, para. 14.

## 5.7.2 Violation of the exclusionary rule

In its report,<sup>63</sup> the State party mentions that based on the Sharia, “all evidence obtained by unlawful means is inadmissible and ineffective in proceedings. Evidence obtained through a forced confession, torture or an unauthorised search of dwellings is considered unlawful and without merit in legal proceedings in that the means used to arrive at such evidence are invalid.” If in its Replies to the List of Issue, the authorities indicate that the CCP provides that self-incriminating statements are thoroughly examined by the Court,<sup>64</sup> which ensures that the confession is true and was not obtained under torture, it does not explain the means through which the Court does so. The State party merely indicates that according to article 188 of the CCP, “[a]ny action that is inconsistent with the principles of Shari’ah or the laws derived therefrom shall be invalid”.<sup>65</sup>

However, as stated above, the Saudi legal system places undue importance on confessions as the sole evidence in trial, despite numerous reported cases of confessions being obtained through torture, especially at the hands of the *Mabahith* (see Sections 4.2 and 6). These forced confessions are later used against individuals in court as evidence in cases of both common criminal acts and acts falling under the right to freedom of opinion and expression. Numerous cases concern individuals accused of having “unorthodox” political or religious thoughts – i.e. not in conformity with the official religious and political line – and who have been forced to confess having these thoughts before being condemned to heavy prison sentences on the basis of declarations. This practice of extracting confessions is even more concerning since the CCP does not provide any protection against self-incrimination.

In this regard, it is noteworthy that the State party did not provide any information on whether allegations made by defendants in court that they were tortured to obtain confessions were investigated and in particular regarding the cases of **Ali Mohamed Baqir Al Nimr; Hadi bin Saleh Abdullah Al Mutlaq; Awad bin Saleh Abdullah Al Mutlaq; Mufrih bin JaberZayed Al Yami** and **Ali bin JaberZayed Al Yami**, as requested by the Committee.<sup>66</sup>

Moreover, the State party did not provide<sup>67</sup> any instances in which a judge has invalidated a confession found to have been made under torture. When asked by the Committee<sup>68</sup> to state legal provisions prohibiting the use of statements made under torture in judicial proceedings, the State party referred to general prohibitions in the Sharia as well as articles 187 and 188 of the CCP.

In practice, cases in which defendants claim having been torture do not trigger an exclusion of the statement made by the victim. Lastly, it should be highlighted that in many cases, reprisals against themselves or their family are also deterring for victims who wish to report to the judge that the statements had been obtained under torture (reprisals against victims, families of victims and human rights defenders who denounce acts of torture are presented in this report under Section 12).

## 5.8 Violations of the right to consular protection

Moreover, in numerous cases, the Saudi authorities have disregarded the right of foreign nationals to prompt access to consular protection.

On 28 September 2015, brothers **Adnan and Ashraf Ahmed**, citizens of Bangladesh, aged 15 and 18 respectively, were leaving the Al Razoi Mosque with their parents, when they were stopped by members of the Saudi Police, who wanted to check their residence documents. Although the Ahmed family had been living in Saudi Arabia for years, during which they had constantly renewed their residence permit without any obstacle, that day, the family had requested a renewal of their permit; however, the brothers still had not received it – despite having taken all the required actions on time –, even though the parents had. As Adnan and Ashraf Ahmed were not able to

<sup>63</sup> State report, para. 104.

<sup>64</sup> Replies to the List of Issues, para. 15.

<sup>65</sup> Article 188 of the CCP is now under 187 of the new CCP (See Replies to the List of Issue, para 104).

<sup>66</sup> Replies to the List of Issues, para. 81.

<sup>67</sup> Replies to the List of Issues, para. 80.

<sup>68</sup> Replies to the List of Issues, para. 80.

present a valid residence permit, the members of the Saudi Police arrested them and took them to Sinafi Retention Center in Makkah. After the brothers' arrest, their family tried to challenge the detention before the prison authorities and asked their sponsor to intervene, but to no avail. Furthermore, Alkarama sent their case to Saudi Arabia's National Human Rights Society, which never answered nor acknowledged receipt of the complaint despite numerous calls and emails. Despite all the steps taken, the brothers were expelled to Bangladesh, where they have no family, after almost two months in detention. They also received a sentence saying that they cannot apply for a visa again to reunite with their parents in Saudi Arabia. Adnan and Ashraf were never allowed to contact the Bangladeshi consulate or embassy to request consular protection.

In May 2013, Alkarama gathered testimonies related to several Yemeni prisoners detained in Saudi Arabia, including **14 members of the Al Hudali family**,<sup>69</sup> who had been denied contact as a form of reprisal following testimonies their families had provided for a documentary. The documentary brought to light the tragedy that these families have been subjected to at the hands of Saudi Arabia's Security Forces. They were arbitrarily detained and mistreated before being expelled to Yemen, despite having been settled in the Kingdom of Saudi Arabia for half a century. Meanwhile, some of their family members are still detained in the Kingdom for as long as 7 years, without any legal procedures against them.

## 5.9 Notable violations and lacks of legal guarantees during the trial

### 5.9.1 Legal uncertainty

As noted above, Saudi Arabia has not codified its criminal offenses, nor is there any clarity in the jurisprudence (as there is no Review of Jurisprudence in the country), resulting in a lack of accessibility and foreseeability of the criminal law in this respect. This flaw in the Saudi criminal law hinders the ability of law enforcement officials to inform detainees of the substance of their rights. Indeed, Saudi law does not specify whether the process of charging a suspect involves a formal, written procedure in which the elements of the crime are specified, and whether the accused should be informed of the evidentiary material held against him. Concerning the right to prepare one's defence, article 137 of the CCP provides that the defendant should be given "sufficient time" without any precision as per what is considered as "sufficient". In practice, defendants were not even told if and when they would have a hearing.

The absence of a Criminal Code or a similar set of laws making clear what are and what are not criminal offenses renders arrests and prosecutions inherently arbitrary as the lack of legal specificity means that whether particular behaviour constitutes an offense is essentially a subjective assessment. This vagueness leaves the door open for prosecutors to punish a defendant on a "discretionary basis" and to fit the crime to the act, as opposed to their obligation to prove that the defendant has committed clearly defined elements of a specific crime. This clearly constitutes a divergence of the Saudi criminal system from the rule of law.

Moreover, it is important to note that article 159<sup>70</sup> and 160<sup>71</sup> of the CCP allows the Prosecution to redefine charges at any moment of the process without informing the defendant, making it practically impossible for the defendant to know the charges held against him with certainty and therefore undermining the preparation of his defense. Another point of concern is that Saudi prosecutors, who are members of the executive branch and in adversary position vis-à-vis criminal suspects, also serve the role of judicial officers, issuing decisions to renew the suspects' detention. This quasi-judicial role for prosecutors is a serious violation of international legal standards and due process guarantees.

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<sup>69</sup> Alkarama, *Saudi Arabia: Communications Cut between Yemeni Prisoners and their Families*, 29 May 2013, <http://en.alkarama.org/component/k2/1093-saudi-arabia-communications-cut-between-yemeni-prisoners-and-their-families?Itemid=> (accessed 15 February 2016).

<sup>70</sup> **Article 159:** "The court shall not be bound by the description included in the memorandum of the charges. It shall give the act the proper description even though the description is not compatible with the memorandum of the charges, and shall advise the accused accordingly"

<sup>71</sup> **Article 160:** "The court may, at any time, permit the Prosecutor to amend the memorandum of the charges at any time. The accused shall be notified of such amendment and be granted sufficient opportunity to prepare his defence with respect to such amendment, according to law"

### 5.9.2 Lack of access to files to prepare one's defense

Due to the lack of access to files, prisoners may be unaware of, or unable to prove, what sentences they have been given, and as such cannot challenge their continued detention. Lack of access to files also means that if a decision has been taken about his or her release, a detainee may not have access to that decision to have it enforced.

Furthermore, with exceedingly short notice before court hearings, defendants have little time to prepare their defense, and lack access to their files, including the prosecutor's case against them and the specific charges under Saudi law. With few exceptions, defendants did not receive a copy of their verdict, making an appeal extremely difficult to file.

### 5.9.3 Evidentiary rules and cross-examination

The right to bring and cross-examine witnesses during trial and review evidence is stipulated in articles 163<sup>72</sup> and 164<sup>73</sup> CCP. Article 175 of the CCP gives "[t]he Prosecutor and all litigants [the right], at any stage of the proceedings, [to] contest any part of the evidence as being forged," although they risk punishment for perjury as a result of false accusations of forgery.<sup>74</sup>

Moreover, during the investigation of a crime, the Prosecutor has the authority to determine which witness testimony should be entered into the file. Article 28 of the CCP does not oblige the Prosecutor to devote attention to exculpatory evidence, but only to "those who may possess information with respect to facts and perpetrators of crimes."<sup>75</sup> Thus, prior to the trial stage, the defendant has no opportunity to present exculpatory witnesses, in addition to being unable to access the prosecution's file and the extremely short notices given to defendants before court hearings.

