



Saudi Arabia

**Contribution to the List of Issues to be taken up in
connection with the consideration of the second
periodic report of Saudi Arabia**

Alkarama Foundation – 27 July 2015

1. Table of content

1. TABLE OF CONTENT	2
2. INTRODUCTION	3
3. OVERVIEW OF THE STATE PARTY'S POLITICAL AND JUDICIAL SYSTEM	3
4. DEFINITION AND INCRIMINATION OF TORTURE (ARTICLES 1 AND 4)	4
4.2 STATE OF THE LAW	4
4.3 PRACTICE OF TORTURE IN DETENTION	5
4.4 CORPORAL PUNISHMENT	6
5. PREVENTION, ABSOLUTE PROHIBITION, SUPERIOR ORDERS (ARTICLE 2)	6
5.2 PREVENTION	6
5.3 ABSOLUTE PROHIBITION.....	7
5.4 DEFENCE OF SUPERIOR ORDERS	8
6. NON REFOULEMENT (ARTICLE 3)	9
7. INTERNATIONAL JUDICIAL COOPERATION (ARTICLES 8 AND 9)	9
8. EDUCATION AND TRAINING OF PERSONNEL (ARTICLE 10)	9
9. REVIEW OF INTERROGATION RULES AND INSTRUCTIONS (ARTICLE 11)	10
10. ACCOUNTABILITY AND REDRESS (ARTICLES 12, 13 AND 14)	10
11. STATEMENTS MADE UNDER TORTURE (ARTICLE 15)	11
12. CRUEL, INHUMANE AND DEGRADING TREATMENT (ARTICLE 16)	11
12.2 SYSTEMATIC PRACTICE OF INCOMMUNICADO DETENTION AND SOLITARY CONFINEMENT.....	11
12.3 OTHER CONCERNS ON FUNDAMENTAL RIGHTS	12
13. ARTICLE 20 AND 22	12
14. GENERAL INFORMATION	12
14.2 STATUS AND ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION.....	12
14.3 STATUS AND ROLE OF THE NATIONAL SOCIETY FOR HUMAN RIGHTS.....	13
14.4 COMMENTS ON THE ANNEXES OF THE STATE PARTY REPORT	15

2. Introduction

This contribution aims at presenting the issues that Alkarama believes need to be addressed within the upcoming second review of the Kingdom of Saudi Arabia by the Committee against Torture. Our contribution to the List of Issues is based on individual cases of torture documented by our organisation since 2004 as well as on an analysis of Saudi Law and information provided by the State party in its national report¹.

First, it should be stressed that Saudi Arabia submitted its second periodic report with a 5-year delay as it was initially due on 30 September 2010 and was only submitted on 7 January 2015. The same delay had been observed for the submission of its initial report, which was due on 22 October 1998 and was only submitted on 27 February 2001.

Globally, since its initial review held in 2002, Saudi Arabia has indeed modified its legislation with the proclaimed aim of putting it in line with its international obligations. However, Alkarama continues to receive numerous cases of torture which show that this practice is still a serious concern. Indeed, an overly repressive and broad counter-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.

Since its initial review, the reporting process itself and the cooperation of the Saudi State with the United Nations human rights mechanisms in general has been jeopardised by a crackdown on civil and political rights associations, lawyers and activists who reported acts of torture to domestic and international mechanisms. The present contribution will shed a light on this concerning situation that puts in jeopardy the application of the Convention against Torture (CAT) by the State party both in substance and in the reporting process.

3. Overview of the State party's political and judicial 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 disposition of the Basic Law that refers to human rights is Article 26 which provides that "the State shall protect human rights in accordance with the Sharia". All state powers are concentrated in the hands of the executive and more 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.

Serious concerns can be raised regarding independence of the judiciary. On one hand, Article 46 of the Basic law states that "The Judiciary is an independent authority. The decisions of judges shall not be subject to any authority other than the authority of the Islamic Sharia." However, in practice the judiciary is under the control of the King and the Ministry of Interior. Indeed, the maintenance of the prosecution under the supervision of the Minister of the Interior, who is responsible for law enforcement, undermines the independence and accountability of state officials for crimes such as acts of torture during the investigation and detention. Article 52 of the Basic Law further states that: "Judges shall be appointed and relieved by Royal Decree, based on a proposal of the Supreme Judiciary Council, in accordance with provisions of the Law"; 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 Bureau of Investigation and Public Prosecution (hereinafter BIPP) created in 1989² by virtue of a Royal Decree – but which was effectively set up in 1995 - is in charge *inter alia* of investigating and

¹ 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. Hereinafter "State Party Report".

² 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.

prosecuting crimes. If the Decree creating it does state that "Members of the Bureau are totally independent" (article 5), in practice the bureau is under the Control of the Ministry of Interior: the premises of the prosecution service are within the Ministry of Interior (article 1)³; the Chief Prosecutor is nominated by the Minister of Interior (article 10)⁴ who also chooses and appoints members of the Bureau Administration Committee(article 4) ⁵ which has a large power including to initiate investigations, review of all decisions taken by the Prosecutor and decides on disciplinary measures against members of the Bureau.

