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SAUDI ARABIA: A Justice System Without Justice

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SAUDI ARABIA: A Justice System Without Justice

“I still haven’t heard anything about my case... I’m waiting for the judge to summon me. Mum, I really want to go home... I feel so helpless.”

“I’m always scared, especially on Fridays, because that’s the day when they execute those who are on death row.”

Extracts from letters sent by Sarah Dematera from prison in Saudi Arabia to her family in 1993 and late 1997 respectively.

Introduction

Sarah Jane Dematera was 19 years old when she arrived in Saudi Arabia in November 1992 from her native Philippines to begin a job as a domestic worker. Four days later she was arrested for the murder of her female employer, a crime she denies committing. She has been in al-Dammam prison ever since. Five years after her arrest Amnesty International and thousands of people around the world learned that she had been sentenced to death, but it appeared that Sarah was still unaware of her sentence. In 1997 she wrote to her mother saying:

“In my last letter, I wrote that they had told me that I have to stay here for one more year, so altogether five years. But I am still not quite sure as they haven’t summoned me to court yet. I am still not able to speak with the judge and in a matter of months it will be five years that I have been here.”

The right to a prompt and public trial is one of many basic rights that Sarah Dematera has been denied. She has had no access to legal assistance, either following her arrest or during any court proceedings. She has not been kept informed of the legal proceedings against her. She was also denied prompt access to the Philippine consulate.¹ The exact status of her sentence is not clear, but it appears that the death sentence will remain pending for approximately 10 years until the youngest child of the murder victim reaches the age of 18 and decides whether to accept compensation instead of execution, grant Sarah a pardon, or ask for the execution to be carried out.²

Sarah’s plight is just one illustration of the human suffering in Saudi Arabia that is facilitated and perpetuated by a criminal justice system that is shrouded in secrecy and systematically violates the rights of all those trapped in its web. The justice system is part of a state structure that fosters fear and lacks accountability. Anyone who dares to criticize official policies is severely punished. No independent bar associations, non-governmental human rights organizations, trade unions or political parties are allowed to operate in the country. The media is censored and communication by the general public with the outside world is strictly controlled. The government ignores requests by international human rights organizations for information about individual prisoners, reported human rights violations or the legal system in general. Victims of abuse are often too scared to speak out, and those who do usually ask to remain anonymous.

Amnesty International has nevertheless studied the criminal justice system, mainly through interviews with former prisoners who have left the country³, by monitoring the local media, by studying publications on the subject, and by studying and analysing legislation that is published⁴ in light of international human rights standards. After carefully cross-checking and evaluating this information, Amnesty International concludes that the criminal justice system leads to human rights violations that originate in and are sustained by the secrecy on which the whole system is premised — from arrest and detention to all the different stages of trial. It is a system that gives excessive powers to the arresting authorities and robs people who fall into its net of their human dignity and fundamental rights.

It is a system that generates and perpetuates ill-treatment and torture and offers no opportunity for redress. It is also a system that discriminates, including against religious minorities, women, migrant workers and people accused of violating the country's strict moral codes.

As a result, people face harsh treatment and arbitrary detention, particularly political and religious activists; torture is routine; flogging is regularly imposed; and over a thousand people have been executed and scores subjected to amputation of limbs in the past two decades.

This report covers some of the key defects in Saudi Arabia's criminal justice system. It should be read in conjunction with Saudi Arabia, A Secret State of Suffering, issued in March 2005, which documents patterns of human rights violations, including persecution of political opponents and religious minorities, torture and cruel, inhuman or degrading punishments, and the death penalty.

The law and practice of arrest and detention in Saudi Arabia are arbitrary and fall far short of internationally recognized safeguards against abuse of power by the state. Criminal laws are vague and open to wide interpretation by judges who enjoy powers unconstrained by rules to safeguard human rights and ensure justice. Court hearings are summary and secret. Defendants are invariably denied access to legal counsel and the right to mount their own defence, and they have no opportunity for effective exercise of the right of appeal. These shortcomings are compounded by the reliance of the criminal justice system on confessions obtained by the arresting authorities to secure criminal convictions, obtain information on political activists or force detainees to renounce their political opposition to the government. Amnesty International believes that if the criminal justice system is to offer human rights protection, these areas need to be addressed with the aim of bringing criminal law and procedures into line with international human rights standards.

Saudi Arabia recognizes some of these international standards. In recent years it has chosen to accede to the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination — albeit with a sweeping reservation to both treaties that the provisions do not contradict Islamic law 6 – and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

An adviser to Dr Ghazi A. Alghosbi, the Saudi Arabian Ambassador to the United Kingdom (UK) informed Amnesty International in September 1999 that Saudi Arabia is planning to ratify additional treaties such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights.

Amnesty International has welcomed Saudi Arabia's accession to international human rights treaties as an important step forward. The challenge now facing the authorities in Saudi Arabia is to introduce the wide-ranging changes in law and practice that will make the rights in these treaties a reality and ensure both that all authorities in the country know and apply these laws and procedures, and that everyone living in the country is made aware of their rights and is able to seek redress for any violation of them. These changes, if and when implemented, would introduce concrete safeguards necessary to bring the criminal justice system into conformity with international standards.

Amnesty International has for many years sought to engage in constructive dialogue with the authorities in Saudi Arabia, but so far without success. Amnesty International hopes nevertheless that this report will contribute to a human rights debate within the country and that its recommendations for change in law and practice will be considered as constructive proposals to bring about greater protection for human rights in Saudi Arabia.

1. A system open to abuse

The justice system in Saudi Arabia is based on the Wahabi interpretation of Shari'a (Islamic law). Wahabism is an interpretation of the Hanbali school of jurisprudence, one of the four schools in Sunni Islam. The others are Malaki, Hanafi and Shaf'iy. Judges in Saudi Arabia are, however, free to refer to and apply interpretations of the law according to all four schools. Shari'a applies to many spheres of law, based on the Qur'an and Sunna,⁷ including personal status and criminal law. However, Shari'a is supplemented by laws legislated by the government, particularly in the area of crime and punishment and economic affairs. All Shari'a courts fall under the jurisdiction of the Ministry of Justice, which was established in 1970.