As a consequence, the Prosecutor's powers to decide which witnesses' testimony to include significantly impinge on the defendant's right to present witnesses in his or her defense. If a private person is party to the criminal suit, the Prosecutor must justify denial of the request of either plaintiff or defendant to hear a witness,<sup>76</sup> "unless he considers that their testimony would be useless."<sup>77</sup>

### 5.9.4 Public hearings

Article 155 of the CCP authorises the court to close proceedings "for [unspecified] security reasons, or maintenance of public morality, if it is deemed necessary for determining the truth." The UN Special Rapporteur on the Independence of Judges and Lawyers, following his visit to Saudi Arabia in 2002, wrote that he was "concerned that the ability to close court hearings in circumstances where it is deemed necessary for determining the truth [...] is too broad in scope and undermines the transparency of the court system."<sup>78</sup>

Moreover, although article 182 of the CCP specifies that "[t]he judgment shall be read in an open session at which the parties must be present, even [if] the case has been considered in closed

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<sup>72</sup> **Article 163:** "If the accused denies the offense of which he is charged, or refuses to respond, the court shall proceed to hear the evidence and take whatever action it deems necessary with respect thereto. It shall interrogate the accused in detail regarding the evidence and the content of memorandum of the charges. Each of the parties may cross-examine the witnesses called by the other party and discuss its evidence."

<sup>73</sup> **Article 164:** "Each of the litigants may request to call any witnesses and review evidence they may present and request taking a specific action in connection with investigation proceedings. The court may reject such a request if it considers that it is intended for delay, malice, or deception, or that granting such a request is not probative."

<sup>74</sup> **Article 178:** "If it is decided that there is no forgery, the court shall punish the accuser, if appropriate."

<sup>75</sup> **Article 28:** "During the process of collection of evidence, the criminal investigation officer shall hear statements of those who may possess information with respect to facts and perpetrators of crimes, question any suspect, and enter the same in the relevant records. They may seek the assistance of experts, including physicians, and seek their advice in writing."

<sup>76</sup> **Article 73:** "The litigants may submit their request to the Investigator during the proceedings. The Investigator shall decide such claims and specify the reasons for his decision."

<sup>77</sup> **Article 95:** "The Investigator shall hear the statements of the witnesses called by the litigants unless he considers that their testimony would be useless. He may also hear statements from others whom he deems necessary with respect to the facts that may lead to the proof of the crime, its circumstances, and its attribution to the accused or his innocence."

<sup>78</sup> UN Commission on Human Rights, UN Special Rapporteur on the independence of judges and lawyers, Dato' Param Kumaraswamy, E/CN.4/2003/65/Add.3, para. 103.

sessions”, article 183, however, only requires the court to “formally communicate [the judgment] to whomever the court deems appropriate.”

### **Recommendations:**

1. Ensure that any person deprived of his liberty has access to a lawyer or representative of his choosing, from the moment of arrest and without limitations, and that interactions between the individual and his lawyer remain confidential;
2. Explicitly prohibit secret and *incommunicado* detention and remove all domestic provisions that allow for or facilitate *incommunicado* detention;
3. Ensure that any person deprived of his liberty is allowed to contact their families and that all foreign nationals are allowed to communicate with their embassy or consulate;
4. Amend domestic law – especially the Law on Criminal Procedure – as to integrate expressly the inadmissibility of evidence that was obtained under torture;
5. Ensure that confessions obtained under torture and the subsequent proceedings are declared null and void;
6. Review all cases of convictions based solely on confessions obtained under torture;
7. Effectively audio and/or video-tape all interrogations, including those carried out in relation to security crimes or terrorism and those conducted by General Intelligence officers.
8. Fully comply with article 3 of the Convention, especially by ensuring procedural safeguards against refoulement and effective remedies with respect to refoulement claims in removal proceedings, including review by an independent judicial body concerning rejections.
9. Amend the Code of Criminal Procedure as to guarantee that no individual is kept in custody for longer than 48 hours without being brought before a judicial authority;
10. Ensure that no individual held in custody should be detained for any longer than the maximum legal provision allows before being transferred to the competent court or released.

## **6. Violations in the context of the fight against terrorism**

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### **6.1 A deep-rooted practice of violations under the pretext of counter-terrorism**

Alkarama has been documenting cases of torture by the *Mabahith* in the context of the fight against terrorism for the past 10 years and observed a systematic practice of torture, secret and lengthy arbitrary detentions by these forces against both nationals and foreigners. Numerous of arrests of foreign workers were carried out in complete disregard of their fundamental rights. Furthermore, as explained in Section 4.2, the General Intelligence or *Mabahith*, in charge of arresting and investigating individuals suspected of terrorism use torture as a mean to punish and coerce suspects into signing incriminating confessions.

Mr Nasser Ali Abdullah **Al Hadiqi**,<sup>79</sup> a Yemeni citizen was arrested at his workplace, a restaurant in Riyadh, on 8 April 2004 by agents of the intelligence services who fired their weapons – hitting him in the the abdomen and legs – although according to all witnesses present, he did not resist nor presented any danger. His family was informed of his arrest by his employer but were not informed of what happened to him and whether he was still alive. The authorities they later contacted consistently refused to communicate any information about him. It was only after eight months that his family was informed by a former co-detainee that he was in Al Ha’ir prison in Riyadh and was disabled because of his gunshot wound. After many steps taken to be allowed to see him, his family was finally able to visit him in April 2005, one year after his arrest, when it was then confirmed that he had first been held *incommunicado* and tortured for several months by the *Mabahith*, who suspected him of having links to terrorist cells in Yemen. Mr Al Hadiqi said that only when the intelligence services were convinced of his innocence that he had been treated well, implying that he had been subjected to torture during his interrogation. Mr Al Hadiqi was later

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<sup>79</sup> Alkarama, *Saudi Arabia: Arbitrary detention and no due process of law for over four years for Mr Nasser Al Hadiqi*, 2 August 2008, <http://en.alkarama.org/saudi-arabia/press-releases/128-saudi-arabia-arbitrary-detention-and-no-due-process-of-law-for-over-four-years-for-mr-nasser-al-hadiqi> (accessed on 28 March 2016).



transferred to Dahban prison in Jeddah before being deported back to Yemen on 15 March 2013. During the whole period of his detention, Mr Al Hadiqi never appeared before a magistrate and no legal proceedings have been initiated against him. Despite his calls to challenge the lawfulness of his detention before a judicial authority, no action has been taken and no lawyer has been allowed to assist him despite his requests.

Moreover, Saudi Arabia has developed a practice of “re-education” of detainees arrested over charges of terrorism or “deviant” thoughts which have to be followed by peaceful and violent dissidents alike in order to ensure their release, although the release is never guaranteed. The main issue is that authorities tend to use these “re-educations” programs as alternatives to a prosecution denying thus the right to be presumed innocent and to a fair trial.

## 6.2 Absence of fundamental rights and guarantees in the Anti-Terrorism Law

The new law on terrorism – the Penal Law for Crimes of Terrorism and its Financing promulgated on 31 January 2014<sup>80</sup> – defines terrorism in extremely vague terms. Indeed, article 1 of the Law defines a terrorist act as follows:

“Any act carried out by the perpetrator to commit a criminal activity either as an individual or as part of a group, whether directly or indirectly, towards the purpose of disrupting public order; harming the security of the community and the stability of the state; risking national unity; disabling the Basic Law or any of its articles; harming the reputation or status of the country; damaging public facilities and natural resources; or trying to coerce a branch of the authority into undertaking a certain course action or obstructing justice; or threatening or inciting the commission of any of the aforementioned acts.”

Concerning is the fact that this law does not mention the resort to or intend of physical harm. Moreover, in practice, it allows for the criminalisation of acts falling under the right to freedom of opinion and expression as any critical statements made against the monarchy can be interpreted as “disturbing public order” or “harming the reputation of the state” and are punished with heavy prison sentences. Hence, this law gives the judicial authorities the right to discretionarily punish any non-violent acts under the pretext of the fight against terrorism.

On 24 March 2016, **Alaa Brinji**, a Saudi journalist, was sentenced to five years imprisonment and a fine of 50,000 Saudi Riyals after being charged with “insulting the rulers and inciting public opinion”. He had been tried by the Specialised Criminal Court under the Anti-Terrorism Law and also found guilty of “ridiculing Islamic religious figures” and “accusing security officers of killing protesters in Awamiyya” – a town in Saudi Arabia’s Eastern Province –. Mr Brinji has been detained since May 2014 for the mere peaceful expression of his opinion, including a period of *incommunicado* detention and solitary confinement.

Moreover, the law blatantly violates fundamental due process guarantees as its article 5 raises the pre-trial detention<sup>81</sup> from six months to an unlimited period upon judicial order. Even more concerning is that its article 6 explicitly authorises the *incommunicado* detention of a suspect for a period of up to 90 days, making individuals accused under this law extremely vulnerable to torture.

It is noteworthy that in its Replies to the List of Issues,<sup>82</sup> the State party claims that the Law on terrorism and its financing does not affect the fundamental guarantees enshrined in the CCP. Yet, the CCP does not itself provide sufficient guarantees and only applies if there are no contradictory specific provisions contradict it. Moreover, the authorities claim that numerous legislative and procedural

<sup>80</sup> Royal Decree No. 44 (12/2013).

