



Saudi Arabia

Follow-up to the Committee against Torture's recommendations

Alkarama Foundation – 23 June 2017

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1. Introduction

In its Concluding Observations to Saudi Arabia's second periodic report, the Committee against Torture (CAT) highlighted three priority recommendations and requested the State to provide follow-up information on their implementation. The Committee had prioritised, over all other concerns, the imposition of corporal punishment, the reprisals against human rights defenders and the execution of the death penalty.

On 11 May 2017, Saudi Arabia submitted its follow-up report, which provided vague elements on the implementation of the Committee's recommendations. It is our opinion that none of these recommendations have been implemented to date.

2. Corporal punishment

The State party should immediately put an end to the practices of flogging/lashing, amputation of limbs and any other form of corporal punishment. In addition, the State party should amend its legislation in order to abolish all such forms of corporal punishment as they amount to torture and cruel, inhuman or degrading treatment or punishment, in violation of the Convention.¹

In its follow-up report, Saudi Arabia explained that corporal punishment was a penalty allowed for by Sharia law,² upon which the penal system of the Kingdom is based. It declared that no judicial or governmental instance, or any other institution had the power to repeal the use of corporal punishment.³ Furthermore, the State insisted that corporal punishment, as a lawful sanction, falls within the savings clause of article 1 of the Convention against Torture (UNCAT),⁴ which provides that the definition articulated "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions". The State thus argued that corporal punishment could not be considered as amounting to torture. However, it has been repeatedly stated by the Special Rapporteur on torture that corporal punishment is contrary to international law and cannot be considered a lawful sanction and that any form of corporal punishment should be considered as contrary to the prohibition of torture.⁵

Lashing of Ra'if Badawi

The State party should review the case of Ra'if Badawi as well as the cases of all individuals currently sentenced to lashing and any other form of corporal punishment with a view to, at a minimum, invalidating any aspect of their sentences involving corporal punishment. In addition, the State party should ensure that Mr. Badawi receives prompt medical care and redress, including rehabilitation, as required by article 14 of the Convention. It should also provide updated information on his status to the Committee.⁶

Failing to abide by the Committee's recommendation, the State did not provide in its follow-up report, any updated information on the case of Raif Badawi, who remains incarcerated and awaits the completion of the punishment pronounced against him, i.e he is still to receive 950 lashes out of the 1000 lashes he was sentenced to in 2014. We would like to note that, as stated by the Saudi authorities, the sentence of corporal punishment may only be suspended by clemency of the King or by request of the person to whom "blood is owed".⁷

¹ Committee against Torture, Concluding Observations on the Second Periodic Report of Saudi Arabia, 8 June 2016, CAT/C/SAU/CO/2, para.11.

² Committee against Torture, Follow-up State Party's Report, 13 May 2017, CAT/C/SAU/CO/2/Add.1, para. 2.

³ *Ibid.*

⁴ *Ibid.*

⁵ General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment, 30 August 2005, A/60/316, paras. 27, 28.

⁶ Committee against Torture, Concluding Observations on the Second Periodic Report of Saudi Arabia, CAT/C/SAU/CO/28 June 2016, para.13.

⁷ Committee against Torture, Follow-up State Party's Report, 13 May 2017, CAT/C/SAU/CO/2/Add.1, para. 2.

3. Reprisals against and harassment, intimidation and arrest of human rights defenders and journalists

*The State party should acknowledge the legitimacy of peaceful criticism and advocacy related to violations of the Convention and consider reviewing the cases of the above-mentioned individuals and releasing any individual detained solely for peaceful criticism or human rights advocacy.*⁸

With regards to the prosecution of human rights defenders, Saudi Arabia cited the promulgation, in December 2015, of the Law for the Regulation of Civil Associations and Foundations, which allows for the establishment of civil society organisations.⁹ Prior to this law, only charities were allowed to be registered in the Kingdom, and civil society organisations were considered illegal and their members prosecuted. The State insists in its follow-up report that any organisation that is not registered under this law is illegal and cannot exist within the Kingdom.¹⁰

However, in its definition of organisations and foundations, the 2015 Law enumerated the nature and aims of these entities, but failed to include human rights and political organisations.¹¹ Human rights and political organisations may therefore not register under this law, in furtherance of the Saudi authorities' repeated and continuous repression of human rights and political organisations. The case of the Saudi Civil and Political Rights Association (ACPRA), whose members were all prosecuted under a number of charges including the "establishment of an unlicensed organisation", illustrates this practice.¹² By excluding human rights and political organisations, the law allows for further repression of the right to freedom of association of peaceful rights activists or political opponents. Other provisions of the 2015 Law prohibit activities that may "prejudice public order and national cohesion"¹³ or any act that "incites dredges and divisions between the citizens"¹⁴; a vague wording which allows for repression of free speech and peaceful criticism. We recall that charges such as "prejudicing public order" have been used to prosecute human rights activists or anyone critical of the authorities.¹⁵