International legal standards establish strict criteria by which the independence of the judiciary can be ensured.⁸ They include functional and structural safeguards against political or other interference in the administration of justice or judicial decisions. The law in Saudi Arabia recognizes the principle of the independence of the judiciary and judges. However, it also subordinates the judiciary to the authority of the executive authority, in particular the Minister of Justice, the Minister of the Interior and regional governors, thus undermining the independence of the judiciary. Under Article 71 of the Statute of the Judiciary, the Justice Minister is invested with powers of supervision over all courts and judges. The article maintains that these powers should not prejudice the independence of the judiciary. Under Article 20 of the Statute of the Judiciary, however, the decision of the Court of Cassation becomes final only upon approval by the Minister of Justice, who may refer the case back to the court for reconsideration if he disagrees with its decision. If the court maintains its initial decision, the Statute requires that the matter should be referred to the Supreme Judicial Council, which will have the final say.⁹

The Supreme Judicial Council is responsible for interpreting Shari'a and reviews all court verdicts resulting in the imposition of the death penalty, amputation and stoning. Its members, appointed by the King, include the Under-Secretary of the Ministry of Justice (Article 6 of the Statute of the Judiciary).¹⁰

The independence of the judiciary is further undermined by powers invested in the Ministry of the Interior, which is responsible for the whole process of arrest and detention (as described below) and decides whether a detainee is released, sent to trial or detained indefinitely without trial. The judiciary is denied any role in supervising these processes.

Thus, the proper role of judges to administer justice fairly and independently is undermined by a system which provides for the executive authority's intervention and undue involvement both in law and practice.

With the principle of an independent and impartial judiciary eroded, it comes as no surprise to find that detainees are treated differently by reason of their sex, nationality, religious beliefs or social standing. Those detained who have access to a member of the royal family, enjoy a high social status or whose family can approach an influential local dignitary to intervene on their behalf are less likely to suffer violations of their human rights and are more likely to receive a pardon in capital cases. Those without such contacts invariably suffer human rights violations and are sometimes not even released after they have completed their sentences if so decided by the provincial governor or the Interior Ministry. Such a system inevitably gives rise to a situation where unfair and discriminatory practices are the norm and the independent administration of justice is an exception.

Arrest and detention procedures

Al-Sayyid Munir al-Sayyid 'Adnan al-Khabaz, a Shi'a cleric from al-Qutaif, was reportedly arrested at Jeddah airport in December 1999 on his return from studying in the city of Qom, Iran. His family,

who had returned to Saudi Arabia ahead of him, was not informed of his arrest nor of his whereabouts. This was one of many arbitrary arrests reported over the years of people perceived to be political or religious opponents of the government on their return to Saudi Arabia from abroad. In November 1998, for example, Suha al-Mas'ari returned home from the United Kingdom, where she had been visiting her exiled brother Muhammad al-Mas'ari, a political opponent of the Saudi Arabian authorities. She was arrested on her arrival at Jeddah and was reportedly taken to al-Ha'ir prison in Riyadh. The reasons for her arrest were not clear, but were reportedly connected to her kinship to Muhammad al-Mas'ari. She was released without charge in December 1998.

Arbitrary arrest, particularly of suspected political and religious opponents of the government, is a routine practice in Saudi Arabia. It is facilitated and perpetuated by the lack of meaningful safeguards to restrain the executive's powers of arrest and detention, the wide powers of arrest by numerous arresting authorities acting without judicial authority, vague laws and the denial of the basic rights of detainees.

Arrest and detention procedures are not regulated by a single clear law as Saudi Arabia does not have a fully written and published criminal procedure code.¹¹ There are at least three laws which deal with this area of the criminal justice system: the Basic Law of Government or the Constitution of March 1992; the Statute of Detention and Imprisonment (SDI) of May 1978; and the Statute of Principles of Arrest, Temporary Confinement and Preventive Detention (SPAD), issued on 11 November 1983. A code of criminal procedure was prepared by the government in 1990, but it was withdrawn on the grounds that it needed further study.¹²

[margin quote]

The Statute of Principles of Arrest, Temporary Confinement and Preventive Detention contains no provisions on how arrests should be carried out, nor any obligation to inform the person arrested of his or her rights. There is no requirement for prior judicial authorization of arrests.

The Constitution and the SDI prohibit arbitrary arrest and detention, but fail to provide mechanisms to prevent such practices. Moreover, both these sets of laws are in practice overridden by application of the SPAD, which is the most detailed piece of legislation on the rules of arrest and detention and is the main law regulating this area of the criminal justice system. It is a law that is grossly inconsistent with international human rights standards. For example, it authorizes arrest on very broad and vague grounds. Article 1 states: "Patrol forces and other public order officials shall have the right to arrest any person in [a] situation giving rise to suspicion." The phrase "situation giving rise to suspicion" is unqualified and when combined with criminal laws, particularly those relating to political and religious opposition, which are equally vague on the grounds for arrest, gives the arresting authorities almost unlimited powers. Moreover, under the SPAD there are numerous authorities vested with the power to carry out arrests¹³, none of which is subject to any judicial supervision.

The main arresting authorities are al-Shurta (the public security police), al-Mabahith al-'Ammah (General Investigations) and religious police known as al-Mutawa'een or Hay'at al-'Amr bilma'ruf wan-Nahi 'an al-Munkar, Committee for the Propagation of Virtue and Prevention of Vice. The first two are accountable to the Minister of the Interior. Al-Mutawa'een, which is mandated to ensure strict adherence to established codes of conduct, is in theory a semi-autonomous agency, but in practice works closely with the police and the governors of the localities. It is required to hand suspects over to the public security police after questioning them.

International legal standards make clear that the use of the powers granted to arresting and detaining authorities must be "subject to recourse to a judicial or other authority" (Principle 9 of the

UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment — Body of Principles). This principle has never been put into practice in Saudi Arabia.

The SPAD contains no provisions on how arrests should be carried out, nor any obligation to inform the person arrested of his or her rights. There is no requirement for prior judicial authorization of arrests.