<sup>81</sup> **Article 5 [Investigative Detention]:** Detention of those so arrested shall be for an initial period of up to six months in the aggregate to permit the investigation of the offense under this law. If the investigation so requires, the period of investigative detention may be extended for an additional period of six months in accordance with the regulations. Cases that require an additional investigative period must be referred to the Specialized Criminal Court for approval of the request for additional investigative detention. Penal Law for Crimes of Terrorism and its Financing, Royal Decree No. 44 (12/2013).

<sup>82</sup> Replies to the List of Issues, paras. 20-23.

measures are available to individuals accused under the counter-terrorism legislation e.g. to complain to the BIPP, the Human Rights Commission or the National Society for Human Rights. Yet, none of these institutions is truly independent and it is not clear whether they can conduct visits to detention centres of the *Mabahith*. Finally, contrarily to what is argued by the State party, victims almost never have access to legal remedy.

### 6.3 The Specialised Criminal Court: a jurisdiction of exception

In addition, the Specialised Criminal Court (SCC) set up in 2008 by the Supreme Judicial Council upon decision of the Ministry of Interior to try cases of terrorism has been increasingly used to prosecute acts of peaceful dissent in proceedings that violate fair trial guarantees. The Statute of the Court has not been made public and judges are selected by the Ministry of Interior itself. Defendants are denied legal counsel and confessions made under torture are regularly admitted during trials. Procedures before this court are marked by systematic violations of fair trial rules: defendants are denied access to the prosecution file to prepare their defence, they are not allowed to be assisted by a legal counsel, hearings before this exceptional court are held *in camera* and judgements are not made public, to the extent that even the accused is usually not even granted with a copy of the verdict.

Adding to these specific violations, judges at the Specialised Criminal Court, like in the common criminal system, are given a large leeway as to what act can be qualified as "terrorist" and falling thus under their jurisdiction. In practice, acts such as signing petitions or participating to peaceful demonstrations are qualified as terrorist acts by this jurisdiction, on the basis of the extremely vague wording of article 1 of the 2007 Law.

Alkarama has documented numerous cases of individuals, such as the head of the NGO Saudi Arabia Monitor of Human Rights **Waleed Abu Al Kha'ir**,<sup>83</sup> who were arrested, tortured and condemned to heavy sentences after unfair trials before this Court. Mr Waleed Abu Al-Kha'ir is a human rights lawyer and the head of Monitor of Human Rights in Saudi Arabia, an independent human rights organisation founded in 2008. He has been the lawyer of members of the Saudi Civil and Political Rights Association ACPRA and Raif Badawi. Mr Al-Kha'ir first faced trial in late 2011 after he signed a statement criticising the authorities' persecution of 16 reformists. On 6 October 2013, Mr Al-Kha'ir was brought before the SCC, where he faced charges including "breaking allegiance to and disobeying the ruler", "setting up an unlicensed organisation" and "participating in establishing another organisation (i.e. ACPRA)". On 6 July 2014, the Specialised Criminal Court sentenced Waleed Abu Al-Kha'ir to 15 years of imprisonment and to a 200,000-riyal fine in accordance with article 21 of the Anti-Terrorism Law. Amongst others, he was accused of "hurting the state legitimacy", "disturbing public order and diminishing the judiciary", "publicly defaming in the judiciary and discrediting Saudi Arabia by alienating international organisations against the Kingdom", making statements and releasing documents "to harm the reputation of the Kingdom", and "being part of an unauthorised association, being its cHa'irman and speaking on its behalf" on the basis of article 21 of the Anti-Terrorism Law. He is currently detained despite several calls for his release by UN Special Procedures and the former UN High Commissioner for Human Rights Navi Pillay.<sup>84</sup>

#### Recommendations:

1. Amend the relevant legislation in order to align the definition of terrorism with international standards as to ensure that it only includes the resort to or intend of violence;
2. Abolish the Specialised Criminal Court in order to put an end to the exceptional justice system in cases of terrorism.

<sup>83</sup> Alkarama, *Saudi Arabia: Waleed Abu Al Kha'ir - 1 Year of Arbitrary Detention for Defending the Rights and Freedoms of his Compatriots*, 15 April 2015, <http://en.alkarama.org/saudi-arabia/1660-saudi-arabia-waleed-abu-al-kha'ir-1-year-of-arbitrary-detention-for-defending-the-rights-and-freedoms-of-his-compatriots> (accessed on 24 March 2016).

<sup>84</sup> OHCHR, *Saudi Arabia: Pillay concerned by harsh sentences against human rights defenders*, 10 July 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14846#sthash.deGG6I2X.dpuf> (accessed on 24 March 2016).

## 7. A widespread practice of cruel inhumane and degrading treatment or punishment

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### 7.1 Mistreatment and poor conditions of detention of individuals deprived of their liberty amounting to a violation of article 16 UNCAT

If States are free to adopt a legislation criminalising cruel, inhumane and degrading treatment or punishment as a separate crime, they have the obligation under article 16 of the Convention to prevent such acts and victims of such violations have a right to an effective remedy and redress.<sup>85</sup> However, it appears that in practice, not only such acts are not criminalised but they are also commonly accepted as ways to punish and control prisoners in detention facilities.

The mistreatments range from beatings to flogging and denial of access basic sanitary amenities. Furthermore, the conditions of detention in many Saudi detention facilities do not comply with the Standard Minimum Rules for the Treatment of Prisoners. The most commonly reported issues are overcrowding of prison cells with less than two square metres per detainee due to the lengthy confinement of prisoners awaiting trial;<sup>86</sup> unsanitary prison conditions due to lack of functioning sewage systems; detention in dungeon like cells; being deprived of daylight and malnutrition.

Moreover, a large number of prisoners of conscience are being detained together with convicted criminals, which is a clear breach of article 63 and 67 of the Standard Minimum Rules for the Treatment of Prisoners, calling for the need to classify groups of prisoners according to their sentences.

Additionally, some prisoners with severe mental and psychiatric condition are being detained, instead of being treated in specialised institutions. The right to medical assistance is also denied on a regular basis to inmates, let alone the right to see an independent doctor. In cases documented by Alkarama, we noticed the quasi-systematic nature of this violation and the repetition of instances in which detainees were denied the right to medical care, including after having been tortured. All the above-mentioned conditions illustrated in the Appendix 1 violate the Standard Minimum Rules for the Treatment of Prisoners and amount to cruel inhumane and degrading treatment.

An example of these common practices is the case of **Khalid Suleiman Al-'Omeir and Mohammad Al-Oteibi** who were arrested on 1 January 2009, for organising a peaceful protest in support of Gaza. Despite orders of the judge to release the two detainees, the BIPP refused to comply with the orders of the judiciary. Detained in Al Ha'ir prison, both men complained to that they were exposed to extreme heat in the prison cells especially during the hottest months of summer as well as being detained in unsanitary conditions and subjected to prolonged water cuts.<sup>87</sup>

It is noteworthy that such mistreatments and poor conditions of detention led to waves of protest in detention centres which were brutally repressed by the authorities. In July 2012, after a prison officer violently beat and spat on a political prisoner in Al Ha'ir prison, protests started denouncing their poor prison conditions, the arbitrary nature of their detention and the regular torture and mistreatment they are exposed to. The sit-in, which lasted for several weeks, saw the participation of many detainees, including **Fahd Abdullah Ali al-Zamel**,<sup>88</sup> who had been detained in Al Ha'ir prison for nine years without any legal proceedings.

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<sup>85</sup> Committee against Torture, General Comment N°3, 19 November 2012, CAT/C/GC/3, para. 1.

<sup>86</sup> France 24, *Leaked images expose overcrowding in Saudi prisons*, 2 January 2012, <http://observers.france24.com/en/20120201-leaked-images-overcrowding-saudi-arabian-prisons-mobile-phone-video-jail-jeddah-khoular-hygiene-crowded-health> (accessed on 24 March 2016).

<sup>87</sup> Alkarama, *Saudi Arabia: Six years of arbitrary detention for Al-Oteibi and Al-'Omeir, General Investigative Services deny orders for their release*, 4 July 2009, <http://en.alkarama.org/saudi-arabia/press-releases/274-saudi-arabia-six-years-of-arbitrary-detention-for-al-oteibi-and-al-omeir-general-investigative-services-deny-orders-for-their-release>, (accessed on 28 March 2016).

<sup>88</sup> Alkarama, *Saudi Arabia: An appeal to King Abdullah bin Abdulaziz to protect the prisoners of al-Hayer, and a violent intervention by the Emergency Forces*, 13 August 2012, <http://en.alkarama.org/saudi-arabia/press-releases/997-saudi-arabia-an-appeal-to-king-abdullah-bin-abdulaziz-to-protect-the-prisoners-of-al-hayer-and-a-violent-intervention-by-the>

The prisoners' demands entailed releasing arbitrarily detained inmates; releasing those whose sentences had expired and releasing sick detainees, especially those terminally ill such as cancer patients who suffer from medical negligence by the prison administration. However, none of the detainees' demands was met and instead the sit-in was violently dispersed when 400 members of the Emergency Forces raided the blockaded areas of the prison using water trunks, stun grenades and tear gas, after they had cut off the water supply and blocked food supplies for several days in order to exhaust the prisoners before attacking them. Furthermore, the guards decided to cut all detainees' contact with their respective families as a punishment. The same week, the families of the prisoners gathered near Al Ha'ir prison after they heard about the protests and the excessive use of force of the security forces in attempting to control the situation. The security forces surrounded the prison to prevent the families from approaching the building and arrested many of them, including women and children.

