



# **Saudi Arabia**

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# Saudi Arabia

## 1. Background

The Kingdom of Saudi Arabia was proclaimed on 23 September 1932. It is an absolute monarchy where the king is both the Head of State, and the Head of Government. He also enacts laws and holds the function of servant to the two holy cities, Mecca and Medina. In accordance with the Basic Law, he has full authority over the army, the secret services (*al-mabahit al-aama*), the police and the *Mutawwa* (Islamic police).

Opposition parties are not tolerated and, in general, any challenge to the authorities in power is suppressed. However, the alignment of the king with the American positions and the involvement of the country in the Gulf wars of 1991 and 2003, most notably through the presence of U.S. military on the territory, shocked many Saudis.

The participation of 15 Saudis in the attacks of 11 September 2001, and the presence of many combatants in Afghanistan has placed the kingdom in a delicate situation. Externally, it is accused of serving as a base for Islamist terrorism while, domestically, criticism vis-à-vis the alliance with the USA is growing. Saudi Arabia has been the scene of many attacks.

After 11 September 2001, U.S. pressure on the country became more pronounced. Cooperation on the control of humanitarian associations and transfer of their funds by the two governments has been strengthened. Many charitable organizations which benefited from the Kingdom's authorities' official support have been banned and their assets frozen.

The reform movement that emerged in the 90s faces difficulty in developing because of the repression taking place. Persons who dare become engaged in calling for constitutional reforms are prosecuted. Advocates defending civil liberties and policies are particularly affected, especially if they speak publicly through the Arab media.

Arbitrary arrests and detentions of Saudi citizens and foreigners are of a massive and systematic nature, and torture is widely practiced. Trials are usually unfair and convicts are often kept in detention after having served their sentences.

However, with Saudi civil society claims growing stronger, the king has contemplated institutional and political reforms. A "basic law" concerning the rights and responsibilities of government was introduced by decree in 1992. A reform of the judiciary system was announced and a criminal procedure code promulgated in November 2001.

In March 1993, 14 administrative regions with local councils were created. In August 1993, a council of ministers (Advisory Council) was set up. Appointed by the king every 4 years, its function is to assist the government. In June 2006, for the first time, six women were nominated for this council. Since 2005, half of the ministers are elected while the other half is chosen by the king. The right to vote is only granted to men aged over 21. They also vote to elect municipal councillors. From 2009, women over 21 should also be allowed to vote.

Saudi Arabia has been a member of the Human Rights Council since May 2007; it has been a party to the Convention against Torture since 23 September 1997 and submitted its initial report to the Committee against Torture in 2001. The Advisory Council ratified the Arab Charter on Human Rights in April 2008.

## 2. Arbitrary arrests and detentions

Arbitrary detention without due process of law and without trial, which may last up to several years, is a major human rights problem in Saudi Arabia. According to Article 2 of the Code of Criminal Procedure, the arrest or detention of any person must be in accordance and pursuant to the statutory provisions, and the duration of such a detention must be determined by the competent authority, the judicial authority in this case. Also, detention may only take place in areas that are intended for this purpose. Article 4 of the same law also explicitly provides for assistance and recourse to a lawyer for those arrested and detained.

Alkarama regularly submits cases of arrests and arbitrary detentions to UN bodies. In most cases, particularly when it comes to people arrested for political reasons, they are carried out by agents of the general intelligence services (*al-mabahit al-aama*) without any arrest warrant being presented, and without any reason being given to justify this measure. Alkarama is particularly concerned by the arrests of persons having exercised their right of expression in a peaceful manner, and of human rights activists, some of whom are members of the organization.