Finally, clarity and legal certainty are undermined by the absence of a Criminal Code that leaves more room for discretionary power to the Prosecution as well as judges – and *in fine* to the Ministry of Interior – to define crimes. Thus, the legal definition of crimes as well as the determination and severity of their punishments rests on the judge's discretionary interpretation of Shari'a law, including in cases involving corporal punishment and capital punishment.

4. Definition and incrimination of torture (Articles 1 and 4)

4.2 State of the Law

Saudi Arabia explains in its report that all international instruments to which the State is party to, are part of the domestic legal system (paragraph 24) 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 a result, the assessment of particular acts as amounting to torture is in practice a discretionary endeavour of judges who are not tied by the conventional definition. As a result, the definition contained in article 1 CAT is nowhere to be found in domestic law.

Regarding the incrimination of torture, Article 2 of the Law of Criminal Procedure of 2001 only mentions the prohibition of torture by stating 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." Alkarama believes that this does not constitute a provision incriminating torture, although it does prohibit it. No definition of torture is mentioned in this article and the provision do not provide for the different modes of participation to the crime (i.e. complicity, instigation, order).

These issues would be best addressed if Saudi Arabia adopted a Criminal Code in which it could incorporate the definition of torture as defined by Article 1 CAT. In addition to incriminating separately acts of torture, the law should provide adequate sanctions that reflect the seriousness of acts of torture⁶. However, the current state of the law is such that no specific punishment is provided in domestic law to punish acts of torture.

- 1. Is the State party planning to adopt a Criminal Code?*
- 2. Is the State party going to expressly incorporate the definition enshrined in article 1 of the Convention into its legislation in a provision which separately incriminates acts of torture as well as cruel inhumane and degrading treatment and provides for appropriate punishment as well as including the different modes of participation (complicity, instigation, order)?*

³ **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.

⁴ **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.

⁵ **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.

⁶ General Comment No. 2, CAT/C/GC/CRP.1/Rev. 4, paras. 3 and 10.

4.3 Practice of torture in detention

Hundreds of cases of arbitrary arrests and detention followed by torture carried out by the General Intelligence forces ("Al Mabahith") that are responsible for investigating "security related" crimes, have been received by Alkarama for the past ten years and have been brought to the attention of the Working Group on Arbitrary Detention and the Special Rapporteur on Torture. These documented cases show that torture is committed by the General Intelligence in an alarmingly systematic fashion in order to extract confessions. The arrests follow the same pattern as they are systematically conducted by officers dressed in civilian clothes that do not present an arrest warrant and do not explain the reasons of the arrest to the individual. The latter is then taken to an unknown place where he is held in solitary confinement and *incommunicado* for often long periods of time, i.e. up to a year in solitary confinement and several years *incommunicado*. During this period, the individual 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: 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. Moreover, over the past five years, Alkarama received several accounts of torture through other methods that were not used before including several cases of water boarding and use of electrical shocks. Amongst the cases received, more than a hundred were previously submitted to the Board of Grievances as complaints, by local lawyers. However, according to our sources, no action has been taken by the authorities to put an end to the violations, investigate and prosecute those responsible, and offer redress to the victims.

3. *Can the State party comment on these allegations?*
4. *What are the measures taken to prevent torture committed by the "mabahith" (General Intelligence) forces?*
5. *Is the State party willing to investigate all cases of torture submitted to the Board of Grievances through a prompt, independent and thorough investigation and offer redress to the victims and their families?*
6. *Can the State party explain in details the figure given in Annex 9 of its State party report? How many on these cases were specifically involving torture and what kind of sanction was given to the perpetrators as well as their hierarchical superior if applicable? Did the Board of Grievances also treat cases of torture committed by the General Intelligence?*
7. *In case of incapacity of the Board of Grievances to process these cases, are the authorities willing to put in place another mechanism to review these complaints?*

In addition, the cases documented by Alkarama since Saudi Arabia's initial review echoes cases of torture mentioned then by the Committee in its List of Issues Prior to Reporting⁷ (paragraph 9) and that Alkarama has previously submitted to the Special Rapporteur on Torture. We refer to: Mr Walid Lamri, Mr Fayçal al Majed, Mr Fouad Ahmed Al Farhan, Dr Saoud Mukhtar Al Hashmini, Mr Mahmoud Hozbor, Mr Abdulrahim Al Murbati, Mr Khaled Gharmallah and Mr Ouda Al Zahrani. Except for Mr Walid Al Amri who has been freed, the situation of these individuals has not improved since 2002 and has even worsened in the case of Dr Saoud Mukhtar Al Hashmini, as he is currently detained in solitary confinement. However, the State party does not mention in its national report any effective steps taken by the authorities in order to put an end to these violations and prosecute those responsible.