In practice, arrests may vary from a polite invitation to a brutal seizure. Members of al-Mutawa'een in particular often carry out arrests without a warrant and with unwarranted violence. For example, in May 1994 seven people travelling in two cars were stopped and arrested by members of al-Mutawa'een. They described their treatment to Amnesty International:

“The Mutawa'een began banging on Khaled and Michelle's windows. Within seconds both windows were broken and Khaled was being hit in the face. No questions were asked; they just began to beat him. The Mutawa'een tried to pull Michelle out of the car... Michelle got out of the car... and four Mutawa'een threw her around like a beachball...

“...Tony [was] dragged out of his vehicle and was being beaten by another group of Mutawa'een. Khaled was removed from the vehicle and was being repeatedly hit in the face...

“...One Mutawa' kicked [Michelle] as she was lying there... After she was kicked, another Mutawa' ... with a closed fist hit her in the left eye. This blow caused a fracture to the left orbit and a sub-conjunctival haemorrhage of her left eye...”

Once in detention, detainees can be held under the SPAD for limitless periods by the General Investigations or the public security police and have no opportunity in practice to challenge the legality of their detention before a judicial or other authority as required by international human rights standards.

In criminal cases detention is often extended in order to extract a confession and thus proceed to trial. In the majority of political cases — with the exception of those involving charges that include acts of violence — the purpose of prolonged detention is different, as such cases rarely proceed to trial. Here, detainees are pressured to give information about their political beliefs and activities, and about other people working with them. They are usually made aware that their release is conditional on their repenting of their previous activities and on their signing an undertaking to cease their activities. This is in breach of international standards, which require that detainees are tried promptly and fairly.¹⁴ The power given to the detaining and investigating authorities in Saudi Arabia at the expense of the judiciary facilitates the indefinite detention of all prisoners, including prisoners of conscience.¹⁵

According to the SPAD, a detainee may at any time make a complaint to the supreme authorities, including the Ministry of the Interior, or the governor of the region. The detainee may also contest the arresting authorities' request to extend the detention beyond 21 days (Article 19) before a committee (see below). However, in no circumstances may a complaint be made to an independent and impartial judicial authority, and there is no procedure explaining how a complaint can be made. As detainees have no right of access to and assistance by a lawyer, these avenues are closed as there is no practical way of submitting a complaint.

In theory there are two other ways for a detainee to lodge a complaint — through the arresting authorities or the family. However, the arresting authorities are not required under the SPAD to inform the suspect of his or her rights, including the right to complain, or to ensure that complaints are referred to the governor or higher authorities. Moreover, any review by the arresting authorities of their own arrest would hardly be independent. As to relatives, they are as a rule not informed of the

reasons for the detention or allowed prompt access to the detainees. Indeed, they may be denied access for many weeks or even months.

The SPAD refers to two ways in which the authorities may deal with complaints in the unlikely event that they are lodged. The first relates to complaints following request of extension of detention beyond the initial period of 21 days. In this instance, the regional governor may set up a committee comprising a Shari‘a adviser or a statutory adviser and a delegate from the police to look into the complaint, hear the detainee’s views and issue recommendations (Article 20). However, this is far from according detainees the right to challenge the lawfulness of their detention before a judicial body as required by international standards. Moreover, the SPAD does not oblige the governor to set up such a committee and the committee may only issue recommendations. In other words, the committee is not empowered to order the release of the detainee even if its findings reveal a wrongful arrest or arbitrary deprivation of freedom. In all cases it is the governor who makes the final decision.

The second instance relates to the expiry of the 30-day maximum period of extension by the governor. The SPAD requires the governor to form the same type of committee to look into the complaint, but adds two stringent preconditions (Article 21). One is that the detainee must have submitted a complaint challenging the detention. It is not clear whether this may be a complaint submitted at the time of the arresting authorities’ request for the extension of the initial 21-day period or must be a new complaint following the expiry of the 30-day period. The other precondition is that the governor must not have already decided to refer the case for trial or to the Ministry of the Interior. No time limits are put on the period of detention by the governor or the Ministry of the Interior. This renders the time limits devoid of any real value. The only apparent function of the time limits is to place the power of indefinite detention in the hands of higher executive authorities.

Whatever the theoretical safeguards, the reality in Saudi Arabia is that suspects continue to be detained with no effective opportunity to challenge the legality of their detention.

Vague laws

Arbitrary arrest and indefinite detention are facilitated by written criminal laws as well as unwritten customary criminal laws that are vague and open to wide interpretation. For example, a woman who is simply walking alone is at risk of arrest on suspicion of prostitution or other “sexual offences”.

Practising religions other than the officially sanctioned Sunni Islam results in arrest and detention, even though there does not appear to be a written law criminalizing such activity. People have been detained, for instance, for possession of Bibles and the literature of other minority religions in Saudi Arabia. Such laws and practices infringe international human rights standards, particularly the right not to suffer discrimination on the basis of religion and the right to practice freely one’s religious faith.¹⁶

Among the written laws that are ambiguous is Article 12 of the Constitution, which stipulates that “the state shall foster national unity and preclude all that may lead to disunity, mischief and division”. Article 39 of the Constitution bans everything that may give rise to mischief and discord, or may compromise the security of the state and its public image, or may offend against man’s dignity and rights.¹⁷

A number of criminal laws are vague, including those covering “sabotage” and “corruption on earth” regulated by Fatwa No. 148 issued by the Council of Senior ‘Ulama¹⁸ in August 1988, which introduced mandatory death penalty for such offences.¹⁹ The definition of the offences is vague, stating that the death penalty will be imposed on:

“Anyone proved to have carried out acts of sabotage and corruption on earth which undermine security by aggression against persons and private or public property such as the destruction of homes, mosques, schools, hospitals, factories, bridges, ammunition dumps, water storage tanks, resources of the treasury such as oil pipelines, the hijacking and blowing up of air planes, and so on.”²⁰

The use of the term “corruption on earth” without a comprehensive definition and without guidance on what level of proof is required means the law can be and is used to detain prisoners of conscience. It also means that judges may apply the death penalty even when the offence did not result in lethal or other extremely grave consequences. This is contrary to international standards, which require states that have not abolished the death penalty to impose it only for the most serious crimes:

“...it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.”²¹

An official source quoted in the daily newspaper Arab News shortly after the publication of the Fatwa illustrates the serious implications of the vagueness of the law:

“The source reaffirmed the Kingdom’s keenness... not to allow any person to propagate any belief, ideology or idea which runs counter to Islam and Shariah, including the fomentation of sedition and sowing seeds of discord among citizens.