Walid Lamri, a member of Alkarama was arrested 27 April 2007 at home, by agents of the intelligence services. He was returning from a business trip in several cities in the region where he met with families of victims of arbitrary detention that had provided information on cases of torture and arbitrary arrests, and the conditions of their relatives in detention. This information was intended to be communicated to the various protection mechanisms of the UN human rights system. At the time of his arrest, he was not informed of the grounds of the arrest and the facts of which he was accused, and no arrest warrant was presented to him. He has never been brought before a magistrate to be legally indicted, and he has not been the subject of any legal procedure. He has therefore not had access to an appeals process to challenge the legality of his detention. He is still in detention to the present day<sup>1</sup>.

Critics exercising their right of expression through the internet may be subject to pressures extending to arrest and arbitrary detention.

Mr Faisal Al Majed, a Saudi, was arrested in Kuwait on 30 September 2007 and deported to Saudi Arabia. A victim of mistreatment from the beginning, he was held incommunicado in a cell of Al Hayr prison near Riyadh for 6 months. He was questioned on the steps he had taken of informing Arab NGOs of the case of his brother Tallal, who has also been arbitrarily detained for 6 years. He was accused of having given information on violations of human rights in the region to NGOs by internet<sup>2</sup>.

Ahmad Fouad Al Farhan who runs a very popular blog in Saudi Arabia (<http://www.alfarhan.org/>) has openly voiced strong criticism of the arbitrary arrests and detentions of persons of the Saudi Arabian reform movement under the pretext of the fight against terrorism. Having been informed two weeks earlier of his likely arrest, he refused to sign the public apology that the Interior Ministry demanded of him. He was arrested on 10 December 2007, taken to an unknown destination and held incommunicado until 5 January 2008. He was released without trial on 26 April 2008<sup>3</sup>.

Incommunicado detention, sometimes for long periods beyond the limits set by law, is common, particularly during the pre-trial phase. The judicial authorities exercise little control over pre-trial detention. Places of detention are often intelligence services centres that are beyond the control of the judicial authority.

Dr. Saud Mukhtar Al-Hashimi was arrested on 5 February 2007 when he met with 8 other well-known personalities of Saudi civil society to discuss the constitution of a committee for the defence of civil and political freedoms, as well as the need for constitutional reforms in the country. Dr Al-Hashimi has often intervened in the Arab media to give his opinion on various issues concerning the political situation in the Middle East and his conception of the reforms. A statement by the spokesman of the Ministry of Interior, General Mansur al-Turki, justified the arrests, accusing these men of "supporting and financing terrorism" and "conducting illegal activities relating to illegal collection of funds and diversion of funds for suspicious parties". Held incommunicado for long periods (156 days for Dr. Al-Hashimi), none of them has made an appearance before a magistrate to be notified of an indictment or of the legal grounds of their arrest. They have not been able to consult a lawyer or to challenge the legality of their detention by introducing a review by a court. They have not been tried so far. The Working Group on Arbitrary Detention found, in its Opinion 27/2007, that the detention of Dr. Saud Al Hashimi and eight other persons constituted a serious violation of the Universal Declaration of Human Rights<sup>4</sup>.

The fact of denying detainees access to legal counsel and external medical care, as well as visits from their families is one of Alkarama's many concerns. Lawyers appointed by the detainees' relatives only rarely obtain permission to assist them. Consequently, the detainee has no legal possibility of challenging the validity of his detention. But most importantly, many prisoners are not freed after serving their sentence and are kept in prison without a fixed date of release<sup>5</sup>.

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<sup>1</sup> [http://fr.alkarama.org/index.php?option=com\\_content&task=view&id=94&Itemid=38](http://fr.alkarama.org/index.php?option=com_content&task=view&id=94&Itemid=38)

<sup>2</sup> [http://en.alkarama.org/index.php?option=com\\_content&task=view&id=99&Itemid=52](http://en.alkarama.org/index.php?option=com_content&task=view&id=99&Itemid=52)

<sup>3</sup> [http://en.alkarama.org/index.php?option=com\\_content&task=view&id=66&Itemid=52](http://en.alkarama.org/index.php?option=com_content&task=view&id=66&Itemid=52)

<sup>4</sup> [http://en.alkarama.org/index.php?option=com\\_content&task=view&id=56&Itemid=52](http://en.alkarama.org/index.php?option=com_content&task=view&id=56&Itemid=52)

<sup>5</sup> The annex contains a list of nearly 360 detainees who remain in prison, in some cases for years, although they have not been the subject of legal proceedings or have not been released after serving their sentences.