8. *Can the State party comment on these allegations with updated information?*
9. *Can the State party explain the steps taken in order to put an end to the violations committed against the above mentioned individuals and offer them redress?*
10. *What steps were taken by the authorities to ensure that such violations are not repeated?*

⁷ Committee Against Torture, List Of Issues Prior to Reporting, Saudi Arabia, CAT/C/SAU/Q/2.

4.4 Corporal Punishment

Acts of corporal punishment are not prohibited by the Convention as such, as long as they result from lawful sanctions. However, according to information obtained by Alkarama, acts of corporal punishment including flogging were pronounced as sanctions following unfair trials, and criminalising acts falling under rights and freedoms such as the right to freedom of expression and opinion. Two cases can be cited as examples: Mr Raif Badawi, a Saudi blogger sentenced to 10 years imprisonment and 1000 lashes for merely peacefully expressing his views and Mr Mukhlif Al Shammari, a Saudi human rights defender sentenced to 200 whiplashes after twitting in favour of peace and mutual understanding between Sunni and Shia communities. It is also important to note that the severity of the punishment is also intended to punish and intimidate activists or any person willing to express peacefully any dissenting opinion.

11. *How are such measures considered in line with the State party's obligations under the Convention?*
12. *What was the legal basis used by the judge in order to decide that the "adequate corporal punishment" for the acts Mr Badawi was accused of would be 1000 lashes? Why did the judicial order mention that Mr Badawi should be flogged with "harshness"?*
13. *What was the legal basis used by the judge in order to decide that the "adequate corporal punishment" for the acts Mr Al Shammari was accused of would be 200 lashes?*

In addition of being a corporal punishment ordered by a judicial decision, flogging is also used inside prisons to enforce discipline and punish inmates. Testimonies of detainees as well video 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.

14. *Were there any cases of a prison guard being held responsible for acts of flogging against inmates after a complaint or on the basis of information collected by the BIPP during visits in detention centres and prisons?*
15. *Are there any guidelines, manuals and adequate training of prison guards in order to prevent such acts from happening?*

5. Prevention, Absolute Prohibition, Superior orders (Article 2)

5.2 Prevention

Basic guarantees for individuals deprived of their liberty have been identified by the Committee as preventing effectively acts of torture and include, *inter alia*, "maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical 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 to challenge the legality of their detention or treatment."⁸

The State party mentions in its report numerous changes in its domestic law which aim at preventing acts of torture and according to which all acts of torture must be investigated and that measures to remedy the situation shall be taken by the "competent authority" (paragraph 25). However, Alkarama reviewed these provisions only to find that they did not address the issues of the lack of accountability of state officials for acts of torture and the lack of independence of judges. Indeed, the State party mentioned in its report that the BIPP, which falls under the Ministry of Interior, is responsible for monitoring detention centres *via* a network of branches within prisons and detention centres which are in charge of monitoring the application of the guarantees contained in the Law of Criminal

⁸ General Comment No. 2, CAT/C/GC/CRP.1/Rev. 4, para. 13.

Procedure (paragraph 26). According to the Law and Regulations of the BIPP⁹, the latter is responsible for monitoring and inspecting prisons and detention centres as well as hearing complaints of prisoners and detainees including on the legality of their imprisonment or detention as well as allegation of torture and ill-treatment. Alkarama expresses its concern over the impartiality of a monitoring and complaint procedure that is carried out by the prosecuting and investigating service in charge of questioning suspects.

Furthermore, the Law of Criminal Procedure does not provide the right to challenge the lawfulness of their detention before an independent judge. It fails to set a reasonable timeframe in the access to a lawyer since it merely provides that "detainees have the right to legal assistance during investigation" and not from the onset of the arrest. This right to legal assistance is also restricted by Article 70 of the Law of Criminal Procedure which states that "The representative or attorney shall not intervene in the investigation except with the permission of the Investigator". Lastly, it also permits pre-trial detention for up to six months without judicial review.

16. *Is the State party planning to put in place an impartial monitoring and complaint mechanism as to allow detainees to both have an impartial interlocutor and to be able challenge the legality of their detention before an independent judge?*
17. *Is the State party planning to revise the relevant provisions of its Criminal Procedure Law in order to incorporate the above mentioned guarantees?*
18. *What are the steps taken by the State party to ensure that detainees have the right to an effective, independent and confidential legal assistance?*

5.3 Absolute prohibition

Implementation of the principle in law

Absolute prohibition means that *no exceptional circumstances whatsoever* may be invoked by the State party to justify acts of torture in any territory under its jurisdiction. The Convention identifies as amongst such circumstances a state of war or threat, internal political instability or any other public emergency. Alkarama is concerned that no provision in domestic law provides for the non-derogability of the prohibition of torture. On the contrary, 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".