In its Concluding Observations, the Committee requested updated information on a number of cases of human rights defenders, among whom ACPRA members. In its follow-up report, Saudi Arabia failed to provide information on the situation of these human rights defenders and highlighted that it had not accepted the individual complaint mechanism of article 22 of the UNCAT¹⁶ and that it had insisted during the review on the lack of veracity of the elements of the cases mentioned by the Committee.¹⁷

Nevertheless, since the adoption of the CAT's concluding observations, two more ACPRA members have been sentenced by the Specialised Criminal Court. Despite a 2015 Opinion issued by the Working Group on Arbitrary Detention calling for the release of detained ACPRA members¹⁸ and the recommendation made by the CAT to "review the cases of [these] individuals and releasing [those] detained solely for their peaceful criticism or human rights activism", Saudi Arabia continues to silence dissenting voices.

Prosecution of ACPRA members

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

⁹ *Ibid*, para. 7.

¹⁰ *Ibid*, para. 9.

¹¹ Saudi Arabia, Royal Decree M/8 of the year 1437 (2015) for the Regulation of Civil Associations and Foundations, article 3.

¹² Alkarama, *Kingdom of Arbitrary Detention, How Saudi Arabia shuts down its most vocal critics*, 12 October 2016, <https://www.alkarama.org/en/documents/kingdomofarbitrarydetention-how-saudi-arabia-shuts-down-its-most-vocal-critics> (accessed on 22 June 2017).

¹³ Saudi Arabia, Royal Decree M/8 of the year 1437 (2015) for the Regulation of Civil Associations and Foundations, article 23.

¹⁴ *Ibid*, article 39.

¹⁵ Alkarama, *Saudi Arabia: Jaber Al Amri sentenced to seven years in prison for posting a youtube video*, 16 February 2017, <https://www.alkarama.org/en/articles/saudi-arabia-jaber-al-amri-sentenced-seven-years-prison-posting-youtube-video> (accessed on 22 June 2017).

¹⁶ Committee against Torture, Follow-up State Party's Report, 13 May 2017, CAT/C/SAU/CO/2/Add.1, para. 6.

¹⁷ *Ibid*, para.10.

¹⁸ Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention, Opinion No. 38/2015 (A/HRC/WGAD/2015), 26 October 2015.

In the case of **Abdulaziz Al Shubaily** mentioned in the CAT's Concluding Observations, the Specialised Criminal Court sentenced him in May 2016 to eight years in prison followed by an eight year travel ban.¹⁹

Furthermore, in December 2016, **Essa Al Hamid**, one of ACPRA's founding members, saw his sentence increased to 11 years in prison followed by an 11-year travel ban. Al Hamid had originally been sentenced by the Specialised Criminal Court to nine years in prison.²⁰

Prosecution of other human rights defenders

Other human rights defenders are currently being tried and prosecuted before the Specialised Criminal Court for their activism; notably **Mohamad Al Oteibi** and **Abdullah Al Atawi**, founders of the Union for Human Rights. In November 2016, they were charged with "illegally founding" their organisation and "harming the reputation of the State and its institutions as well as the national unity, security and stability of the state." Their trial is currently ongoing.²¹

Arbitrary detention of human rights defenders

In December 2016, **Issa Al Nukheifi**, a prominent human rights defender, was arrested once more, right before the conduct of a country visit by the UN Special Rapporteur on extreme poverty. Al Nukheifi had been assisting the UN Special Procedure mandate holder organise his visit to the Kingdom.²²

As for **Khaled Al Omeir**, who had been arrested in 2009 for having planned to participate in a demonstration in support of the people of Gaza, he remained deprived of his liberty despite having served his full sentence. After his arrest, Al Omeir was detained for two years before trial proceedings began. He was sentenced in 2011 by the Specialised Criminal Court to eight years in prison for "attempted illegal gathering" and "publishing information online." On 5 October 2016, his sentence legally expired, but Al Omeir was transferred under administrative detention to the Mohammed Bin Nayef Centre for Counseling and Care, a rehabilitation centre for terrorists.²³ He was released on 12 April 2017, seven months after the legal expiry of his sentence.