Mr Mahmoud Hozbor, a Syrian citizen working in Saudi Arabia, was arrested on 3 July 2003 and detained in a secret location, without any legal procedure. For more than six months, his family was unable to obtain any information as to his fate. It was not until January 2004 that they obtained permission to see him a single time, at the Al Hayr prison. They learned that he had been subjected to severe torture and had been held incommunicado and in total isolation for several months. Sentenced to 18 months in prison, he was transferred to the intelligence services detention centre of Al-Jouf's and no longer received any visits. At the end of the prison sentence, Mr Hozbor was not released and was kept in secret detention. He finally gave a sign of life by telephone on 20 June 2008 but remains imprisoned without any legal basis<sup>6</sup>.

### 3. Torture

Article 2 of the Code of Criminal Procedure specifies that an arrested person may not be subjected to torture and ill-treatment. The Saudi government stated, in its initial 2001 report, that "domestic law does not provide for any exceptional circumstances, including orders from a superior, which may be invoked to justify torture." Saudi Arabia also ensures that confessions extracted under torture are not admissible in a court action and that a suspect may withdraw his confession at any time during the proceedings. However, if an explicit prohibition of torture was established by Royal Decree No. M/39 of 3 November 2001 Code of Criminal Procedure, no legal provision provides for criminal penalties for those who practice it, the Committee has already pointed out<sup>7</sup>.

The Committee also stressed "*The requirement of article 100 of the statute of the Directorate of Public Security for an investigating officer to endeavour "by judicious means" to ascertain the reasons for an individual's silence. While the article in question formally proscribes resort to torture or coercion, such a requirement unjustifiably heightens the risk of conduct violating the Convention.*"

In reality, the people arrested by the intelligence services are held incommunicado in the intelligence services' premises, sometimes for long periods, and are often victim to torture or ill-treatment.

Mr Abdulrahim Al-Murbati, a Bahraini businessman residing in Saudi Arabia, has been detained without legal procedure since 22 August 2003, and his family has been without news of him since 6 June 2008. After his arrest by the General Intelligence services in Medina, he was held incommunicado for more than four months. It was during their first visit in December 2003 that his family was told that he has been brutally tortured since his arrest: he was tortured a great number of times, and at each interrogation, he was whipped on the back and the soles of his feet with electric cables. He was imprisoned in solitary confinement, in a freezing cell lit day and night with a very bright light, and was never provided with medical care. He has never been tried<sup>8</sup>.

The aim of torture is often to obtain confessions that are then used in judicial proceedings. Suspects are transferred to a local police station and imprisoned in a cell with a surface of 1m x 1.5m in complete isolation where they are beaten, threatened, insulted and deprived of care and sleep.

It is common for detainees who demand counselling, a doctor's visit, or their families, or who want to challenge their detention in legal terms to be subject to sanctions in the form of torture. Those who have suffered ill-treatment do not systematically have access to medical care. It is only when their state of health is alarming that the detainees are transferred to a hospital.

Gharmallah Khaled Ouda Al Zahrani, who was born in 1972, was arrested by the general intelligence services on 20 July 2004. His family has never been allowed to visit him in prison, nor to provide him with a lawyer, nor obtain news of him directly or through the administration. They are particularly worried because Khaled Al Zahrani has very fragile health, suffering from a "diffuse interstitial pulmonary fibrosis" since a first detention without trial lasting six years from 11 March 1998 to 26 October 2003. He was urgently evacuated to the King Faisal hospital from the beginning of his last arrest. The medical report, prepared on 28 July 2004 by the department of internal medicine in which he was treated after his emergency evacuation, prescribes serious medical treatment and specialist care. In June 2007, he was still imprisoned in the basement of Al Hayr prison