19. *Can the State party explain how it implements the principle of non-derogability of jus cogens norms such as the prohibition of torture, cruel, inhumane and degrading treatment?*
20. *Can the State party confirm that Article 82 of the Basic Law does not entail that exceptional circumstances can be invoked to suspend fundamental rights such as the right not to be subjected to torture and cruel inhumane and degrading treatment?*
21. *Is the State party planning to modify its Basic Law in order to ensure that exceptional circumstances cannot lead to the suspension of fundamental human rights, including the prohibition of torture?*

Torture and Counter-terrorism

Moreover, Alkarama is deeply concerned over the new law on terrorism enacted in January 2014¹⁰ which flaws constitute a breeding ground for torture and other serious human rights violations, as it clearly violates fair trial guarantees and lacks legal certainty. Indeed, terrorism is defined in a vague and overly broad way and *in fine* criminalises free expression¹¹. The law also gives excessive police

⁹Law and Regulations of the Bureau of Investigation and Public Prosecution [1989], *opcit*, 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."

¹⁰ The Penal Law for Crimes of Terrorism and its Financing (Royal Decree No. 44 (12/2013))

¹¹The law defines terrorism in its Article 1 as "Any act carried out by an offender in furtherance of an individual or collective project, directly or indirectly, intended to disturb the public order of the state, or to shake the security of society, or the stability of the state, or to expose its national unity to danger, or to suspend the basic law of governance or some of its articles, or to insult the reputation of the state or its position, or to inflict damage upon one of its public utilities or its natural resources, or to attempt to force a governmental authority to carry out or prevent it from carrying out an action, or to threaten to carry out acts that lead to the named purposes or incite [these acts]."

powers to the executive without judicial oversight and deprives the accused of due process rights. Under this Law, the Minister of Interior can order arrests of terrorist suspects without requesting an arrest warrant; the legal limit of pre-trial detention is raised from six to 12 months and allows for unlimited extensions upon court order. Moreover, the law raises the current legal limit on the time officials may hold a suspect *incommunicado* and in solitary confinement¹². The practical consequence of such law is that individuals accused under this law are extremely vulnerable to torture.

22. Is the State party willing to amend the law in order to align its definition of terrorism with international standards, especially by restricting it to acts of violence with the purpose of using terror for political purposes?

In addition, the Specialised Criminal Court set up in 2008 by the Supreme Judicial Council to try cases of terrorism has been increasingly used to prosecute acts of peaceful dissent in proceedings that violate fair trial rules. The Statute of the Court has not been made public and judges are selected by the Ministry of Interior itself. Alkarama has documented numerous cases of individuals arrested, tortured and condemned to heavy sentences after unfair trials before this Court. For example, Mr Khaled Al Omeir, on whose case the Working Group on Arbitrary Detention issued an opinion qualifying his detention as arbitrary¹³ was sentenced to eight years of imprisonment by the Court in 2011 for acts falling under his right to freedom of expression and peaceful assembly. He was forbidden from having access to a lawyer; his trial was held in secret and he did not have the possibility to appeal his sentence nor to submit a request of habeas corpus.

23. Can the State party explain why the case of Mr Al Omeir and other similar cases have not been redressed according to the WGAD decision?

24. Is the State party planning to at least reform if not dissolve the Specialised Criminal Court in order to avoid justice of exception for acts of terrorism?

Finally, Alkarama has received numerous testimonies of families and former prisoners accused of terrorism related charges who alleged having been detained *incommunicado* and in secret facilities where they were subjected to torture. Moreover, the Committee against Torture raised the problem in its List of Issues Prior to Reporting (paragraph 3). However, the State party keeps denying their existence, including in its national report (paragraph 127).

25. What are the measures taken by the State party to close these secret detention facilities and ensure that all places of detention under its jurisdiction are submitted to independent oversight in order to maintain all detainees under the protection of the law?

5.4 Defence of Superior Orders

Investigation of acts of torture as well as their prosecution should take particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence. In the same vein, no order from a superior should constitute a defence for acts of torture. However, 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.

26. Can the State party explain how is paragraph 3 of Article 2 CAT implemented in its domestic law, including in laws and regulations concerning General Intelligence and military personnel?

27. What are the legal standards that serve in Saudi law to assess the responsibility of a superior for crimes committed by his subordinate, especially crimes of torture?

¹² This disposition extends the temporal scope of Article 119 of the Law on Criminal Procedure which states that: « In all cases, the Investigator shall order that the accused may not communicate with any other prisoner or detainee, and that he not be visited by anyone for a period not exceeding sixty days if the interest of the investigation so requires, without prejudice to the right of the accused to communicate with his representative or attorney. »

¹³ Khaled Al-Omeir v. Saudi Arabia, Working Group on Arbitrary Detention, Opinion No. 32/2013, U.N. Doc. A/HRC/WGAD/2013/32 (2014).

6. Non refoulement (Article 3)

The State party explains in its national report that article 3 of the Convention is implemented in its domestic law and takes into account other extradition agreements signed with other countries of the region. However, Alkarama has received numerous cases of nationals of neighbouring countries being arbitrarily arrested and subjected to torture from different countries in the region.

