



SAUDI ARABIA

*Torture, cruel and inhuman treatment:
increased concerns in the Covid-19 pandemic
context*

*Submission of the list of issues and questions for
the consideration of the 3rd periodic review of
Saudi Arabia by the Committee against Torture*

Alkarama, 21 June 2021

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1 Introduction

The unprecedented health crisis related to the COVID-19 pandemic has challenged societies, governments, communities, and individuals regarding human rights. While several experts and international organisations¹ such as the World Health Organization (WHO) have called for the release of particularly vulnerable detainees, Saudi Arabia has used the health crisis as an excuse to restrict fundamental freedoms unduly.

Since its last periodic review by the Committee against Torture (CAT) in 2016, Saudi Arabia has made several amendments to its legislation that failed to address the grave human rights issues highlighted by various UN human rights mechanisms and member states alike. Alkarama continues to receive numerous cases of torture, ill-treatment, enforced disappearance and other abuses that amount to serious violations of the State party's obligation under the UN Convention against Torture (UNCAT). Severe and systematic violations of fundamental rights and liberties constitute a reality that the Kingdom still endeavours to justify under the pretext of its fight against terrorism.

The human rights situation in Saudi Arabia, which was already a source of great concern since the last review by the CAT, has deteriorated further since Crown Prince Mohammed Bin Salman took over the throne in 2015. Under his authoritarian rule, repression has increased in defiance of international law. Hundreds of human rights defenders have been deprived of their freedom and subjected to various forms of torture and ill-treatment.

Cooperation of human rights defenders and victim's families with UN Human rights protection mechanisms is systematically punished.² In her latest oral presentation to the Human Rights Council, Assistant Secretary-General for Human Rights highlighted her particular concern over the use of detention to punish those who cooperate with the UN in Saudi Arabia. In particular, she referred to the findings of several UN actors indicating that "arbitrary detention is a systemic problem" in the Kingdom.³

This contribution is based on the documentation of individual cases of violations by Alkarama and official documents issued by the State party.

¹ Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings COVID-19 HUMAN RIGHTS DISPATCH –NUMBER 2 COVID-19 and Protection of right to life in places of detention #NoCurfewOnHumanRights, https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.pdf

² <https://www.alkarama.org/en/articles/united-nations-alkarama-submits-its-report-secretary-general-reprisals-against-persons>

³ Oral presentation by Assistant Secretary-General for Human Rights Ilze Brands Kehris of the report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, Human Rights Council, 45th Session, Agenda Item 5 Geneva, 30 September 2020

2 Legislation and judicial practices (Article 1, 2, 3 and 4)

Saudi Arabia is an absolute monarchy whose legal system is based on the “Shari’a” Islamic law derived from the Coran. It is the primary source of Saudi law and is supplemented by royal decrees and government regulations. Article 26 of the Saudi Constitution states that the state shall protect human rights “*in accordance with the Islamic Shari’a*”. Saudi law is not codified, and only a code of criminal procedure has been adopted.

The “Shura Council” retains the legislative power but plays an essentially advisory role. Bills discussed come into force if adopted by the Council of Ministers and approved by the king. The Council of Ministers thus has the power to legislate.

The legal system based on Islamic law and governed by the Ministry of Justice is composed of judges appointed and relieved of their duties by royal decree.

Although torture is criminalised under Saudi domestic law⁴, no definition of torture is enshrined therein. According to the State party, “*the definition of torture, which is contained in article 1 of the Convention, is legally incorporated into the legal framework for the enhancement and protection of human rights [...]*” and that it is “*possible to invoke this definition of torture in court*”.⁵ However, the absence of explicit legislative provisions within existing national legislation guaranteeing an absolute prohibition, including all exceptional circumstances, and not subject to derogation, considerably limits the effectiveness of the Convention against Torture.

On the second periodic review of Saudi Arabia, the Committee underlined the need to incorporate the crime of torture into Saudi criminal law as defined in Article 1 of the Convention to avoid any derogation⁶. To date, this recommendation does not appear to have been implemented.

1. What measures do the State party intend to take to remedy its failure to incorporate a clear and precise definition of torture into its domestic legislation?

During the 2nd periodic review by the CAT, the Saudi delegation expressed its willingness to ratify the Optional Protocol to the Convention against Torture⁷.

2. Does the State party still intend to ratify the Optional Protocol to the Convention against Torture?

⁴ Code of Criminal Procedure Article 2

⁵ Replies of Saudi Arabia to the list of issues regarding the 2nd periodic review, CAT/C/SAU/Q/2/Add.2, par.3.

⁶ 2nd periodic review, CAT/C/SAU/CO/2, par.6.

⁷ 2nd periodic review, CAT/C/SAU/CO/2, par.53.