<sup>6</sup> [http://en.alkarama.org/index.php?option=com\\_content&task=view&id=73&Itemid=52](http://en.alkarama.org/index.php?option=com_content&task=view&id=73&Itemid=52)

<sup>7</sup> [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.28.5.Fr?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.28.5.Fr?Opendocument)

<sup>8</sup> [http://fr.alkarama.org/index.php?option=com\\_content&task=view&id=322&Itemid=81](http://fr.alkarama.org/index.php?option=com_content&task=view&id=322&Itemid=81)

in inhumane conditions. It appears he has had severe respiratory crises requiring interventions to resuscitate him<sup>9</sup>.

Article 38 of the Code of Criminal Procedure includes the right for detainees to submit complaints. It does not, however, explicitly mention that they may be about torture. But these complaints are not taken into account and allegations of torture during trials are routinely ignored.

#### **4. Justice: gaps and non-compliance with laws**

Saudi Arabia is one of the few Muslim countries where the judicial system and jurisprudence is based almost exclusively on Islamic law, which in Saudi Arabia is rite hanbalite. It still does not have a Penal Code.

Justice is rendered by civilian and religious courts. The former deal with international affairs, such as financial and commercial disputes with a foreign company. Judges are appointed by the king on the proposal of the High Council on Legal Issues composed of 12 judges. The independence of the courts is enshrined in the Constitution (Article 46) but the king may intervene to modify or cancel judgements (art. 12 and 50).

It must also be acknowledged that legal texts, on the one hand, do not adequately ensure the principles of law, and on the other, that they are not respected. Criminal offences being insufficiently defined, prosecutors thus have full latitude to define them. The judges themselves have a wide margin of interpretation of Sharia, their definitions of crimes and convictions are variable, and their decisions are often arbitrary and dictated by the executive. The absence of codification promotes, in particular, arbitrary arrests and detentions and torture. The presumption of innocence is a little-honoured principle.

The law stipulates a period of custody which may be prolonged unduly. Being set at five days by the investigator, he may refer the matter to the regional bureau of investigation which may extend that period up to 40 days. If the investigation requires more time, it is up to the national bureau of investigation, under the Ministry of Interior and therefore the attorney General, who is himself appointed by the minister, to give the order to prolong the detention which can last up to six months (article 14). The investigator can in turn, for the purposes of the investigation, maintain the suspect in isolation for 60 days without contact with the outside world, except for his lawyer (art. 119).

It is not uncommon for trials to take place behind closed doors without witnesses other than those for the prosecution, which may be officers of the intelligence services responsible for the preliminary investigation. The meetings are expeditious and a guilty verdict declared even in cases of doubt. Finally, acts are condemned without being recognized as criminal offences.

Dr Said bin Zair, 56 years old, and professor of information sciences at the University of Ryadh, was arrested on 6 June 2007 in Riyadh. A personality known in the country for the public position he adopts about the need for institutional reforms, as well as his support of the reformers' movement, he has been jailed several times: once for over 8 years, from 5 March 1995 to 24 March 2003, without trial and without ever having been legally prosecuted. He was arrested a second time on 20 April 2004 after giving an interview to Al Jazeera. In the wake of his arrest, he was held incommunicado for several months. He was sentenced to 5 years' criminal imprisonment on 19 September 2004, following an unfair trial during which none of his fundamental rights were respected. He never had access to the charges filed against him, nor was he able to benefit from a lawyer's assistance on the day of his trial. He was released on 8 August 2005 but was arrested again on 6 June 2007. He has been held incommunicado since then<sup>10</sup>. His son, Saad bin Zair, a lawyer and a human rights activist aged 29 was also arrested by the intelligence services on 10 April 2007 and has been held incommunicado since then.