28. *What are the elements taken into account by the authorities in order to agree to an extradition demand from another country?*
29. *What are the legal means available to individuals in order to challenge such a decision? Which Court has jurisdiction over such requests?*
30. *How does the State party's obligations under other multilateral or bilateral treaties, including Gulf Cooperation Council agreement, providing for cooperation in extradition does not contravene its obligation under article 3?*
31. *In cases where individuals are extradited, is the State party accepting diplomatic assurances and how does it evaluate their reliability? Did the State investigate the fate of detainees who were extradited to other neighbouring countries?*

In the same vein, foreigners who are found guilty of a crime in Saudi Arabia are expelled to their country of citizenship after serving their sentences.

32. *What are the elements taken into account by the authorities in order to not violate their obligations under article 3 of the Convention?*
33. *What are the legal means available to individuals in order to challenge such a decision? Which Court has jurisdiction over such recourses?*

7. International judicial cooperation (Articles 8 and 9)

Alkarama is concerned about the lack of access of foreign detainees to their consular representation and consular protection rights. According to official figures¹⁴, the number of foreign detainees is 684 individuals for whom according to the figures contained in annex 7 of the State party report, only an average of five visits of consular authorities per year (74 in total since the submission of the initial report) were made¹⁵.

34. *How many foreign detainees have effective access to consular protection, including visits and legal assistance?*

8. Education and training of personnel (Article 10)

In its national report (paragraph 73) and reply to the Committee's observation 8 j) (paragraph 178) on measures taken to train its officials, it is not clear 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 offices such as the Office of Counter Terrorism and the Office for the Promotion of Virtue and the Prevention of Vice which known to commit acts of torture and mistreatment. However, it seems that these were not "trainings" but merely optional conferences.

35. *Can the State party precise if it provides for compulsory training regarding the prohibition of torture to all its officials, including military personnel, members of the General Intelligence, the Office for the Promotion of Virtue and the Prevention of Vice and the Office of Counter*

¹⁴ See: <https://www.nafethah.gov.sa/en/web/quest/inmate-list>.

¹⁵ Unofficial figures report however that the real total number of foreign detainees in Saudi Arabia would be around 25 000 individuals for a total of 50 000 prisoners across the country. https://www.washingtonpost.com/world/middle_east/a-rare-look-inside-a-saudi-prison-that-shows-terrorists-with-perks/2015/03/01/2da9dfb4-a64e-11e4-a162-121d06ca77f1_story.html

Terrorism, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment?

36. *Can the State party explain the steps taken in order to institutionalise and make compulsory trainings to prevent acts of torture and mistreatment for all forces including those mentioned above?*

9. Review of interrogation rules and instructions (Article 11)

Alkarama notes with concern that interrogations of suspects were still not video or audio taped which renders the practice of torture more likely. Recorded interrogations are a crucial tool to prevent abuses from occurring. Moreover, all exchanges between detainees and their lawyers are systematically monitored by guards who stay in the room.

37. *Is the State party planning to change the relevant provisions in order to ensure that any person deprived of his liberty has access to a lawyer, from the onset of the arrest, and that interactions between the individual and his lawyer remain confidential?*

38. *When will the State party effectively audio and/or video-tape all interrogations, including those carried out in relation to security crimes or terrorism? Will the video-taping encompass all interrogations, including those conducted by General Intelligence officers?*

Lastly, the State party did not answer the questions of paragraph 23 of the List of Issues Prior to Reporting and especially on the two following issues:

39. *Is there any manual designed for every state official who may have to interact with persons deprived of their liberties that explains their obligations under the Convention against Torture? If yes, does these manual contain the dispositions of the Convention and their explanation?*

40. *Are they standard operating rules (SOP) for interrogation? If yes, can the State party provide a copy of these SOPs?*

10. Accountability and redress (Articles 12, 13 and 14)

In its report, the State party seems to explain that disciplinary measures are taken as a principle by the authorities "without prejudice to any criminal prosecution" (paragraph 26). However, the State party does not explain what the steps are taken by the authorities to ensure that investigation and criminal prosecution are systematically carried out. Moreover, according to the State party's report, military personnel can only be subjected to disciplinary measure if he is found guilty of committing acts of torture during his service.

41. *Can the State party explain the legal basis to prosecute members of the General Intelligence and members of the military who commit acts of torture?*

42. *What legal standards are used to assess the superior's responsibility in cases of torture committed by their subordinates?*

43. *Can the State party provide more information on the investigations carried out after complaints to the Board of Grievances as reported in its annex 9?*

In addition, the complaint mechanism put in place in detention centres is being controlled by the BIPP, which falls under the Ministry of Interior, and which as explained in section 4 of this contribution raised concerns in terms of independence and impartiality. Compared to the 364 677 visits allegedly undertaken by the BIPP in detention centres since 2003 (Annex 1 of the State party report), the Human Rights Commission only undertook 842 visits (Annex 4 of the State party report) and the National Society for human rights undertook only 119 visits (Annex 6 of the State party report). None of the latter institutions were able to trigger any action after their visits.