## 7.2 Corporal punishment

If article 1 of the Convention does not prohibit as such, punishment resulting from lawful sanctions, the definition of what constitutes a lawful sanction should be interpreted narrowly and the sanctions must not be cruel, inhumane and degrading. The Committee has raised the problematic of corporal punishment in its List of Issues<sup>89</sup> by asking if steps were taken by the State party "to prohibit the imposition by judicial and administrative authorities of corporal punishments, such as flogging and amputation of limbs" adding that such punishments were in breach of the Convention.

Despite this, the State party replied<sup>90</sup> that they could not change or put an end to corporal punishment imposed for offenses regulated by the "law of retaliation" (*qisas* – i.e. voluntary homicide and intentional assault) and legal punishments (*hudud* which are according to the State party "specific penalties specified in the Quran and the Sunna as applied by the Prophet"<sup>91</sup>). The State party explains furthermore that such punishments are considered as "expressly contained in the Sharia" and "are not subject to interpretation", adding that such punishments were limited to specific crimes that are defined by Sharia law which sets the applicable penalty and evidentiary methods. However, in practice such sanctions are applied to punish acts which do not constitute crimes in sharia law.

What is all the more concerning is that according to information obtained by Alkarama, acts of corporal punishment including flogging were pronounced as sanctions to criminalise acts falling under rights and freedoms such as the right to freedom of expression and opinion. The State party did not provide information on the following cases in its replies to the list of issues of the Committee that are exemplifying the issue of arbitrary use of flogging.

As noted by the Committee in its List of Issues, an emblematic case is that of **Raif Badawi**,<sup>92</sup> a Saudi blogger sentenced to ten years imprisonment and 1000 lashes merely for peacefully expressing his views. A further example is that of **Mukhlif Al Shammari**,<sup>93</sup> a Saudi human

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[emergency-forces](#) (accessed on 28 March 2016); Alkarama, *Saudi Arabia: Widespread riots in Al-Hayer prison and violent intervention by the security forces*, 18 July 2012, <http://en.alkarama.org/saudi-arabia/press-releases/975-saudi-arabia-widespread-riots-in-al-hayer-prison-and-violent-intervention-by-the-security-forces> (accessed on 28 March 2016).

<sup>89</sup> List of Issues in relation to the second periodic report of Saudi Arabia, 5 January 2016, CAT/C/SAU/Q/2/Add.1, (hereinafter "List of Issues").

<sup>90</sup> Replies to the List of Issues, para. 4.

<sup>91</sup> If *Hadd* (crimes against God) are generally already defined by the Quran (although interpretation of the circumstances of the applicability of these crimes differs amongst Islamic legal schools) and *Qisas* (crimes against private persons) are defined by the rule of equal retribution, it remains that the majority of crimes are not defined by neither Hadd nor Qisas. In these cases (*ta'zir*), it is up to the judge has a discretionary power to define crimes and the subsequent sentence for the case without having to follow any precedents.

<sup>92</sup> Alkarama, *Saudi Arabia: Raif Badawi's Flogging Not Carried Out Today but Blogger's Flogging May Resume Any Time and 10-Year Prison Sentence Confirmed*, 12 June 2015, <http://en.alkarama.org/saudi-arabia/1756-saudi-arabia-raif-badawi-s-flogging-not-carried-out-today-but-blogger-s-flogging-may-resume-any-time-and-10-year-prison-sentence-confirmed> (accessed on 24 March 2016).

<sup>93</sup> Alkarama, *Saudi Arabia: Court of Appeal Upholds Sentence of 2 Years Imprisonment and 200 Lashes against Activist for Tweet Advocating for Peace and Tolerance between Shia/Sunni Communities*, 2 December 2015, <http://en.alkarama.org/saudi-arabia/1973-saudi-arabia-court-of-appeal-upholds-sentence-of-2-years-imprisonment-and->

rights defender sentenced to 200 lashes after tweeting in favour of peace and mutual understanding between Sunni and Shia communities. On 16 December 2015, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated in a press release<sup>94</sup> that their arrest constituted an attack on freedom of expression, which “deter critical thinking, public participation, and civic engagement, the very things that are crucial to human development and democratic culture.”

It is worth noting that contrary to what the State party affirmed in its answer, the Saudi government does not provide its citizens with a clear and public interpretation and definition of what types of crimes can be sanctioned with corporal punishment. As a result, corporal punishments are applied in a discretionary manner by judges– violating the principle of *nullum crimen nulla poena sine lege* – leaving it to the Prosecution – and *in fine* to the Ministry of Interior – to qualify *ex post facto* acts as crimes and to the judge to choose whether to use flogging as a sanction. As such, the argument of the state party that such punishments are applied only in cases regulated by Sharia law is contradicted by numerous examples including the following one.

Another case of an arbitrary decision involving flogging is that of **Ms Najla Yahya Wafa**,<sup>95</sup> an Egyptian citizen who was arrested on 30 September 2009 at the behest of a princess in the royal family with whom she had business dealings. Ms Wafa was interrogated by investigators from the al-Suliemaniah police station for four days, during which she suffered mistreatment and was verbally abused by the investigator and the princess' lawyer. Ms Wafa was not allowed to appoint a lawyer, following instructions given by her royal opponent. When the interrogation ended, she remained in arbitrary detention without trial, for one year and eight months, after which she appeared before the Specialised Criminal Court in Riyadh, and was not offered any legal support or allowed to appoint a lawyer during 13 the hearings. On 14 June 2011, the Court sentenced her to five years in prison and 500 lashes. The Saudi authorities started carrying out the flogging part of the sentence towards the end of May 2011 and she was eventually subjected to a total of 300 lashes inside the al-Malaz prison at the rate of 50 lashes per week. After her back was so injured that she could not receive any more lashes – she suffered from previous back pain conditions – the authorities did not carry out the 200 remaining lashes.

Lastly, it should be noted that flogging is also used inside prisons to enforce discipline and punish inmates. Testimonies of detainees as well as videos leaked from prisons show the extent of this practice, which clearly falls outside the scope of legal corporal punishment. Indeed, the State party cannot reasonably submit that this does not constitute torture, given the severity of the pain inflicted and the purpose of this practice.

### **Recommendations:**

1. Issue a moratorium on all corporal punishments;
2. Guarantee that all prison authorities receive appropriate training in order to prevent the use of flogging as a corporal punishment in prisons;
3. Guarantee conditions of detention that comply with the Standard Minimum Rules for the Treatment of Prisoners;
4. Provide appropriate medical care for prisoners with medical conditions and assistance as well as forensic exams to victims of torture by independent physicians.

## **8. Death penalty**

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[200-lashes-against-activist-for-tweet-advocating-for-peace-and-tolerance-between-shia-sunni-communities](#) (accessed on 24 March 2016).

<sup>94</sup> OHCHR, *UN rights expert raises alarm over Saudi Arabia's growing clamp down on freedom of expression*, 16 December 2015, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16892&LangID=E#sthash.MmPiMXIU.dpuf> (accessed on 24 March 2016).

<sup>95</sup> Alkarama, *Saudi Arabia: UN asked to intervene with Saudi Authorities to stop flogging of Egyptian woman*, 6 August 2012 <http://en.alkarama.org/saudi-arabia/press-releases/988-saudi-arabia-un-asked-to-intervene-with-saudi-authorities-to-stop-flogging-of-egyptian-woman> (accessed on 28 March 2016).

If death penalty is not expressly prohibited by international law, strict limitations are imposed on the sentence such as the right to a fair trial, the limitation that it is only to punish the most serious crimes,<sup>96</sup> that it should not be imposed retroactively and that the condemned should have the right to seek for a pardon or a commutation of his sentence. Lastly, death penalty should not be pronounced against persons who were under the age of 18 at the time the commission of the offence or against pregnant women. We would add to these restrictions the fact that the defendant should not be mentally ill at the time of the commission of the crime.

Furthermore, various methods of execution have also been identified as cruel and contrary to human dignity and as such, in violation of international law, especially if the way the sentence is carried out prolongs the suffering and death.

We note that the State party indicated in its Replies to the List of Issues that death sentences are always pronounced after a fair trial and only for the most serious crimes "as prescribed by the Sharia".<sup>97</sup> However, in practice, serious concerns can be raised as to the fairness of trials given all the violations of fundamental rights from the onset of the arrest to the trial, especially with the use of confessions extracted under torture by the security forces (See Sections 5 to 7). This is particularly alarming for death sentences applied in cases of terrorism, which are prosecuted before the Specialised Criminal Court, a jurisdiction of exception known for blatantly violating fair trials rights (See Section 6). The decisions to sanction an accused with the death penalty are never motivated by the judges but only contain the name of the accused and the offenses he/she allegedly committed, which is even more concerning given the discretionary power given to judges to determine the penalties applicable to those found guilty. The criteria of the limitation of death penalty to the most serious crimes is also problematic since death penalty can be pronounced for charges of terrorism – which definition does not entail the use of deadly violence – or drug-related charges. It also appears that the State party does not seem to consider abolishing the death penalty for non-violent crimes such as witchcraft and apostasy.