“The rules of the decision shall be applied to any individual who breaches the teachings of Islam, undermines security or attempts to shake the foundations of the existing government in the country.”²²

The Arab News article also quoted officials explaining that the Fatwa was issued primarily to confront mounting political opposition that in some instances resulted in acts of violence.

At least two dozen political prisoners have been executed under the Fatwa since it was issued. All were accused of violent acts, although in some cases the crimes did not have lethal consequences and the authorities made it clear that the death penalty was imposed for political reasons. For example, ‘Abdullah ‘Abd al-Rahman al-Hudhayf, an Islamist political opponent of the government, was executed in August 1995. He was accused of throwing acid at a security officer and of having links with the Committee for the Defence of Legitimate Rights (CDLR), a banned organization in Saudi Arabia which stated its aims as “...the alleviation of injustice... and the defence of human rights decided by Shari‘a”. A Ministry of the Interior statement announcing his execution warned:

“...such will be the fate of anyone who breaches any aspect of our religion... or endangers the security enjoyed by this country...”

One newspaper reported statements made by Sheikh Salah bin Muhammad al-Lahaidan, President of the Supreme Judicial Council, in relation to the case:

“Refuting allegations that the recent execution of a renegade Saudi was improper, he said that the sentence was given as per Islamic teachings. He quoted Prophet Muhammad (peace be upon him) as saying that people who try to create divisions in the Ummah should be beheaded.”²³

2. Secret and summary justice

“They just put me in prison without telling me what was going to happen to me. I was just waiting and waiting...”

These words were written by Donato Lama, a Filipino who was arrested in October 1995 reportedly on suspicion of preaching Christianity. He was held for a year after he had been tortured into giving a confession²⁴, and was never given any information about how his case would progress through the legal system. He was eventually sentenced after a summary trial to 18 months' imprisonment and 70 lashes, which were administered in a single session. He was released in May 1997 and returned to the Philippines.

International standards require that detainees are kept informed throughout the legal process from the moment of arrest to the final appeal.²⁵ These standards include the right to be informed of one's rights, enshrined in Principle 13 of the UN Body of Principles: "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights." In no single case known to Amnesty International has a detainee been provided with this information.

The agony of waiting in ignorance was expressed by Sarah Dematera (see Introduction) in a letter to her family:

"It's already been six months and still nobody has arrived from the embassy. Please call the embassy and tell them to send someone here... I don't think I can take it any more... I think I can breathe easier if I have news that they are even taking care of my case. I don't even have anyone I can talk to who can help me..."

International standards also state that information provided to a detainee must be in a language the person understands.²⁶ Some foreign workers have told Amnesty International that they were never told in their own language the reason for their detention and therefore were not sure what, if any, charges they faced.

When it comes to trial, access to relevant information is of central importance to the preparation of a defence. Principle 21 of the UN Basic Principles on the Role of Lawyers states: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time." It is also the right of a defendant to be informed of the reasons for any judgment against him or her. This is essential to the right of the accused to appeal against the judgment.

All these standards are routinely violated in Saudi Arabia. Detainees are as a rule kept in the dark about their cases, irrespective of whether they have been charged or are simply being held in indefinite detention. A prisoner from an Asian country who is under sentence of death wrote in a letter:²⁷

"In my tenth month, I was summoned to court. I insisted on a change of plea — NOT GUILTY. Despite all my efforts, however, I still have not heard of any progress in my case... I have been pleading with the person in charge of my section to call the police officer handling my case, but all I have been hearing from this person are empty promises and lies. It has been many years since the incident and there still has not been any development in my case."

Prisoners have also expressed their dismay at the summary nature of trials. Nieves (see Chapter 3), for example, who was convicted and sentenced to 60 lashes and 25 days' imprisonment in 1992, said of her trial:

"I was really so shocked to hear the verdict that I could not say anything. It was only a matter of minutes and right there they were able to give a verdict..."

Saudi Arabian officials maintain that their court system provides all the safeguards for fair trial. They back their claim by reference to the hierarchy of the court system, which consists of Lower Courts, the Court of Cassation and the Supreme Judicial Council,²⁸ and the number of judges involved in each criminal case at different stages of the trial process.

Amnesty International notes that, although there is a multi-tiered criminal court system, the system lacks many basic safeguards and procedures without which the right to a fair trial cannot be guaranteed in principle, let alone exercised in practice. Among the essential failings of the court system are hearings routinely held in camera (where the public is excluded) and summary court sessions in political cases and in cases of people charged with crimes punishable by death, amputation or flogging.

Saudi Arabian law, under Article 33 of the Statute of the Judiciary, stipulates that court hearings are public except if the court decides otherwise on grounds of public morals and public order, and that in all cases the verdict and sentence shall be given in public session.²⁹ In practice, however, most criminal courts hold their sessions behind closed doors. The only exceptions known to Amnesty International have been some cases involving foreign nationals where the lower courts have allowed a consular representative to attend as an observer or interpreter. The press is never allowed to cover court proceedings. An official explanation for this was given by the Saudi Arabian ambassador to the UK, Dr Ghazi A. Algosabi, who stated in relation to the case of two British nurses accused of murder (see Chapter 3):

“The embassy would like it known that trials in Saudi Arabia are not covered by the press. There is no precedent in our judicial history of journalists being allowed into a courtroom, and the Saudi Government does not intend to change this rule in this case.”

This has not prevented the government from publishing its own information and accusations about defendants before and after trials.

The right to a public hearing, spelled out in international human rights standards, including Article 10 of the Universal Declaration of Human Rights (UDHR), means that not only the parties in the case, but also the general public, have the right to be present in order to know how justice is administered. While there are some circumstances which may sometimes justify hearings in camera, these are very narrowly defined in international law³⁰ and do not apply to the vast majority of trials in any country.