4. Death penalty

*The Committee encourages the State party to establish a moratorium on executions, to commute all existing death sentences, to become a party to the International Covenant on Civil and Political Rights and, in particular, its Second Optional Protocol aimed at the abolition of the death penalty. The Committee calls upon the State party to provide disaggregated data on the number of individuals currently on death row, the number executed, detailing the offences and whether any minors or mentally disabled have been sentenced to death and/or executed, and the other data requested.*²⁴

¹⁹ Foundation, *Kingdom of Arbitrary Detention, How Saudi Arabia shuts down its most vocal critics*, 12 October 2016, <https://www.alkarama.org/en/documents/kingdomofarbitrarydetention-how-saudi-arabia-shuts-down-its-most-vocal-critics> (accessed on 22 June 2017), p.17.

²⁰ Alkarama, *Saudi Arabia: Sentence of prominent human rights defender and ACPRA member Essa Al Hamid increased to eleven years in prison*, 2 December 2016, <https://www.alkarama.org/en/articles/saudi-arabia-sentence-prominent-human-rights-defender-and-acpra-member-essa-al-hamid> (accessed on 22 June 2017).

²¹ Alkarama, *Saudi Arabia: Two human rights defenders prosecuted before the Specialised Criminal Court*, 21 November 2016, <https://www.alkarama.org/en/articles/saudi-arabia-two-human-rights-defenders-prosecuted-specialised-criminal-court> (accessed on 22 June 2017).

²² Alkarama, *Saudi Arabia: Prominent human rights defender Issa Al Nukheifi arrested again*, 18 January 2017, <https://www.alkarama.org/en/articles/saudi-arabia-prominent-human-rights-defender-issa-al-nukheifi-arrested-again> (accessed on 22 June 2017).

²³ Alkarama, *Saudi Arabia: Authorities refuse to release Khaled Al Omeir after he served his full sentence*, 18 October 2016, <https://www.alkarama.org/en/articles/saudi-arabia-authorities-refuse-release-khaled-al-omeir-after-he-served-his-full-sentence>

²⁴ Committee against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia*, 8 June 2016, CAT/C/SAU/CO/2, para. 43.

In response to the Committee's recommendation to establish a moratorium on the death penalty in Saudi Arabia, the State insisted that the death penalty "is only imposed for the gravest of crimes in accordance with the Islamic Sharia".²⁵

However, as demonstrated by a case documented by Alkarama, in which the victim had been sentenced to death and originally arrested for his participation in a demonstration, it appears that the imposition of the death penalty in Saudi Arabia is not restricted to the "gravest of crimes". Indeed, **Mounir Aal Adam** had been arrested for his "participation in illegal gatherings" and forced under torture to confess his taking part in demonstrations. He was later also charged with "joining a terrorist organisation".²⁶

Mounir Aal Adam was not allowed to consult his lawyer before his second hearing; he was furthermore only allowed to contact his family four months after his arrest, during which time he had been subjected to torture and forced to make confessions. Moreover, despite the fact that his written confession stated that he had "mandated the investigator to write the confession on [his] behalf due to [his] illegible handwriting"; the court ignored the torture allegations he had made and refused to launch an investigation into his claims. UN Special Rapporteurs described his case as a "typical case of torture and ill-treatment in Saudi Arabia".²⁷ On 25 May 2017, the court of appeals upheld Aal Adam's sentence.

In its follow-up report, Saudi Arabia further mentions the number of legal safeguards applicable in cases in which the death penalty is imposed.²⁸ However, as illustrated by the case of Mounir Aal Adam, fair trial standards are not upheld. Following the visit he conducted in May 2017 to Saudi Arabia, the Special Rapporteur on counter-terrorism and human rights expressed his concern about the reported use of confessions obtained under duress, and the use of the death penalty in proceedings which are said to fall short of proper legal process".²⁹

²⁵ Committee against Torture, Follow-up State Party's Report, 13 May 2017, CAT/C/SAU/CO/2/Add.1, para. 13.

²⁶ Alkarama, *Saudi Arabia: Specialised Criminal Court sentences man to death after severely flawed trial*, 17 August 2016, <https://www.alkarama.org/en/articles/saudi-arabia-specialised-criminal-court-sentences-man-death-after-severely-flawed-trial> (accessed on 22 June 2017).

²⁷ Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions, et al., Case SAU 5/2016, 31 August 2016.

²⁸ Committee against Torture, Follow-up State Party's Report, 13 May 2017, CAT/C/SAU/CO/2/Add.1, para. 1.3

²⁹ UN OHCHR, *Saudi Arabia must reform counter-terror law and free peaceful critics, says UN rights expert*, 5 May 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21585&LangID=E> (accessed on 22 June 2017).