For the past ten years, Alkarama has witnessed a persistent practice of issuance of death sentences by judges in violation of the accused fundamental rights and in violation of the principles related to the death penalty. We documented cases in which death sentences were pronounced after unfair trials and in which the offender was under the age of 18. Moreover, death sentences are not limited "to the most serious crimes".

**Seven young men** (whose case was referred to in Section 4.1) were sentenced to death in 2009 for theft, based on their confessions obtained under torture, despite the claims made by the defendants to the judges that they had been tortured. Furthermore, the men were denied access to a lawyer in order to prepare their defence and the verdict was pronounced after a trial consisting in three brief *in camera* court sessions during which they were not assisted by a lawyer. We also highlight that Sarhan Al Mashaikh's corpse, accused of being the mastermind of the robbery and the head of the group, was crucified for three days following his execution.

It is worth noting that the State party did not provide any statistical data on the number of executions carried out, which is all the more concerning in the light of the increased number of execution carried out in 2015 and 2016. Alarming, the State party did not halt this practice. On the contrary, Saudi Arabia keeps carrying out mass executions of prisoners sentenced to death in clear disrespect of international law.

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<sup>96</sup> In 1984, the Economic and Social Council published the Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty, which stipulated that the most serious crimes should not go beyond intentional crimes with lethal or other extremely grave consequences. While these Safeguards are not legally binding, they were endorsed by UN General Assembly, indicating strong international support. Similarly, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that the death penalty should be eliminated for economic crimes, drug-related offences, victimless offences, and actions relating to moral values including adultery, prostitution and sexual orientation.

<sup>97</sup> Replies to the List of Issues, para. 85.



For example, in January 2016, the Ministry of Interior executed 47 prisoners, among whom **Mustafa Abkar**,<sup>98</sup> who was arrested in 2003, when he was 13 years old, and charged with terrorism. Detained for over 11 years, on 14 October 2014, Mr Abkar was sentenced to death after an unfair trial, during which he was only once presented before a court and was not allowed to have a lawyer present. Following a prolonged period on death row, Mr Abkar was executed in January 2016.

### **Recommendations:**

1. Issue a moratorium on executions, ensure independent review of all death row candidates' files and immediately halt all executions that do not comply with international law standards and those following an unfair trial;
2. Ensure as a matter of urgency that the death penalty is not imposed on children;
3. Re-examine past executions to compensate families of victims of executions following unfair trials.

## **9. Absence of effective measures to prevent torture**

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The absence of effective measures of prevention of torture stems from both the absence of adequate training of State agents on human rights standards and the prohibition of torture on one side and, on the other side, from the absence of independent mechanisms to monitor places of deprivation of liberty.

### **9.1 Lack of adequate training of law enforcement officers**

In the State party report<sup>99</sup> and reply to the Committee<sup>100</sup> on measures taken to train its officials, it is unclear whether trainings specifically on torture and mistreatment for State officials are compulsory for everyone involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment or a mere "opportunity". For example, the State party mentions "workshops" and "conferences" organised by the National Commission for Human Rights for officers working in the Office of Counter Terrorism and the Office for the Promotion of Virtue and the Prevention of Vice. However, it seems that these were not "trainings" but merely optional conferences.

The State party re-iterated those statements in its Replies to the List of Issues and did not provide information on any interrogation manual provided to its agents which would include the absolute prohibition of torture.<sup>101</sup> Furthermore, it is concerning to note that training in human rights such as rights of the detained persons and the prohibition of torture seem to be limited to few optional courses with the aim of "diffusing a human rights culture" but without any precision on the curriculum. In the absence of any specific training on torture and in the absence of a manual recalling the definition and the absolute prohibition of torture, we fear that these trainings are neither sufficient nor effective.

### **9.2 Lack of independent monitoring mechanisms in places of detention**

Both monitoring and complaint mechanisms in places of detention are under the responsibility of the BIPP which is also in charge of maintaining an official register of detainees.<sup>102</sup> The BIPP is in charge of controlling and inspecting prisons and other places of detention as well as reviewing the files of prisoners and has the obligation to order the release of prisoners who are detained arbitrarily.<sup>103</sup> BIPP

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<sup>98</sup> Rori Donaghy, "REVEALED: Juvenile prisoners and mentally ill killed in Saudi executions", *Middle East Eye*, <http://www.middleeasteye.net/news/untold-story-prisoners-arrested-children-and-mentally-unwell-inmates-executed-saudi-8396661#sthash.vE5WR2GV.dpuf> (accessed on 24 March 2016).

<sup>99</sup> State party report, para. 73.

<sup>100</sup> State party report, para. 178.

<sup>101</sup> Replies to the List of Issues, para. 54.

<sup>102</sup> As confirmed by the State party in its Replies to the List of Issues, para. 13.

<sup>103</sup> Law of Interrogation Authority and Prosecution General, 1989, art. 3(f). Official translation.

Prosecutors are obliged to inform the Minister of Interior of any illegal behaviour of their agents who may be sanctioned disciplinarily by their department. In this regard, it is noteworthy that the State party did not in its Replies to the List of Issues<sup>104</sup> mention whether it is considering to strengthen the independence of the BIPP or create an independent prison monitoring authority.

However, monitoring and visits should be undertaken by a third entity, which must be independent and not the one that investigate and prosecute the detainees; complaints must be heard by an independent mechanism. As Saudi Arabia is not a party to the Optional Protocol to the Convention against Torture (OPCAT), it does not have any national prevention mechanism.

In its Replies to the List of Issues,<sup>105</sup> the State merely indicated that it has put in place an “elaborate” computer-based program indicating for each detainee the date of detention and the date of end of the detention period so that the “detention *can be either renewed* or the detainee released”. However, it fails to explain how this mechanism is substituting itself to the necessary order from the BIPP to release the detainee and only talks about “a notification” by the program of the end date of a detention.<sup>106</sup> Furthermore, it is worth noting that the program is run and controlled by the BIPP itself and not by an independent monitoring system. Lastly, the responsibility for ensuring that prisoners are released at the end of their sentence also rests with the BIPP.<sup>107</sup>

Regarding the steps taken to improve the conditions of detention so that detainees are not subjected to cruel, inhumane and degrading treatment, the State party affirms<sup>108</sup> that the Bureau of Investigation and Public Prosecution is in charge of monitoring places of detention and undertaking visits. In Annex 1 of the State party report, we see that compared to the number of visits undertaken by the BIPP, visits from the Human Rights Commission – Saudi Arabia’s National Human Rights Institution (NHRI) – or the National Society for Human rights – the governmental body in charge of human rights matters – are significantly less frequent. Indeed, compared to the 364 677 visits allegedly undertaken by the BIPP in detention centres since 2003 (Annex 1), the Human Rights Commission only undertook 842 visits (Annex 4) and the National Society for human undertook only 119 visits (Annex 6). None of the latter has published a report of the visits, making it impossible to analyse their findings.

### 9.3 Lack of independent complaint mechanisms in places of detention

The complaint mechanisms for detainees lack independence and impartiality. First, under article 38 of the Code of Criminal Procedure,<sup>109</sup> complaints of torture by detainees during the investigations will be directed to the BIPP, which thus becomes judge and party. As stated above, the independence and impartiality of the BIPP are severely undermined as the Bureau is under the control of the Ministry of Interior. The complaint mechanism for detainees to report acts of torture is therefore ineffective and many detainees abstain from filing complaints due to fear of reprisals.

The State party indicates that families of detainees can report acts of torture and other ill-treatment to either the National Human Rights Commission – which is the equivalent of a national institution for human rights – or the National Society for Human rights – which is a parastatal organisation –.

However, as the National Human Rights Commission was created by an act of the executive, its independence and impartiality are undermined. Moreover, it has not yet been accredited by the International Coordinating Committee for National Human Rights Institutions (ICC) and has so far not

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<sup>104</sup> Replies to the List of Issues, para. 60.

<sup>105</sup> Replies to the List of Issues, para. 13.

<sup>106</sup> Imprisonment and Detention Law, Council of Ministers Resolution, No 441on, 16 May 1978, article 21. “The [prison’s] administrative procedure shall not delay the release of the prisoner or detainee on the fixed date.”

<sup>107</sup> Law of the Bureau of Investigation and Public Prosecutions, article 3(f).

<sup>108</sup> State party report, para. 106.

<sup>109</sup> **Article 38:** “All prisoners and detainees shall have the right to make a written or verbal complaint at any time to the warden of the prison or detention centre and request that he communicate it to a member of the Bureau of Investigation and Public Prosecution. The official shall accept the complaint, promptly communicate it after recording it in the designated logbook, and provide the person making the complaint with an acknowledgement of receipt. The administration of the prison or detention centre shall set aside an office for the competent member of the Bureau so that he can follow up cases of prisoners or detainees.”



demanded accreditation. It should also be noted that even though the State party mentions<sup>110</sup> that the National Society for Human Rights is an independent civil society organisation, which is not subjected to any government supervision or control, it does enjoy privileges that no other organisation has been granted such as governmental funds and access to prisons and detention centres.