44. *Can the State party give example of enforced rights to fair and adequate redress as well as rehabilitation made available to victims of torture?*

11. Statements made under torture (Article 15)

The Saudi Criminal Procedure Law fails to clearly state that statements obtained under torture are inadmissible in court. Article 102 of the Law merely states that “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”. This provision does not mention torture nor the inadmissibility of statements made under duress.

Moreover, the Saudi legal system places undue importance on confessions as the sole evidence in prosecution, despite numerous reported cases of torture in order to obtain such confessions especially at the hands of the General Intelligence. These forced confessions were later used against individuals in court as evidence and relate to both common criminal acts but also to 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.

45. *Is the State party planning to modify its domestic law and especially its Law on Criminal Procedure as to integrate expressly the inadmissibility of evidence that was obtained under torture?*
46. *What are the steps taken by the authorities in order to ensure that no confession that might have been obtained through torture is used in Court?*
47. *What are the steps taken by the judicial authority when allegations of torture are made by victims before the Court? Can the State party provide examples of cases in which the victim alleged having been tortured before the judge and explain the measures triggered by such allegations?*

12. Cruel, Inhumane and Degrading Treatment (Article 16)

In its answer to the Committee’s recommendation 8 d) on the steps taken to improve the conditions of detention so that inmates are not subjected to cruel, inhumane and degrading treatment, the State party precise that the Department of Investigation and Prosecution is in charge of monitoring places of detention and undertaking visits. Monitoring and visits should be undertaken by a third entity which has to be independent and not the one that is already leading investigation and prosecution against the inmates. In Annex 1, we see that compared to the number of visits undertaken by the department, visits from the Human Rights Commission or the National Society for Human rights drops significantly. Moreover, the State party mentioned a system a complaint without explaining the mechanism of complaint itself.

48. *Does the State party plan to set up a monitoring system that is completely independent and not under the authority of the Prosecution or under the control of the Ministry of Interior?*
49. *Is the complaint mechanism effectively available to all detainees? Is the mechanism confidential? Is it also available to inmates who are kept in detention under terrorism suspicions or charges?*
50. *Can the State party provide examples of actions taken after complaints received about mistreatment or poor prison conditions?*

12.2 Systematic practice of incommunicado detention and solitary confinement

Amongst the cases of torture committed by the General Intelligence received by Alkarama, instances of *incommunicado* detention appear to be systematically imposed on individuals arrested especially in order to punish the victim or to obtain forced confessions. Such cases are described above in section 4. Moreover, the Law on Criminal Procedure itself provides for *incommunicado* detention in its article

119 which states that "In all cases, the Investigator shall order that the accused may not communicate with any other prisoner or detainee, and that he not be visited by anyone for a period not exceeding sixty days if the interest of the investigation so requires, without prejudice to the right of the accused to communicate with his representative or attorney."

51. Is the State party willing to repeal article 119 of the Law on Criminal Procedure in order to avoid incommunicado detention and solitary confinement as recommended by the Special Rapporteur on the Independence of Judges and Lawyers after his visit to Saudi Arabia in 2003?

12.3 Other concerns on fundamental rights

The right to medical assistance is denied on a regular basis to inmates, let alone the right to see an independent doctor in order to be examined. In cases of torture 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, as way to further punish the victim.

52. What are the steps taken by the State party in order to ensure that detainees have access to an independent physician from the onset of their arrest and throughout their detention?

Moreover, accounts of overcrowded cells, due to a large number of individuals who are put in detention awaiting trial have been released by former prisoners, including through photos and videos showing inmates sleeping in cells aligned next to each other without any room to move¹⁶.

53. Can the State Party provide detailed figures on the number of detainees per cell as well as the average number of prisoners who are still awaiting trial following places of detention: Khobar Prison, Braiman prison, Al Qasim prison?

Numerous families of victims report to us that before visits to their relatives, they are submitted to extensive body searches that they consider as degrading. Women have been particularly vulnerable to these searches and have been reporting that they feel that these searches are unnecessary and purposely made to humiliate female relatives of detainees.

54. Can the State party explain the Standard Operating Procedures for body searching of relatives prior to their visit to detainees?

55. What are the steps taken by the State party to ensure that inmates' relatives are not subjected to humiliating treatment or perceived as such by them, during the body searches prior to visit?

13. Article 20 and 22

56. Is the State party planning to lift its reservation to article 20 and accept the individual complaint procedure under article 22 of the Convention?

14. General Information

14.2 Status and Role of the National Human Rights Commission

Concerning the role of the National Human Rights Commission, it should be noted that the Commission was created by an act of the executive which does not provide for a legal basis ensuring its independence and impartiality. Moreover, it has not yet been accredited by the International Coordinating Committee for National Human Rights Institutions (ICC).

57. What are the "international norms" to which the State is referring to as guiding norms for its Commission in paragraph 15 of its report?

¹⁶ See: <http://observers.france24.com/en/20120201-leaked-images-overcrowding-saudi-arabian-prisons-mobile-phone-video-jail-jeddah-khoudar-hygiene-crowded-health>.