A recent case highlighted the continuing refusal of the Saudi Arabian authorities to allow outside scrutiny of the country's criminal justice system. In October and November Amnesty International repeatedly contacted the Saudi Arabian Embassy in London by letter and telephone with a view to obtaining permission to visit Saudi Arabia to observe the trial of Hani al-Sayegh. The organization never received a response. Hani al-Sayegh, a 30-year-old Saudi Arabian who had sought asylum in the USA, was forcibly returned to Saudi Arabia on 11 October 1999. He was detained immediately on arrival as a suspect in connection with the bombing of a US military complex at al-Khobar in 1996, an offence punishable by death. Amnesty International is concerned that he might face execution after an unfair trial. As of December 1999, he was still being held without access to lawyers and no information was made public by the government about any pending trial proceedings.

The secrecy in Saudi Arabia means that the exact workings of criminal court sessions are not publicly known. However, they may be reconstructed from testimonies provided by former prisoners tried and convicted in Saudi Arabia. These show that, as a rule, the defendant appears before a judge or judges, depending on the case³¹, with a member or members of the arresting authority and often an interpreter in the case of non-Arabic speakers.

During the first session the judge reads out the charges and ensures that the defendant accepts the confession obtained by the interrogators and already authenticated by a judge (who may also be the presiding judge at the trial). If the confession is not contested, the verdict and sentence may be pronounced immediately. When a defendant persists in contesting the confession, the judge questions the defendant on the content of the confession and notes the answers. The judge or judges then go into recess to study the two statements. This is followed by another hearing where the judge or judges pronounce the verdict in light of their deliberations held in closed session. For minor criminal offences the sentence may be pronounced at the same time as the verdict. In all such cases brought to Amnesty International's attention, this final session of the trial has been attended only by the defendant, the judge, police, a clerk and an interpreter where necessary. For the most serious offences, including those that carry the death penalty, neither the verdict nor the sentence seems to be formally conveyed to the person convicted.

The court sessions are short, varying from five minutes to two hours. 'Emad 'Abd al-Raouf Mohamed Said, an Egyptian teacher who was convicted of theft after being tricked into writing a "confession" in 1996³², described to Amnesty International his trial as follows:

"Police brought me to the courtroom, which was an ordinary room. About 15 policemen were standing behind me and my co-defendant and the person who lost the money. I and my co-defendant were handcuffed. Opposite us, there was the judge sitting at his desk and next to him a clerk and someone else I did not know what his function was. The judge started by reading the charges then he asked each one of us to speak. The whole process took about half an hour and he immediately delivered the verdict. I received five months' imprisonment and 120 lashes. I was shattered."

In no case known to Amnesty International has the judge called witnesses for the defence, and no cross-examination of prosecution witnesses takes place. Any additional evidence that may have been gathered in the course of the case investigation remains hidden from the defendant. Salah Ibrahim al-Hejailan, a Saudi Arabian lawyer, wrote of the case involving the two British nurses accused of murder (see Chapter 3):

"...the government did not see fit to reveal any forensic or other evidence against the accused and then to withstand examination of the same... Whether or not such other evidence existed, it was left as a matter to be considered in private by the competent authorities, or worse to be dealt with at the level of rumour. Indeed, bundles of papers, presumably evidence, sat unexplained before the judges on the bench, but played no role in the court sessions. This was certainly not a case of the accused being found at the scene of the crime."³³

3. Use of confessions

"...I was sent to the office of the head of police where I met other high-ranking officers. A police officer handed me a blank notebook and asked me to write whatever he dictated. I thought it would be better for my situation if I just followed orders without questioning them, so I started writing. I wrote while he dictated the events that happened that morning. He then included in this statement that I killed [—] and so I immediately stopped writing. I asked why I was being accused of this murder that I did not commit and then one of the officers yelled at me saying that if I did not obey, they would electrocute me and use a lie detector. I gave in and did not make any further objections and continued writing. After which, I was taken to court so they could prove that I was guilty of this crime."

From a letter written by a prisoner from an Asian country who is currently under sentence of death.³⁸

Sa'ad al-Din 'Izz al-Din Muhammad, a Sudanese national, was executed in June 1996 for murder, a crime he denied. A former prisoner who was held with him in Malaz Prison told Amnesty International:

“He suffered seven months of torture including removal of fingernails and suspension in mid-air by steel poles through his knee and elbow joints. His eventual ‘confession’ was signed by him with a red thumbprint, only because six police officers physically manhandled his thumb to the paper.”

At the heart of many of the human rights violations suffered by detainees is the reliance of the criminal justice system on confessions obtained by the police to secure criminal convictions. Judges should not accept a confession when it is disputed by the accused on the grounds of torture, coercion or deception.³⁴ However, in practice this safeguard against such confessions is seriously undermined by the process by which “confessions” are obtained in pre-trial detention.

The process starts with members of the security force interrogating the detainee following arrest and while they are held incommunicado.³⁵ During this period the detainee is given little or no information about the reasons for arrest or charges, about the procedures to be followed, or about his or her rights. In the absence of voluntary admission of guilt, interrogators may use different means to obtain confessions — torture, coercion or deception, or all these combined — to force the person to confess. The detainee has no access to a lawyer or any judicial or other authority that could act as a safeguard against these methods.

When interrogators have obtained a confession, they bring the detainee before a judge to sign it. If the person refuses to sign on the ground that it was not given freely, the judge may refuse to authenticate the confession and his role ends there.³⁶ The judge does not call a halt to the proceedings. Nor does he order a medical examination or an investigation to establish whether torture took place, in contravention of Article 12 of the Convention against Torture, a treaty to which Saudi Arabia is a state party. The detainee is returned immediately to the custody of the interrogator with no protection from the risk of further torture, ill-treatment or intimidation, in contravention of Article 13 of the Convention against Torture.

Former prisoners³⁷ have told Amnesty International that when this happens the process of interrogation and, in some cases, torture, starts again until a confession is once more “agreed” and then signed in front of a judge. With no legal assistance or access to the outside world, and no independent and impartial judicial supervision, the detainee is caught in a circle where the only exit is agreeing to sign the confession before the judge, even if the “confession” bears no relation to the truth.