As no report on the visits to detention facilities undertaken by the Human Rights Commission was ever published, this further questions their transparency and independence. On several occasions, Alkarama directly communicated with members of the Commission concerning different cases of human rights violations, yet actual assistance or effective cooperation was impossible due to the institution's lack of independence. In October 2015 for example, Alkarama submitted an urgent case to the Human Rights Commission regarding two Bangladeshi brothers, one of which is a minor, who were about to be extradited from Saudi Arabia to Bangladesh without their parents. The NHRI, however, never responded to Alkarama's submission or took any action regarding this case.

In its Replies to the List of Issues,<sup>111</sup> the State party mentioned that it received 19 complaints of ill-treatment by the NHRI, adding that only the most serious cases were referred to the BIPP for investigation. Such a low number of complaints is most likely related to detainees fearing to suffer from reprisals, in addition to the fact that the BIPP is an inadequate authority to receive complaints as it often is the perpetrator of acts of torture.

Finally, even if the State party argues in its Replies to the List of Issues<sup>112</sup> that it has established a human rights department in detention facilities that are reporting to the prison director, there is no explanation provided as to how these departments deal with violations and whether they take complaints from detainees.

### **Recommendations:**

1. Introduce obligatory training on the treatment of detainees and the prevention of torture, including prison guards, personnel of the General Intelligence and judges;
2. Set up a monitoring system of prisons and detention facilities that is completely independent and not under the authority of the BIPP or under the control of the Ministry of Interior;
3. Accede to the OPCAT;
4. Ensure that all detainees have access to a confidential, effective and independent complaint mechanism;
5. Investigate all complaints made by detainees and provide redress in case of violation;
6. Request the accreditation of the National Human Rights Commission with the the International Coordinating Committee for National Human Rights Institutions to review its independence and compliance with the Paris Principles.

## **10. Non effective complaints mechanisms, failure to investigate and prosecute acts of torture**

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### **10.1 Violations of the right to complain**

The Convention requires States parties to ensure an effective right to complain to the competent authorities and protect victims and witnesses of acts of torture against reprisals. As such, the State party must ensure that victims can file a complaint with the judicial authorities who in turn must be impartial and take effective steps to promptly and impartially examine the facts, investigate and prosecute those acts. To fulfil this obligation, States parties have to enact legislation to ensure the effectiveness of those rights including by establishing an independent body to investigate allegations of torture committed by its agents.<sup>113</sup>

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<sup>110</sup> State party report, para. 16.

<sup>111</sup> Replies to the List of Issues, para. 63.

<sup>112</sup> Replies to the List of Issues, para. 16.

<sup>113</sup> CAT, General Comment N°3, 19 November 2012, CAT/C/GC/3, para. 5.

Alkarama wishes to highlight the fact that these obligations are not respected by the State party, creating a pervasive climate of impunity. The main reason is the complete lack of independence of monitoring and complaint mechanisms both within the places of detention (as seen in Section 9) and within the judicial system in general. Indeed, the BIPP, which is controlled by the Ministry of Interior is responsible for the arrest, questioning, detention, investigation and prosecution as well as the monitoring of all these phases. Since all the forces responsible for the arbitrary arrests, torture and arbitrary detention are also under the control the Ministry of Interior, complaints from victims will be addressed to the very same authorities who committed the acts of torture and which are keeping him/her in detention.

As a consequence of this complete lack of independence of complaints mechanisms, victims and their families are often too afraid to complain due to the high risk of retaliation against the family and especially the victim if the latter is still in detention. Alkarama witnessed this omnipresent fear first hand. Indeed, when contacting families of victims of torture and arbitrary detention, they told us that they were keen on filing complaints but that they were too afraid to do so because their imprisoned relative was too afraid to be mistreated as retaliation and/or the family was afraid that other family members would be arrested. Protection against any form of reprisals against victims who lodge complaints is a clear obligation deriving from article 13 of the Convention and the State party should take positives measures to protect detainees and ensure that their families are not subjected to reprisals.

Furthermore, Alkarama received information about more than a hundred complaints previously submitted to the Board of Grievances by local lawyers in 2012, which show the inefficiency of complaints filed with this administrative court. However, according to our sources, no action has ever been taken by the authorities to put an end to the violations, investigate and prosecute those responsible, and offer redress to the victims (See Appendix 1). In numerous instances, the detainees remained in prison despite a decision from the Board of Grievances acknowledging the arbitrariness of the detention. In such cases, the BIPP did not take into account the decision of the Board of Grievances.

**Thamer Al Khodr**,<sup>114</sup> human rights defender and son of Dr Abdelkarim Alkhodr, Professor of Comparative Jurisprudence and founding member of the Association of Civil and Political Rights was arrested on 3 March 2010 by *Mabahith* agents. He was then detained without charge or trial until October 2011 and remained in detention despite a decision from First Administrative Circuit Court in the Riyadh Board of Grievances on 8 June 2011, ordering his immediate release, acknowledging a violation of article 114 of the Saudi CCP by the *Mabahith*. According to our sources, the *Mabahith's* lawyers failed to attend any of the four hearings held, in clear disrespect of the Court's procedures. It was only on 3 October 2011 that Mr Al Klhodr was released without having been compensated for the arbitrary detention, including three months and 16 days of *incommunicado* detention, long periods of solitary confinement as well the ill-treatment and torture he suffered in prison.

Lastly, if the State party mentions in its Replies to the List of Issues that the National Human Rights Commission and the National Society for Human Rights had received complaints, including for mistreatment, by prisoners, the complaints are addressed to the BIPP and not to an independent authority. As a result, none of the complaints filed with these institutions was considered impartially and none led to the opening of an investigation into the facts alleged.

## **10.2 Failure to investigate and prosecute**

State parties are obliged to investigate thoroughly, promptly and impartially any allegation of torture, even if the victim did not complain. Such investigations should be followed by the prosecution of those who committed the acts and other agents who participated in the commission of the crime (e.g. through acquiescence, complicity) as well as their superior according to the applicable standards. It is important to note that the Committee recommends the establishment of an independent body to

<sup>114</sup> Alkarama, *Saudi Arabia: Court's decision to release defender ignored*, 4 August 2011, <http://en.alkarama.org/saudi-arabia/press-releases/799-saudi-arabia-court-s-decision-to-release-defender-ignored> (accessed on 30 March 2016).

investigate allegations of torture committed by State agents, such establishment ordinarily to be enacted through legislation.<sup>115</sup> In the same vein, the prosecuting authorities should be able to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment.

In its report, the State party explains that the BIPP “may call upon the competent authority to consider any breach of duty or omission on the part of an officer and request disciplinary action against him, without prejudice to the right to initiate criminal proceedings”.<sup>116</sup> However, the State party does not explain what steps are taken by the authorities to ensure that investigation and criminal prosecution are systematically carried out when allegations of torture are made. Additionally, the State report merely provides general statements and does not provide any statistics or examples of the prosecution and punishment of perpetrators of torture. In its Replies to the List of Issues,<sup>117</sup> the State party merely provides alleged numbers of “investigations” opened – which is surprisingly of 904 052 – but provides no information as to who many concerned acts of torture and ill-treatment, who carried out the investigation, what was the outcome and whether it led to the prosecution of those responsible.

In addition, the State party mentions in its report numerous amendments to its domestic law which allegedly aim at preventing acts of torture and according to which all acts of torture must be investigated and measures taken by the “competent authority”.<sup>118</sup> The “competent authorities” are the BIPP which is in charge of both investigating and prosecuting acts of torture. While questioned by the Committee<sup>119</sup> on the independence of the BIPP and judges, the State party merely re-affirms the independence of the BIPP without addressing the issue of whether the BIPP will still remain under the authority of the Ministry of Interior.

Furthermore, Alkarama has observed that even when families file complaints with the National Human Rights Commission and the National Society for Human Rights, no investigation is ever opened. Indeed, complaints sent by victims and their families to the NSHR are automatically sent to the BIPP which did not take any legal action,<sup>120</sup> in breach of the State’s obligation to launch investigation when it has information establishing reasonable grounds to believe that an act of torture has been committed by state agents received from the victim or from NGOs, NHRIs, families, lawyers or medical staff.

In its Replies to the List of Issues,<sup>121</sup> the State party did not indicate clearly if its agents were trained properly in order to investigate into allegations of torture and ill-treatment. Moreover, it affirms that it gives seminars and training workshops for health professionals to detect signs of torture or ill-treatment. Yet, it remains unclear whether these trainings are voluntary or compulsory, when they should be made an intrinsic part of the vocational health training. Moreover, the authorities claim that they are also distributing information and training to forensic doctors on detecting signs of torture on corpses and during autopsies. However, forensic doctors often do not possess the necessary skills to detect these signs and more importantly lack independence, as the authorities often even deny the performance of autopsies. As a consequence, thorough investigations of acts of torture are hindered by an absence of independent medical expertise to establish facts after a complaint or a case of death in detention. The State party did not provide substantial information on the independence and training of medical experts either.

Such a lack of independent investigators and medical experts has created a climate of impunity for the perpetrators of torture.