3. *Does the State party intend to recognise the Committee's competence to receive individual communications under article 22 of the Convention?*

3 Absence of prosecution of perpetrators of torture (Article 12, 13, 14, and 16)

During the second periodic review, the Committee recommended that the state party conduct impartial investigations into allegations of torture⁸. Independent only, in theory, the State institutions responsible for these investigations are under the direct authority of the executive. The structure of these institutions also contributes to a climate of impunity, encouraging the practice of torture.

The **Bureau of Investigation and Prosecution**⁹ is responsible for authorising investigations and monitoring Saudi prisons (Article 3). Although article 5 of the decree states that “*the members of the office are completely independent*”, they are under the control of the Ministry of the Interior. The prosecution service is located within the Ministry of the Interior (Article 1), and the chief prosecutor is appointed by the Minister of the Interior (Article 10), who also selects and appoints the members of the office's administrative Committee (Article 4).

4. *How many requests have been received by the Bureau, and how many of these have been investigated?*
5. *How many investigations have resulted in the prosecution and punishment of perpetrators of torture? How many of them have resulted in reparations?*
6. *Is a structural review of the Bureau planned to ensure the true independence of the institution?*

The Saudi judiciary system is also under the executive's direct command and control, as evidenced by Article 52 of the Basic Law, which states that judges are appointed and removed from office by the king. This lack of independence hinders the efficiency of the judiciary and affects the impartiality of the decisions.

⁸ 2nd periodic review, CAT/C/SAU/CO/2, par.8

⁹ Royal Decree No. M/56, 24 Shawwal 1409 (29 May 1989)

The Council of Grievances (Diwan Al Mazalem), a Saudi administrative court whose role includes dealing with complaints from individuals seeking redress for damages resulting from the illegal actions of state officials¹⁰, is directly under the king's authority who appoints and dismisses judges.

7. *How many requests for reparation have been made, and how many of them have resulted in sanctions and reparation?*
8. *Is a structural review of the Council of Grievances planned to ensure true independence of the institution and impartiality of decisions?*

4 Corporal punishment

While the Convention against Torture prohibits all forms of torture and other cruel, inhuman or degrading treatment or punishment, Saudi Arabia provides in its legislation for the use of corporal punishment.

In a statement dated 24 April 2020, Awad Al Awad, chairman of the Human Rights Commission, announced the abolition of flogging, which prison sentences and fines have now replaced. Two days later, the president also indicated that the death penalty had been abolished for individuals convicted of crimes committed as minors. However, no steps have been taken to implement these reforms.

5 Violations to fundamental safeguards in detention

While the state party proceeded to review the cases of **Ali al Nimr**, **Abdullah al Zaher** and **Dawood al Marhoon**, whose death sentences were commuted to 10 years imprisonment, the issue remains that these individuals are detained arbitrarily and subjected to torture and ill-treatment.

Many individuals are subjected to arbitrary detention, torture, and ill-treatment, particularly as a form of reprisals for publicly criticising the royal authorities or participating in protests. Many individuals with vulnerabilities are amongst victims of these severe violations.

Murtaja Algariras was arrested in 2014 at the age of 13 by the Saudi police while travelling to Bahrain. During the investigation, he was tortured to extract a confession stating his participation in "illegal gatherings". After his arrest, Murtaja was held incommunicado and in solitary confinement for a month. He was interrogated by the forces of Al Mabahith, Saudi Arabia's intelligence service, who brutally beat him to force him to confess to participating in peaceful demonstrations and attending the funerals of

¹⁰ Article 1 Council of Ministers Resolution No. 190, 16 Dhu al-Qa'dah 1409 (19 June 1989)

people killed by the authorities during protests. Murtaja was also prevented from consulting and instructing a lawyer.

9. What are concrete measures planned by the State party to impartially review all allegations of arbitrary detention, torture and ill-treatment in its places of detention?

10. What measures were taken by the State party to address violations committed against human rights defenders, minors, and vulnerable individuals in detention, including Murtaja Algariras, Salman Aloudah, Safar Al Hawali?

Saudi prisons are overcrowded with opponents who are being detained without trial. Despite the recommendations made by UN bodies regarding their arbitrary detention, Alkarama continues to record numerous cases, mainly regarding offences considered to be political.

As previously highlighted by the Committee, “the majority of those deprived of their liberty by Al-Mabahith are held in pre-trial detention for long periods and their fundamental legal guarantees, including the right to have access to a lawyer of their choice and habeas corpus, are frequently violated.”¹¹

In the absence of a response during the second periodic review, it is worth recalling the cases of **Saud Mukhtar Al-Hashimi**, a physician, and **Sulaiman Al-Rashoudi**, a former judge, who, according to the Working Group on Arbitrary Detention, have been arbitrarily detained since their arrest in February 2007.