58. *What are the criteria to lodge a complaint with the Commission and how accessible is it to all individuals under the State party's jurisdiction?*
59. *How many complaints has the commission received on cases of torture or mistreatment of detainees, either by the detainees themselves or by their relatives' or lawyers?*
60. *If so, what measures were taken by the Commission in order to launch independent and thorough investigation, prosecute those responsible for acts of torture and offer redress to the victims?*
61. *Is the State party willing to put the Human Rights Commission in line with the Paris Principles and to submit a report for accreditation to the ICC's Subcommittee on Accreditation (SCA)?*

14.3 Status and Role of the National Society for Human Rights

The status of the National Society for Human Rights remains unclear in the State party report as it seems that while it is supposed to be an independent civil society organisation, it does enjoy privileges that no other organisation has been granted such as funds and access to prisons and detention centres.

On the other hand, independent associations like the Civil and Political Rights Association (ACPRA) composed of activists and lawyers who were working within the Saudi legal system as well as with the UN Human Rights Mechanisms to document cases of serious human rights violations including torture, has been dissolved and its members prosecuted. The majority of them are now serving heavy sentences as reprisals for their activism after unfair trial¹⁷. ACPRA members were prosecuted and sentenced to heavy prison sentences after having helped hundreds of families of victims of arbitrary arrests and detention as well as torture to file complaints against State agents, including the General Intelligence to the Board of Grievances and other domestic jurisdictions and having sent information to UN Human Rights Mechanisms including the Special Rapporteur on Torture and the Committee against Torture and in 2012 and 2013.

In the charges brought against them, it is specifically mentioned that the individuals were prosecuted for providing information on human rights violations to international organisations including to the United Nations as well as on charges of "breaking allegiance to the ruler", "questioning the integrity of officials", "seeking to disrupt security and inciting disorder by calling for demonstrations", and "instigating international organizations against the Kingdom" and "disseminating misinformation to harm the State". According to Court rulings, it seems that the authorities considered the fact that these activists and lawyers complained about torture, mistreatment and arbitrary detention within domestic legal system and the UN Human Rights Mechanisms as a criticism about the integrity of the authorities and as giving a bad image of the State at the United Nations. It is this legitimate criticism and legal work that the State Party decided to prosecute as security-related crimes, instead of protecting it as a right and fundamental guarantee enshrined in both its domestic law and its international obligation under the Convention against Torture. Alkarama documented the cases of the following individuals for which different actions were taken by UN Human Rights Mechanisms:

- Mr. Mohammad Fahd Al-Qahtani founding members of the Saudi Civil and Political Rights Association was arrested on 9 March 2013 and sentenced on 29 December 2013 to 10 years imprisonment¹⁸;
- Mr. Abdulla Al Hamid, a founding members of the Saudi Civil and Political Rights Association has been sentenced to five years imprisonment for similar charges¹⁹
- Sulaiman Ibrahim Saleh Al Rashoudi has been sentenced to 15 years imprisonment in December 2012²⁰
- Saud Mukhtar Al Hashimi was sentenced to 30 years' imprisonment and a fine of 2 million riyals (US\$534,000) in November 2011 by the SCC²¹.

¹⁷ <http://www.ohchr.org/en/newsevents/pages/displaynews.aspx?newsid=14846>

¹⁸ Joint Urgent Appeal of Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UA SAU 11/2014, 3 October 2014 <https://spdb.ohchr.org/hrdb/28th/public - UA Saudi Arabia 03.10.14 %2811.2014%29.pdf>

¹⁹ *ibidem*

²⁰ *ibidem*

- Mohammad Salih Al Bajadi, one of ACPRA founders, was arrested after he attended a peaceful protest by families of victims of arbitrary detention and torture. He was sentenced in April 2012 to four years in prison after an unfair trial before the SCC for “participating in the establishment of an unlicensed organization”, “harming the image of the state through the media”, “calling on the families of political detainees to protest and hold sit-ins”, “contesting the independence of the judiciary”, and “having banned books in his possession”. Alkarama referred his case to the WGAD which issued Opinion 45/2013 on his detention²².
- Salih Ashwan Al Ashwan was arrested on 7 July 2012 in a Riyadh and was secretly detained for two months. He is currently still detained without charge or trial, and without any means of challenging his detention²³.
- Abdulkarim Youssouf Al Khodr has been sentenced in June 2013 to eight years in prison under similar charges²⁴.
- Omar Al Saeed was sentenced on 12 December 2013 to four years imprisonment and a flogging of 300 lashes²⁵.
- Mr Fowzan Al Harbi, lawyer and member of ACPRA. He was subsequently arrested and sentenced to 10 years imprisonment for crimes including “disturbing public opinion” or “describing the Saudi State as a repressive State” as well as sending information on human rights violations to foreign and international organisations, especially cases of torture²⁶.
- Mr Waleed Abu Al Khair, lawyer founder of the Monitor for Human rights in Saudi Arabia and member of the Saudi Civil and Political Rights Association has also been sentenced to 15 years of imprisonment under the same charges for criticising the lack of fundamental guarantees in the Saudi judicial system and especially the Specialised Criminal Court. He was subjected to techniques amounting to torture, cruel inhumane and degrading treatment after his arrest including sleep deprivation and solitary confinement²⁷.
- Abdulaziz Al Shoubaily and Dr. Abdul Rahman Al Hamed are the only remaining members of ACPRA who have not been imprisoned yet. However, both are under trial under similar charges including “inciting against public order” and “spreading chaos by participating in the drafting and publishing of a statement calling for demonstrations”, “disrespecting the judicial authorities”, as well as “communicating wrong information to third parties in order to harm the image of the state” and “participating in setting up an unlicensed organization”. Their trial started in 2014 and they are now facing similar punishment²⁸.