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<sup>115</sup> CAT, General Comment N°3, CAT/C/GC/3, 19 November 2012.

<sup>116</sup> State report, para. 26.

<sup>117</sup> Replies to the List of Issues, para. 59.

<sup>118</sup> State report, para. 25.

<sup>119</sup> Replies to the List of Issues, para. 60.

<sup>120</sup> Arab News, *Prisoners Not to Stay in Jails for Over Six Months Without Trial*, 24 March 2006, available at: <http://www.arabnews.com/node/282249> “The National Society for Human Rights (NSHR) had earlier criticized the conditions prevailing in some Saudi prisons after visiting prisons in Riyadh, Jeddah, Makkah, Taif and Jizan. The NSHR had forwarded to the Ministry of Interior the complaints it received from some prisoners or their families about delays in hearings, being imprisoned longer than the terms of their sentences, being forced to register false confessions or being detained under tenuous suspicions.”

<sup>121</sup> Replies to the List of Issues, paras. 50-51.

An illustrative case is that of Yemeni citizen **Muhammad Abduh Al-Duaysi**<sup>122</sup> who died in December 2010 under torture at the Qasim Prison in southern Saudi Arabia. The Saudi authorities had refused for more than four months to hand his body over to his relatives in Yemen, fearing that they would perform an autopsy on the corpse to find criminal evidence against the Saudi authorities regarding his death under torture. The Saudi authorities ultimately buried his body on 10 April 2011 without performing an autopsy. The funeral and the burial took place accompanied by a television team filming it, without any Saudi citizen being allowed to come near the corpse or to shake hands with any of the victim's relatives to offer condolences. The relatives' mobile phones were confiscated to prevent them from filming the marks of torture which were still clearly visible on the victim's body, with his nose which appeared to be broken and bruises on his face. The victim's family was denied redress or compensation and was even threatened for turning towards human rights organisations like Alkarama.

Until now, Alkarama has not received any information about the prosecution and sentencing of an agent responsible for cases of torture we documented to the UN Special Procedures. In its Replies to the List of Issues,<sup>123</sup> the State party indicated that agents who are found responsible of torture can be prosecuted and punished with up to 10 years under the Decree Law No. 43 of 1958. However, this law does not provide for punishments that are specific to the crime of torture but for "abuse of power" and has not been applied so far to any case of torture.

The over hundred cases Alkarama provided in the confidential annex of the report illustrate the total absence of prosecution for acts of torture. Despite the referral of all cases to the respective prison authorities, the Ministry of Interior and the Board of Grievances mentioning the forms of torture the victims have been subjected to, but no action has been taken in any of the cases so far.

### **Recommendations:**

1. Ensure that all alleged acts of torture are impartially and thoroughly investigated and provide accountability and redress for the victims;
2. Provide statistics and examples of prosecution and punishment of perpetrators of torture;
3. Ensure that individuals can exercise their right to complain to an independent body and to be protected against reprisals;
4. Launch prompt and impartial investigations of all allegations of torture;
5. Prosecute alleged perpetrators of torture, as well as their superior in accordance with international law standards.

## **11. Absence of redress for victims of torture: no effective remedy and denial of the right to reparation**

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Article 14 of the Convention requires States parties to enact legislation recognising the right to redress for victims of torture and cruel, inhuman or degrading treatment or punishment. The Committee has considered that the term "redress" includes the right to effective remedy and the right to reparation and entails as such "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention".<sup>124</sup>

The only legal provisions that guarantee the right to redress in Saudi legislation are articles 210 and 217 of the CCP of 2001. Article 210 provides that "[a]ny acquittal judgment pursuant to a petition for reconsideration must, if the convicted person so requests, include moral and material compensation to mitigate the damage suffered by him" while article 217 stipulates that "an accused person, who has been harmed as a result of malicious accusation or as a result of being detained or imprisoned for a period exceeding the term prescribed for such detention or imprisonment, shall be entitled to

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<sup>122</sup> Alkarama, *Saudi Arabia: Burial of Yemeni citizen Duaysi in Saudi Arabia without autopsy*, 1 June 2011, <http://en.alkarama.org/component/k2/745-saudi-arabia-burial-of-yemeni-citizen-duaysi-in-saudi-arabia-without-autopsy?Itemid> (accessed on 15 March 2016).

<sup>123</sup> Replies to the List of Issues, para. 2.

<sup>124</sup> Committee against Torture, General Comment N°3, 19 November 2012, CAT/C/GC/3, paras. 2 and 5.

compensation.” According to the State party in its Replies to the List of Issues, the CCP<sup>125</sup> amended in 2013 provides for even more safeguards with regards to the prevention of torture. Yet, concerning the right to redress, no new provisions were incorporated and both articles merely renumbered (former article 210 is now article 207 while article 217 is now 210).

These dispositions are insufficient as they do not mention specifically the right to compensation for victims of torture or other ill-treatments. In practice, Alkarama has not been able to document a single instance in which the Saudi authorities have provided redress to victims of torture. Therefore, it is not surprising that in its Replies to the List of Issues<sup>126</sup> on compensation, rehabilitation and redress, the authorities merely state that they are currently compiling data on cases in which any form of redress was provided.

A case illustrating the denial of the right to reparation is that of **Murad Al Mukhlif**,<sup>127</sup> a school director and father of two children who is detained at Damman Central Prison since 2010. During interrogations and in detention, he suffered from severe acts of torture. He was being sleep deprived and forced to stay in painful positions for many hours, and the beatings he had received on his back ultimately led to the paralysis of both his legs. As Mr Al Mukhlif's father requested explanations regarding his son's medical condition, the prison administration told him that he had “fallen in his cell”. Obviously not satisfied with this answer, he brought the case to the Ministry of Interior and asked for an investigation into the allegations of torture and that his son be immediately released. With no response from the Ministry of Interior, he also filed a complaint with the Board of Grievances. The sole answer he received was a threat of arrest if he did not stop questioning the authorities about his son's case. This case illustrates the prevailing impunity and denial of redress and compensations for acts of torture.

Even more concerning is that when families of detainees peacefully gather to demand justice and redress for their relatives, they are not being heard, but judicially harassed.

In June 2013, dozens of women and children in the Saudi cities of Al-Jawf, Ha'il, Mecca, Riyadh and Buraydah protested the arbitrary detention, torture and denial of medical treatment for their relatives in “**Freedom Sit-Ins**”.<sup>128</sup> These peaceful protests were met with brutal violence by security forces, beating dozens of civilians including women and minors with batons and arresting them.

### **Recommendations:**

1. Incorporate the right to redress for cases of torture into the national legislation; ensure that forms of reparation encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and include family's and dependants' of victims as well as anyone who suffered harm while assisting the immediate victim;
2. Enable victims of torture to obtain civil reparation without the prior conclusion of criminal proceedings.

## **12. The systematic crackdown on civil society**

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### **12.1 Torture as reprisals for acts falling under the rights to freedom of opinion and expression, peaceful assembly and association**

The rights to peaceful assembly and association are not recognised in the Kingdom, which is not a party to the ICCPR. Political parties and unions are banned and the sole act of signing a petition or

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<sup>125</sup> Amended Code of Criminal Procedure, Royal Decree No.M/2 of 2013.

<sup>126</sup> Replies to the List of Issues, para. 76.

<sup>127</sup> Alkarama, *Saudi Arabia: A detainee paralyzed following severe acts of torture*, 5 August 2011, <http://en.alkarama.org/saudi-arabia/press-releases/804-saudi-arabia-a-detainee-paralyzed-following-severe-acts-of-torture> (accessed on 5 March 2016).

<sup>128</sup> Alkarama, *Saudi Arabia: Mass Arrests during "Freedom Sit-In" held by Families of Arbitrarily Detained Persons*, 19 June 2013, <http://en.alkarama.org/saudi-arabia/press-releases/1120-saudi-arabia-mass-arrests-during-freedom-sit-in-held-by-families-of-arbitrarily-detained-persons> (accessed on 5 March 2016).

making a request for registration of an organisation can be considered a subversive act likely to result in arrest and prosecution.

The public authorities operating under the control and order of the Ministry of Interior are responsible for a systematic crackdown on peaceful dissent and human rights activism in Saudi Arabia. Violations of fundamental freedoms are being committed in a specific pattern: public authorities operating under the control and order of the Ministry of Interior, especially the General Investigation Directorate, arrest the victim without presenting any warrant nor explaining the reasons for the arrest. The victim is then held in pre-trial detention for prolonged periods, frequently *incommunicado*, without access to a lawyer. While some of the victims are later released without charges, others are subjected to unfair trials and sentenced to long prison terms on the basis of confessions extracted under torture. Although most victims allege having been ill-treated or tortured in detention, no investigation is ever opened into these allegations.

The case of **Hanane Abdurrahman Samkari**<sup>129</sup> illustrates the harsh crackdown on peaceful assembly and association. In 2010, Ms Samkari took part in a peaceful demonstration in front of the Ministry of the Interior to protest against the detention of her husband. On 25 December 2010 in the middle of the night, men of the Criminal Investigation Services of the General Intelligence broke into her house and arrested her with her three children (Abdurrahman, Jana and Namur, respectively 4, 8, and 13 years old at the time of arrest). She was detained with them in Mecca and then brought to the Dhabhan "high security" Prison in Jeddah where they were exposed to particularly inhumane prison conditions, insulted, sleep deprived and threatened. Brought for the first time before a court on 13 May 2012, 18 months after her initial arrest, she was released with her children on 29 June 2012.