11. Does the State party intend to implement the Working Group’s decision on Arbitrary Detention regarding the cases of Mr Saud Mukhtar Al-Hashimi and Mr Sulaiman Al-Rashoudi and to release them?

Many prominent figures are held indefinitely in detention despite repeated calls from UN human rights mechanisms.

Safar bin Abdulrahman Al Hawali, a 70-year-old religious scholar, has been arbitrarily detained since 12 July 2018 after publishing a book in which he criticised Saudi Crown Prince Mohammed bin Salman’s international policy choices and made recommendations for his consideration. Mr Al Hawali has suffered repeated strokes that have resulted in a permanent speech impediment that renders him unable to speak and be understood. Mr Al Hawali’s health condition deteriorated severely just after his arrest. Despite his disability, old age and poor health, he has been denied medical care ever since. On 12

¹¹ 2nd periodic review, CAT/C/SAU/CO/2, par.26.

October 2020, Alkarama submitted a communication to the Committee on the Rights of Persons with Disabilities, which urged the authorities to release him.

12. Does the State party plan to implement the Committee's decision on the Rights of Persons with Disabilities regarding the case of Mr. Al Hawali and proceed to his release?

Khaled Al-Rashed, a well-known religious scholar of the “reform” movement, was arrested on 19 March 2006 in Mecca while completing the religious pilgrimage of Umrah with his wife. His arrest came shortly after he publicly criticised the Saudi royalty and its international policies. It was only a month after his arrest that his family was informed that he was being held secretly in a Mabahith centre where he was subjected to torture and ill-treatment, causing him severe health damage. Convicted without trial, Mr Al-Rashed remains in detention despite the opinion of the Working Group on Arbitrary Detention and the fact that he has served an arbitrary sentence of 15 years.

13. Does the State party intend to implement the WGAD's opinion in the case of Mr Al-Rashed and proceed to his release?

14. What steps does the state party intend to put an end to these repeated violations and to implement the recommendations issued by the UN human rights mechanism?

15. What measures have been taken or are envisaged by the authorities to eradicate the practice of arbitrary detention?

16. What measures have been taken or are envisaged to avoid reiterating such acts and that persons deprived of their liberty are effectively afforded all fundamental legal guarantees, including the right to a fair trial?

6 The practice of torture in detention (Article 10 and 11)

Torture continues to be routinely used by the Saudi authorities, whether to extract confessions or to “punish” detainees. Such practices remain common in prisons, particularly in the branches of the Criminal Investigation Department of the Ministry of Interior and in the Al-Mabahith detention centres.

17. How many investigations have been opened against Al-Mabahith officials?

18. How many officials have been disciplined or prosecuted for torture or ill-treatment?

Despite previous requests, no concrete information on the number and location of detainees has been shared¹².

19. How many people are currently being held by Al-Mabahith agents?

20. Where are these people currently located, and how much time has passed between their arrest and their presentation before a judicial authority?

7 Coerced confessions (Article 15)

Extorted confessions are regularly used as evidence. Despite previous recommendations in this regard, confessions obtained under torture are still accepted in court proceedings.

21. Has the State party adopted effective measures to ensure the inadmissibility of confessions obtained under duress? If not, does it plan to make a specific provision?

8 The counter-terrorism legislation: a repressive legal framework

During the second periodic review, the Committee had expressed its concern about the Law of Terrorism Crimes and Financing of 2014 because it contained “*an extremely broad definition of terrorism that allows for the criminalisation of the peaceful expression of views deemed to endanger ‘national unity’ or to undermine ‘the reputation or status of the state’.*”

Indeed, by vaguely defining the notion of “terrorism”, the law significantly expands its scope to include additional terrorist acts. It also gives the judiciary discretionary power to impose a prison sentence on anyone who criticises the king or the crown prince and the monarchy.

Despite the recommendation made during the last periodic review, no legislative amendments have been made. Counter-terrorism legislation continues to be used against peaceful opponents and human rights defenders under its vague provisions.

22. Does the State party plan to amend the counter-terrorism legislation to bring it into line with international human rights standards?

23. Will the legal definition of terrorism be amended so that it is no longer applied to cases of non-violent expression?

¹² 2nd periodic review, CAT/C/SAU/CO/2, par.27.

Another concern is the lack of independence of the **Special Criminal Court**, a special court established in 2008 by the Supreme Council of the Judiciary on the decision of the Ministry of the Interior to try terrorism cases.

A considerable number of human rights defenders and political activists were prosecuted, in violation of fair trial rights, by this special court composed of judges directly appointed by the Ministry of the Interior¹³. In 2016, the Committee had already highlighted the need to strengthen the independence of this jurisdiction¹⁴.