62. *What are the criteria that a civil society group should fulfil in order to gain the same access to prisons and victims of human rights violations, especially victims of torture?*

63. *Can the State party explain why members of a civil society group, peacefully denouncing the use of torture and filing complaints to the domestic courts that the authorities have been describing in their Report as effective remedies against torture (such as the Board of Grievance) have been prosecuted under charges such as "writing that the Saudi authorities*

²¹ Dr. Saud Mukhtar Al-Hashimi and eight other persons vs Saudi Arabia, WGAD OPINION No. 27/2007 of 19 February 2007 (Saudi Arabia) <http://www.unwqadatabase.org/un/Document.aspx?id=1960>

²² Mohammad Salih Al Bajadi vs. Saudi Arabia, WGAD Opinion No. 45/2013 of 9 September (Saudi Arabia), <http://www.unwqadatabase.org/un/Document.aspx?id=2941>

²³ See Arbitrary Detention; Freedom of expression; Freedom of peaceful assembly and of association; Human rights defenders; Joint Urgent Appeal No SAU 9/2012 of 12/07/2012, Saudi Arabia

²⁴ See Abdulkarim Al Khodr vs. Saudi Arabia WGAD No. 46/2013 (Saudi Arabia)

²⁵ See Joint Urgent Appeal of Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UA SAU 11/2014, 3 October 2014, *Opcit.*

²⁶ *ibidem*

²⁷ Joint Urgent appeal of Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment No. SAU 5/2014 of 24 April 2014 on the arbitrary detention and mistreatment of Waleed Abu Al Khair. Answer of the government https://spdb.ohchr.org/hrdb/28th/SAU_19.12.14_%285.2014%29_Trans.pdf

²⁸ See : Alkarama, Saudi Arabia: Alkarama Seizes UN Regarding Al Shabili's Prosecution by Specialised Criminal Court, 08 May 2015, <http://en.alkarama.org/saudi-arabia/1680-saudi-arabia-alkarama-seizes-un-regarding-al-shabili-s-prosecution-by-specialised-criminal-court>

were violating human rights" or "contacting international organisations" (i.e. the United Nations and international human Rights NGOs)?

64. *Given that the above mentioned group and individuals were cooperating with UN Human Rights Mechanisms to report cases of serious human rights violations such as torture, can the State party explain the steps it is willing to take in order to put an end to reprisals against lawyers and human rights defenders who document cases of arbitrary detention and torture?*
65. *Is the State Party willing to put an end to the violations committed against the above mentioned individuals, including immediate release and appropriate redress as well as guarantees of non-repetition?*

14.4 Comments on the Annexes of the State Party Report

After reviewing the State party's report, Alkarama noticed few issues with the figures presented in the annexes. In the Annex 1 of the report, the State party expose figures of "visits" undertaken by the Department of investigation and prosecution in prisons and detention centres. According to these figures, the Department of investigation undertook a mean of 100 visits per day.

66. *Can the State party define what it considers as a "visit" as well the methodology used to collect these figures?*
67. *Can the State party explain how the visits are undertaken and by whom?*
68. *Are the persons in charge of visits allowed to talk to all prisoners including those in solitary confinement and those arrested by the General Intelligence as well as the Office of Counter terrorism?*
69. *Has the Department been able to hear detainees on cases of prolonged solitary confinement, interrogations techniques amounting to torture and mistreatment, forced confessions, prison conditions as well as arbitrary detention and denial of fundamental rights such as the right to legal counsel, to family visits and to medical care?*

Concerning Annex 2 providing for the number of cases reviewed by the Department of Investigation and Prosecution, the State party states that the BIPP has reviewed 2 499 025 cases during visits in prisons and detention centres from 2003 to 2013.

70. *Can the State party explain what it means by "case reviewed" as well the methodology used to collect these figures?*
71. *Have they come across complaints from detainees about their ill treatment? If so, what steps did the State Party take in order to stop and remedy the situation?*

Finally, in annex 9 providing the number of judgments' executions monitored by the Department of Investigation and Prosecution, the State party seem to put in the same table different types of abuses together.

72. *Has there been cases of persons who committed acts of torture, including cases of state officials prosecuted for such acts?*