**Abdelaziz Mohamed Al Wohaibi**,<sup>130</sup> a lawyer and human rights defender, was arrested on 16 February 2011 with six other people in different cities: Ahmed bin Saad Al Gharam Al Ghamidi, university professor, Saoud bin Ahmed Al Dughiter, human rights activist, Abdulkareem bin Yussef Al Khodr, university professor, Mohamed bin Nasser Al Ghamidi, human rights activist, Walid Mohamed Abdullah Al Majed, lawyer and Mohamed bin Hussein bin Ghanem Al Qahtani, human rights activist for merely having sent an application for approval of a political party "Hizb Al umma Al Islami" to the Royal Cabinet (*Al Diwan al Malaki*) and requested its official registration. This was considered by the authorities as a serious threat to national security that would justify the condemnation to a heavy prison sentence.

**Fadhel Makki Al Manasif**,<sup>131</sup> human rights defender from the Qatif region in eastern Saudi Arabia, was detained on 1 May 2011 at Al-Awamieh police station after being summoned for questioning by Criminal Investigation Services of the General Intelligence. He was arrested due to his participation in peaceful sit-ins and his activities as a human rights activist. No official reason was given to him for his arrest and he was neither presented with a warrant nor promptly brought before a judge. In mid-March 2014, Al Manasif was convicted on charges including "inciting and participating in demonstrations" and "writing articles against endangering state security" and sentenced to 15 years of imprisonment.

## **12.2 Torture as reprisals against human rights defenders who denounce violations of the Convention by the State party**

In its Replies to the List of Issues,<sup>132</sup> the State party emphasises its cooperation with civil society organisations (CSOs) on the protection of human rights and their importance in the provision and distribution of relevant information to the population as well as to the international human rights mechanisms. Yet, in practice it does not allow for any independent CSOs working on human rights in

<sup>129</sup> Alkarama, *Universal Periodic Review: Saudi Arabia*, 3 March 2013, <http://en.alkarama.org/reports/1707-report-of-the-working-group-on-the-upr-addendum> (accessed on 20 February 2016).

<sup>130</sup> Alkarama, *Universal Periodic Review: Saudi Arabia*, 3 March 2013, <http://en.alkarama.org/reports/1707-report-of-the-working-group-on-the-upr-addendum> (accessed on 20 February 2016).

<sup>131</sup> Alkarama, *Saudi Arabia: Lead protestor held incommunicado in Al-Tabakh*, 9 May 2011, <http://en.alkarama.org/saudi-arabia/press-releases/729-saudi-arabia-lead-protestor-held-incommunicado-in-al-tabakh> (accessed on 12 March 2016).

<sup>132</sup> Replies to the List of Issues, paras. 35-39.



the Kingdom and harshly repress such actions through judicial harassment as has been the case for members of the Saudi Civil and Political Rights Association.

**The Saudi Civil and Political Rights Association**<sup>133</sup> (ACPRA) is an association created in 2009 with the aim of campaigning for the rights of political prisoners and detainees in Saudi Arabia as well as for civil and political rights in general. All members of ACPRA have been prosecuted and charged with vaguely defined crimes which criminalise peaceful activism, including “breaking allegiance with the ruler” or “reporting that the authorities were committing human rights violations”. It was closed down by the authorities in March 2013. Alkarama dealt with the cases of 15 ACPRA members, who have been the victims of reprisals since the creation of their organisation. They are all currently either prosecuted, awaiting trial or detained after having been convicted to heavy prison sentences. Several of the victims were detained *incommunicado* for long periods and subjected to acts of torture. All of them have been subjected to or are at risk of unfair trial, mostly before the Specialised Criminal Court, with limited access to legal counsel. ACPRA members and other human rights defenders continue to be detained regardless of several Opinions issued by the UN Working Group on Arbitrary Detention on the basis of complaints sent by Alkarama, in which it clearly stated that the individuals were imprisoned solely for exercising their legitimate right to freedom of expression and peaceful assembly.<sup>134</sup> Most members were sentenced under the Anti-Terrorism law before the Specialised Criminal Court for charges that literally included “cooperation with the UN human rights mechanisms” and having denounced human rights violations committed by the authorities.

The Special Rapporteur on the situation of human rights defenders mentioned the case of ACPRA members in its report of March 2015<sup>135</sup> by stating the following:

“The Special Rapporteur notes the worrying pattern of arrests and lengthy detention of human rights defenders on charges relating to involvement with “illegal organisations”, among other charges that relate to criticising, disrespecting or planning to overthrow the King. This appears to particularly target those who are involved in human rights organisations that monitor and report on the human rights situation in the country, a number of which have been forced to close. Members of the Saudi Civil and Political Rights Association have faced particular persecution in this regard. The Special Rapporteur deeply regrets instances of reprisals against human rights defenders who cooperated with United Nations human rights mechanisms, and he wishes to reiterate the right of everyone to “unhindered access to and communication with international bodies”.

In this regard, since 2002, the cooperation of the Saudi authorities with the United Nations human rights mechanisms has been jeopardised by this crackdown on civil and political rights associations, lawyers and activists who reported acts of torture to international mechanisms. Alkarama documented several cases of retaliation against human rights defenders who were documenting cases of torture to bring them to the attention of the relevant UN Special Procedures. Since 2011, all annual reports of the UN Secretary-General on reprisals have mentioned cases of Saudi human rights defenders, including ACPRA members, who have been victims of judicial harassment.<sup>136</sup>

Alarmingly, human rights defenders cooperating with the UN human rights mechanisms have been sentenced to heavy penalties for, among others, “insulting the Saudi authorities by describing them as

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<sup>133</sup> Alkarama, *Saudi Arabia: 4 years after the country's first human rights NGO founded, 8 of its members are behind bars*, 23 January 2014, <http://en.alkarama.org/saudi-arabia/1188-saudi-arabia-4-years-after-the-country-s-first-human-rights-ngo-founded-8-of-its-members-are-behind-bars> (accessed on 24 March 2016).

<sup>134</sup> Alkarama, *Saudi Arabia: UN Experts Request Immediate Release of 9 Human Rights Defenders Arbitrarily Detained*, 5 February 2016, <http://en.alkarama.org/component/k2/2036-saudi-arabia-un-experts-request-immediate-release-of-9-human-rights-defenders-arbitrarily-detained?Itemid=> (accessed on 24 March 2016).

<sup>135</sup> Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, 4 March 2015, A/HRC/28/63/Add.1, para. 541.

<sup>136</sup> See the Annual reports of the Secretary-General on the Cooperation with the United Nations, its representatives and mechanisms in the field of human rights. In 2015, the case of Ms Samar Badawi was raised (A/HRC/30/29); in 2014, the case of Mr Fawzan Mohsen Awad Al-Harbi (ACPRA) was raised (A/HRC/27/38); in 2013, the case of Mr Abdullah Al Hamid (ACPRA) was raised (A/HRC/24/29); in 2012, the case of Mohammad Fahad Al-Qahtani (ACPRA) was raised (A/HRC/21/18); in 2011, the case of Mr Fadhel Al Manasif was raised (A/HRC/18/19).

a police state which violates human rights”; “troubling public opinion by accusing security authorities and high officials of repression, torture, summary execution, enforced disappearance and human rights violations” or “preparing, stocking and sending information which might prejudice public policy”.

**Recommendations:**

1. Release all those detained for exercising their rights and freedoms, especially freedom of opinion and expression, peaceful assembly and association;
2. Implement all recommendations issued by the UN Special Procedures especially the Opinions of the Working Group on Arbitrary Detention calling upon the release of victims of arbitrary detention;
3. Stop all forms of harassment against human rights defenders;
4. Immediately release all members of ACPRA;
5. Ensure respect for peaceful expression of opinion and expression, assembly and association.

**13. Conclusion**

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Since its initial review held in 2002, Saudi Arabia has amended its domestic legislation with the proclaimed aim of putting it in line with its international obligations and the CAT. Yet, its legislation is now more restrictive than before and the little legal safeguards enshrined in the Code of Criminal Procedure are not being respected in practice. Alkarama continues to receive numerous cases of torture, which show that this practice is used in a widespread manner. Moreover, an overly repressive and broad Anti-Terrorism Law aggravated a situation in which State security related arrests are often followed by the use of torture and the extraction of forced confessions.

The Kingdom of Saudi Arabia should not only ratify the Optional Protocol of the CAT, but be encouraged to ratify the International Covenant on Civil and Political Rights, as well as its First Optional Protocol. To put an end to the systematic violations of human rights, the authorities must take, without delay, the necessary steps to bring its laws and practices into conformity with the standards and principles enshrined in the Universal Declaration of Human Rights and the relevant international standards, as to ensure the rule of law.

Alkarama hopes that the concerns raised in this report will be addressed constructively during the dialogue between the Committee against Torture and the representatives of the State party in order to put an end to torture and other violations of human dignity.