Once authenticated by the judge, the confession gains the force of sufficient evidence for conviction in trial. The role of confession evidence therefore seems to determine almost the whole process of investigation and trial in ordinary criminal cases, even when the punishment can be as serious as long-term imprisonment, flogging, amputation of limbs or execution. Moreover, the use of confessions obtained by torture is in direct violation of Saudi Arabia’s obligation under the Convention against Torture. Article 15 requires that statements made as a result of torture shall not be invoked as evidence in any proceeding, except as evidence against people accused of that torture.

In cases of political detainees, the primary purpose of the use of torture or coercion is to obtain “confessions” about the suspect’s political activities, although such information may also be used as evidence in court on the rare occasions when political cases do proceed to trial. In all cases, political or not, the secrecy of the process and the isolation of the detainee make the voluntary nature of the confession highly suspect.

James Rebenito, a Filipino, was convicted of murder and executed in June 1996. He was held incommunicado for over two years and no information about his case was available until January 1995, when the Saudi Arabian Foreign Ministry informed the Philippine consulate that James Rebenito had “confessed” to murder. No one other than the Saudi Arabian authorities knows the circumstances under which his “confession” was obtained as his time in detention, his interrogation and his trial remain shrouded in secrecy. Requests by the Philippine consulate to visit him, have access to his file and attend any trial proceedings were all turned down, in contravention of Saudi Arabia’s obligations under Article 36 of the UN Vienna Convention on Consular Relations and Principle 16(2) of the Body of Principles. An official document dated 8 September 1995 from the Minister of Foreign Affairs of the Philippines, which was handed to James Rebenito’s wife, states, “Diplomatic requests were made to give [consular] officials access to Shariah Court proceedings and records but have not been granted by the Kingdom.” Similarly, requests made by Amnesty International in 1995, prior to his execution, for clarification of his case were never answered.³⁹ His wife, who was allowed to see him once before his execution, told Amnesty International that he proclaimed his innocence and said he had witnesses to prove it. There were apparently two witnesses near the scene of the murder and another person was with James Rebenito throughout the day of the crime. All were questioned by the police, but for reasons which may never be known, none of them was called to testify at the trial.

Former prisoners have told Amnesty International of how they agreed to “confess” and then allowed their “confessions” to be authenticated as a result of the fear they experienced in Saudi Arabia’s jails and their lack of understanding about the process and their rights. Foreign nationals are particularly vulnerable as many do not understand Arabic. In cases known to Amnesty International, people have been deceived or coerced into signing confessions in Arabic, sometimes not understanding the content, sometimes not even understanding the nature of what they were signing. They have then been convicted on the basis of such confessions.

Nieves, a Philippine married mother of two children who worked in Riyadh, suffered this fate. On 9 November 1992 she was invited by a married couple to celebrate the wife’s birthday at a restaurant in Riyadh. She and a female friend joined the couple. At the restaurant they were joined by a male friend of the couple. While having their meal a group of Mutawa’een entered the restaurant and took them all away. They suspected Nieves of being there in order to be introduced to the male friend of the couple. Nieves denied the accusation, but was deceived into signing a “confession” written in Arabic which she understood was a release order. That “confession” was the sole basis of her conviction for prostitution and sentence — 25 days’ imprisonment and 60 lashes which were carried out.⁴⁰

The weight given to confessions by the criminal justice system, despite the nature of the process by which they are obtained, can be illustrated by the well-publicized case of two British nurses, Lucille McLaughlan and Deborah Parry, who were arrested in connection with the murder of their Australian colleague, Yvonne Gilford, in December 1996. Although not held in public, their trial was almost certainly the most publicized criminal trial ever held in Saudi Arabia. Probably as a result of the international publicity and pressure, the defendants were unusually allowed some access to lawyers. However, in all other aspects the trial fell far short of international fair trial standards.⁴¹

Firstly, no evidence was introduced other than the confessions — even though other evidence could have been considered. Secondly, the court had contradictory confessions, in addition to which both defendants claimed that they had confessed under duress amounting to torture. Defence lawyers focused on this in a written submission to the judges:

“If we leave to Your Honours’ estimation of the question of duress, there are many defects in the confessions themselves as to the multiplicity of their form and contradictions in their contents...”⁴²

The submission also included “...written reports from leading experts provided by Scottish counsel that the confessions were unlikely to have been made voluntarily and also evidence as to the unreliability of convictions based on confession alone.”⁴³ Nonetheless, the two nurses were found guilty and no explanation was given to them or their lawyers about how the verdict was reached.

For confessions to be allowed to stand in court, they must not have been obtained in ways that render them unreliable, such as by coercion or torture. The prohibition of coerced confessions means that authorities are forbidden from engaging in any form of coercion, whether direct or indirect, physical or psychological. Authorities are also prohibited from inflicting torture and cruel, inhuman or degrading treatment and any treatment which violates the right of detainees to be treated with respect for the inherent dignity of the human person.

The Convention against Torture requires that competent authorities conduct a prompt and impartial investigation whenever there is reasonable ground to believe that statements have been extracted through torture or cruel, inhuman or degrading treatment (Article 12). The state is therefore obliged to ensure that there is a suitable mechanism to which complaints or allegations can be addressed. Article 13 of the Convention states: “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”

Thus, as a state party to the Convention, Saudi Arabia is obliged to establish whether or not a statement has been obtained by torture and, if it has, to exclude it from use in court. The Saudi Arabian authorities are clearly violating this obligation. Conditions of detention, lack of access to legal representation and the nature of judicial proceedings all mean that there are no effective mechanisms in Saudi Arabia for ensuring that confessions are not obtained under torture or coercion in the first place, for investigating allegations that confessions have been obtained under coercion or torture, or for preventing their use in court, much less for providing a remedy when torture takes place, as the Convention against Torture also requires.

These fundamental faults in the criminal justice system are compounded by the fact that a confession obtained under the secret system of pre-trial detention is sometimes the only evidence presented to a court. This is a clear violation of international standards for fair trial, including guarantees necessary for a defence.

In Saudi Arabia, coerced confessions are used even without the counterbalance of an adequate defence. Consequently, they can be and are used as the sole basis for conviction. A fundamental principle of the right to fair trial is the right of every person charged with a criminal offence to be presumed innocent until and unless proved guilty beyond reasonable doubt after a fair trial.⁴⁴ The burden of proof lies with the prosecution, not with the accused. In cases of capital offences, the standard is even stricter — the evidence should not leave any room for an alternative explanation of the facts.⁴⁵ Anything less than these standards must be interpreted in favour of the accused. These are basic safeguards against miscarriage of justice and against state abuse of individual liberty — and these safeguards are routinely violated in Saudi Arabia.