Some detainees report mock trial they did not even attend. In fact, they are summoned by a magistrate who notifies them of their conviction. It is at that time that they become aware of the charges being brought against them. They therefore have no means to defend themselves since the judicial process is over.

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<sup>9</sup> [http://fr.alkarama.org/index.php?option=com\\_content&task=view&id=55&Itemid=81](http://fr.alkarama.org/index.php?option=com_content&task=view&id=55&Itemid=81)

<sup>10</sup> [http://en.alkarama.org/index.php?option=com\\_content&task=view&id=25&Itemid=52](http://en.alkarama.org/index.php?option=com_content&task=view&id=25&Itemid=52)

Mahmoud Hozbor, cited above, was sentenced to 18 months in prison on charges of non denunciation of persons wanted by the intelligence services. He was hauled out from his cell a few days after his arrest in the middle of the night, taken blindfolded to an unknown location and put into an office containing several people. The person who appeared to be a magistrate, and to whom he complained at the outset of the treatment he had suffered, ordered him to shut up, saying: "Shut up, you deserve to be hanged!" This person then read what proved to be an indictment, and told him he was sentenced to eighteen months in prison<sup>11</sup>.

Many offences are punishable by death, while minimum conditions for a fair trial are not met. This penalty is in effect handed down at trials which do not meet the most basic international standards: the accused cannot hire an attorney, the hearing takes place behind closed doors; the conviction is based on confessions extracted under torture or coercion; and neither the accused nor the family is informed of the procedure.

Khaled Mohamed Issa Al-Qadihi was arrested with two other people on 25 July 2004 and accused of drug trafficking following the discovery of five kilograms of cannabis on the bus from Syria via Jordan. He was sentenced to death on 26 April 2006 after an unfair trial and in the absence of minimum guarantees. Khaled Al-Qadihi was not able to hire an attorney, he has not acknowledged the facts, and mentioned that confessions recorded in the minutes of interrogation had been extracted under duress. The court refused to investigate allegations of torture, and was content to simply mention the accused's statements in the grounds of judgement, merely noting that when he was requested to provide evidence of coercion he did not reply. An appeal by the accused helped overturn the judgement on 2 December 2006, as the appellate judges noted that "the death sentence pronounced against the two accused was subject to revision because of the low quantity seized and the blank criminal record of the accused." The case was retried by the original court on 3 May 2007, composed of the same judges who rejected the decision of the appellate court to confirm their original judgement of the death penalty. They expressly motivated their second decision by "instructions from the executive power."

## 5. Recommendations

- The state should combat the practice of prolonged detention without trial and incommunicado detention by establishing a system of control over all places of detention in the country, and particularly by placing them under the control and authority of the judiciary institution.
- Guarantee the right of any person detained to exercise judicial review to challenge the validity of their detention before an independent judge, and to ensure in practice the right of any accused to hire an attorney at all stages of the investigation and trial.
- Ensure a legal process which offers all possible safeguards to ensure a fair trial, particularly those accused of a crime punishable by death, and in particular an adequate judicial assistance at all stages of the proceedings, the right to appeal to a higher court; and to be tried again by a court with a different composition.
- Ensure that the composition of the judiciary is fully consistent with the basic principles of the independence of the judiciary, devoting particular attention to the principle of tenures of judges.
- Adopt adequate measures to protect defenders of human rights and allow them to form themselves into independent non-governmental organizations, join them, or communicate with them in accordance with Resolution No. 53/144 of 9 December 1998 of the United Nations General Assembly.
- On the normative level: the state should consider ratifying the International Covenant relating to civil rights, and making the declaration under Article 22 of the Convention against Torture.
- The state should incorporate the crime of torture as defined by Article 1 of the Convention into domestic law and establish appropriate penalties to repress it.

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<sup>11</sup> [http://en.alkarama.org/index.php?option=com\\_content&task=view&id=73&Itemid=52](http://en.alkarama.org/index.php?option=com_content&task=view&id=73&Itemid=52)