24. Has the Special Criminal Court been restructured to ensure the independence of the judges?

The judges of the Special Criminal Court refused to consider statements that some defendants were subjected to torture or ill-treatment during interrogation to coerce confessions, as in the cases of **Ali al-Nimr**, **Abdullah al-Zaher**, **Dawood al-Marhoon**, and **Murtaja Algariras** (mentioned above). Despite the years that have passed, the statements of torture have not been investigated.

25. Will similar cases of arrest and conviction based on confessions extracted under torture be reviewed?

26. Does the State party envisage the express inclusion of the inadmissibility of evidence obtained under torture in its domestic law?

27. How many reports of torture have been investigated? Will the Al-Mabahith agents who committed acts of torture to be prosecuted and punished? Will the victims of torture be compensated?

7. Repression of human rights defenders

During the second periodic review of Saudi Arabia by the Committee against Torture, the state party was urged to recognise the legitimacy of peaceful criticism. The Committee urged it to consider reviewing the cases of those mentioned during the review and releasing anyone detained solely for peaceful criticism or human rights activism¹⁵. While the recommendations have not been implemented, the crackdown has intensified. The Crown Prince's rise to power has been accompanied by a wave of arrests in the country aimed at silencing many prominent figures.

¹³ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/40/52/Add.2

¹⁴ 2nd periodic review, CAT/C/SAU/CO/2, par.18 c).

¹⁵ Committee against Torture, Concluding Observations on the Second Periodic Report of Saudi Arabia, 8 June 2016, CAT/C/SAU/CO/2, para. 20.

These arrests are based on Saudi Arabia's national legislation that criminalises peaceful dissent and leads to arbitrary detentions to silence dissenters under various pretexts, including the fight against terrorism.

Dr Salman ALODAH (Salman Al Awda), one of Saudi Arabia's best-known religious thinkers, was arrested on 7 September 2017 as part of a crackdown targeting prominent figures who refused to endorse the policies of Crown Prince Mohamed bin Salman publicly. Held in solitary confinement since his arrest and deprived of medical care, he has been subjected to severe physical and psychological torture. His trial is underway in the Specialized Criminal Court on 37 charges related to his activism, for which the prosecution has requested the death penalty.

Since his arrest, several UN special procedures mandate holders have considered his trial unfair and have called for his immediate release¹⁶. His hearings are continually postponed, and Mr Alodah is held in indefinite detention and under constant threat of the death penalty, which constitutes cruel and inhuman treatment for him and his family.

28. Does the State party plan to end Mr Alodah's indefinite detention and release him?

Saudi Arabia's human rights record remains deplorable despite some developments since the last periodic review. Human rights defenders and intellectuals who advocate the need for political reform in the country are silenced.

The continued detention of members of the Saudi Association for Civil and Political Rights (ACPRA), the leading civil and political rights organisation, is the most telling example.

Mohammad Al Qahtani, a lawyer and co-founder of ACPRA, was arrested in June 2012 and sentenced in March 2013 to 10 years in prison. Despite repeated calls by the UN Working Group on Arbitrary Detention for his release, Mr Al Qahtani remains in detention. Testing positive for COVID-19 during April 2021, Al Qahtani has been banned from all contact with the outside world since 7 April 2021.

29. How long was the ban imposed on Mr Al-Qahtani? Did he receive adequate care during his detention?

30. Do the Saudi authorities ever plan to release Mr Al-Qahtani in accordance with the Working Group's decision?

Indefinite detention is also a way for the authorities to ensure the slow death of dissenting voices. **Abdullah El Hamid**, a co-founding member of ACPRA and a prominent Saudi human rights defender, was

¹⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24186>

arrested in 2013 and sentenced to 11 years in prison for his involvement in human rights advocacy. He passed away on 24 April 2020.

31. What steps are being considered to ensure the release of all imprisoned human rights defenders in Saudi Arabia?

32. Is a review of those convicted for freely expressing their views, particularly human rights defenders, being considered?

Most human rights defenders are prosecuted and convicted under the counter-terrorism law on the grounds of “harming national security”. This is notably the case of **Waleed Abu Al Khair**, a lawyer and human rights defender who was sentenced in 2014 by the Special Criminal Court to 15 years in prison and a fine of 200,000 riyals, based on Article 21 of the Anti-Terrorism Law. He was accused of, among other things, “undermining the legitimacy of the state”, “disturbing public order”, “publicly defaming the judiciary and discrediting Saudi Arabia by setting international organisations against the Kingdom,” and making statements and publishing documents “to harm the reputation of the Kingdom”.

33. Is a revision of the counter-terrorism law being considered to end the criminalisation of non-violent expression?

The case of Saudi blogger **Raif Badawi**, sentenced in 2014 to 10 years in prison, 1,000 lashes, and a fine of one million riyals for creating an online forum for public debate, can also be cited crackdown on non-violent expression in the country. In May 2015, Badawi was sentenced to 10 years in prison and 1000 lashes for criticising Saudi religious leaders on the web.