Salah al-Hejailan, a Saudi Arabian lawyer, confirms the testimony provided to Amnesty International by many victims:

“...handwritten confessions as confirmed in front of judges are deemed to be conclusive, however physically exhausted or confused or misled the accused might be, these conditions being only considered as irrational interference with a well established rule.”⁴⁶

He believes, however, that because of the case of the British nurses, “...there is now public debate over the proper weight to be given to written confession in a criminal case... The Public Prosecutor has taken a position at variance with the common practice until now in Saudi Shari‘a courts of affording near total conclusory weight to written confessions confirmed before a Shari‘a judge, regardless of the conditions in the detention and police custody leading up to the confessions... [The Public Prosecutor] has stated that a written confession is not alone adequate if the confession is recanted in a timely manner and if there is an indication that the confession was obtained under duress or by trickery.”⁴⁷

Such debate is welcome. However, it remains unclear whether and how this new interpretation will be used in other cases and in other courts.

4. Denial of legal representation

“Here in prison we have no right to ask for a lawyer because... in court judges do not accept defence by lawyers.”

Written by a prisoner currently held on charges of murder and possibly under sentence of death.

“Lawyer!... There is no chance of having access to a lawyer. I didn’t ask, everybody knows, you have no access to lawyers.”

This was the response given by a former detainee who was held in a police station and then in al-Malaz prison in Riyadh in 1999 when asked by Amnesty International if he had requested access to a lawyer. It is typical of the responses given to Amnesty International when former prisoners are interviewed.

While some laws in Saudi Arabia refer to the possibility of detainees having access to a lawyer, Amnesty International knows of only one case where this has ever happened — the case of the two British nurses referred to in Chapter 3. In late 1999 there were media reports of plans to promulgate a law regulating the legal profession, but no details were available at the time of writing this report and there was no indication as to whether this would herald the much needed establishment of a fully independent bar association.

A former Shari‘a lawyer, who worked as an interpreter for fellow nationals of his own country in Saudi Arabian courts, summed up the role of the defence lawyer when he told Amnesty International representatives in 1997:

“In Saudi Arabia, there are no defence lawyers in court. Whenever I went to the court I acted as an interpreter only for the accused... There are lawyers in Saudi Arabia, but they can’t appear before the court. However, they can give written advice, but only to defendants not in detention, that is, in civil cases.”

In a booklet issued by the Saudi Arabian Embassy in London, the UK, in the wake of the trial of the two British nurses in 1996, the rationale for this role of lawyers was explained as follows:

“Lawyers are not an integral part of the system. One can bring a lawyer but that is optional. We don’t consider the presence of lawyers a prerequisite for the delivery of justice... the judge acts, in effect, as the defendant’s lawyer. He challenges every piece of evidence presented by the prosecution.”⁴⁸

This general pattern was confirmed by the Saudi Arabian lawyer Salah Ibrahim al-Hejailan when he said of his defence experience in the case of the two British nurses:

“... it was unprecedented that a Saudi lawyer was allowed to represent the accused in a criminal case and to appear before the Shari‘a court.”

Amnesty International welcomed this development and urged that access to counsel for defendants should become a universal rule for all stages of Saudi Arabia’s criminal justice process. As yet, it has not.

5. No meaningful appeal

Forty days after being shown on television “confessing”, four men were executed in 1996 in connection with the bombing of the Saudi Arabian National Guard training centre in Riyadh in November 1995, which resulted in seven deaths. The four — Muhsin al-Shamrani, Khalid al-Sa‘id, Riyadh al-Hajri and ‘Abd al-‘Aziz al-Mi‘tham — were shown on television on 22 April 1996. After their executions, the Minister of the Interior stated that the four had been referred to the Grand Court in Riyadh:

“... a decision was made by three judges establishing the accusations against them on the basis of their confessions... and [that they] should be killed as a punishment for what they have done... which is the most repugnant form of highway robbery and corruption on earth...”⁴⁹

However harsh the punishment, defendants in Saudi Arabia are denied the right to meaningful appeal against conviction and sentence. According to Saudi Arabian law and practice, defendants are asked by the judge if they accept the verdict and sentence in cases involving less serious offences. For those who do, the sentence becomes enforceable with immediate effect. For those who contest the verdict, and, according to officials, in all cases of capital punishment and amputation, the cases are referred to the Court of Cassation for review. According to testimonies received by Amnesty International, some defendants are warned by fellow inmates not to contest the verdict as they will have to remain in detention until the review is concluded, which could be longer than the sentence. As a result, defendants have “chosen” to accept the verdict. The prospect of a general amnesty, which is sometimes issued during the fasting month of Ramadan, has also persuaded defendants not to oppose the verdict.

This process does not meet the requirement of judicial appeal as set out by international fair trial standards. For example, the reviews invariably take place behind closed doors without the presence even of the accused or defence lawyers, and the prisoner is kept in ignorance of the progress of the case.

The lawyer Salah Ibrahim al-Hejailan explained his view of the issue:

“Judgments by Shari‘a court are technically not subject to appeal, but are only subject to objection by either party who is not convinced. If that happens, the case will go to the Court of Cassation just to make sure that the judge has paid sufficient attention to the point of objection. There is virtually no re-argument, nor re-trial, nor re-examination of files, nor review of witness statements, except in certain cases. The deed of the judgment contains only the facts and re-statements sometimes of the parties’ submission but does not contain the rationale of the judgment. This rationale is available in the internal court file and can be given by the judge only to the Court of Cassation, but not to the parties...”⁵⁰

How the Court of Cassation carries out the review and reaches its conclusions remains unclear. For example, ‘Abd al-Karim al-Naqshabandi, a Syrian national, was subjected to summary and secret trial hearings on charges of “witchcraft”, based solely on possession of “...a number of

heretical books and fables”.⁵¹ He had no access to legal assistance or even the opportunity to defend himself. He resorted to writing to the court, objecting to the accusation and the evidence against him. He explained that he had been coerced and tortured by members of al-Mutawa’een to sign his confession. He also pointed out facts, dates, names of witnesses and documents that threw considerable doubt on the accusation against him. He argued that he had been framed by his influential employer as revenge for refusing to help with a false testimony in a business deal. When he was led to the executioner, he had still not received a response to his detailed appeal. It is not clear whether the court looked into any of the issues raised by ‘Abd al-Karim al-Naqshabandi or whether they were considered by the Court of Cassation. What seems to be clear is that, with his life at stake, he was denied the right to a fair trial and any meaningful right to appeal. The Syrian consulate did not appear to have been informed that he had been sentenced to death.

Amnesty International’s recommendations 52

Saudi Arabia’s criminal justice system is secretive and arbitrary, and facilitates and perpetuates a wide range of serious human rights violations. Amnesty International urges the government to introduce the following measures to reform the criminal justice system so that it conforms with international human rights standards and becomes transparent and fair to all.

Ensure the independence of the judiciary

The authorities should take urgent steps to ensure the independence of the judiciary in accordance with international standards, particularly Principles 1, 2, 3 and 4 of the Basic Principles on the Independence of the Judiciary, which require that such independence must be enshrined in law and protected by structural and functional safeguards. To achieve this aim the government should abrogate laws which provide the executive with the right to interfere in judicial matters. It should also monitor the implementation of international human rights standards, including those for fair trial.

End arbitrary arrest and detention

Both the law and practice of arrest and detention need to be amended to ensure that they are consistent with international human rights standards and that secrecy is replaced by clear and transparent safeguards with properly defined chains of command and accountability. Specifically, the following steps should be implemented:

- * Arrest and detention for the peaceful expression of conscientiously held beliefs should be made illegal and immediate steps should be taken to review the cases of all political prisoners with the aim of immediately releasing all those held for their peaceful activities.
- * Anyone subjected to arrest should be promptly informed of the reasons of arrest and any charges brought against them as required by Principles 10 and 11 of the Body of Principles. The information should be conveyed in a language understood by the detainee in accordance with Principle 14 of the Body of Principles.
- * Anyone arrested or detained should be informed promptly of their rights in accordance with Principle 13 of the Body of Principles and Principle 5 of the Basic Principles on the Role of Lawyers.
- * Anyone arrested or detained on a criminal charge should be brought promptly before a judge in accordance with Principle 11(1) of the Body of Principles. They should be allowed unlimited access to lawyers during interrogation in order to prevent extraction of confessions under torture or duress, and to prevent detainees from being forced to testify against themselves. Denial of these rights is contrary to international standards, including Principle 21 of the Body of Principles, and facilitates torture during pre-trial detention in contravention of the Convention against Torture, to which Saudi Arabia has acceded.
- * The routine practice of incommunicado detention by the arresting authorities should

be ended. Detainees should always be provided with the opportunity to communicate with the outside world as required by Principle 19 of the Body of Principles.

- * The consulate or embassy of detained foreign nationals should always be informed of the detention of their nationals and be allowed to communicate with them in accordance with Article 36 of the Vienna Convention on Consular Relations and Principle 16(2) of the Body of Principles.
- * Immediate steps should be taken to end indefinite detention by setting up an adequate process by which detainees or their counsel are always able to initiate proceedings to challenge the lawfulness of detention, a right enshrined in Principle 32 of the Body of Principles.

Ensure the right to fair trial

The government should take immediate steps to ensure that trial proceedings in Saudi Arabia conform to international human rights standards for fair trial. In particular, it should:

- * Ensure that “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence” in accordance with Article 11(1) of the Universal Declaration of Human Rights (UDHR).
- * Ensure that defendants are always given adequate time and facilities, including access to all relevant information, to prepare their defence with the assistance of their lawyers at all stages of trial proceedings, as required by Principle 18 of the Body of Principles. Laws should be amended to ensure that availability of legal assistance becomes a requirement.
- * End the standard practice of holding trials in secret and ensure that as a general rule trials are open to the public, in accordance with Article 10 of the UDHR.
- * Ensure that when presented with confessions allegedly extracted under torture, judges immediately initiate investigations into the allegations, exclude evidence obtained as a result of torture and urge the prosecuting authorities to bring to justice officials suspected of torture, as required by Articles 13, 15 and 16 of the Convention against Torture.
- * Ensure that anyone convicted of a criminal offence is given full opportunity to exercise their right to a meaningful appeal. All appeals should observe the right to a fair and public trial in which rights such as having adequate time and facilities to prepare a defence are fully respected.
- * Ensure that detainees facing trials for capital offences are unconditionally guaranteed the additional safeguards for fair trial provided by international standards, including the Safeguards guaranteeing the protection of the rights of those facing the death penalty.⁵³
- * Commission an independent study into possible miscarriages of justice with the aim of identifying any recurrent mistaken judicial practices and of setting standard safeguards against such practices.

The absence of an independent Bar Association recognized by the state greatly impacts on the right to fair trial in all criminal cases. The establishment of a Bar Association which is fully consistent with the Basic Principles on the Role of Lawyers should be accompanied by swift amendments in law to ensure that legal assistance is a requirement in all criminal cases. Only if such steps are taken will detainees be properly equipped to defend themselves and will lawyers feel able to defend clients in all cases without fear of harassment.

Clarify vague laws

The government should amend all vague laws so that definitions are sufficiently clear and precise as to give notice of what is prohibited by law and so as not to violate the prohibition of arbitrary arrest and the right to freedom of expression and association.

Ratify international human rights standards

Saudi Arabia should withdraw its sweeping reservations to the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination. It should also take immediate steps to ratify without limiting reservations other international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women. Saudi Arabia should take immediate steps to ensure that all human rights standards are widely publicized and are used in educational establishments as well as in training for law enforcement officials, lawyers and members of the judiciary. It should also cooperate with thematic mechanisms of the UN Commission on Human Rights and invite them to visit the country, in particular the Special Rapporteur on the independence of judges and lawyers.

ENDNOTES

1 Saudi Arabia is a party to the Vienna Convention on Consular Relations and Optional Protocols. Article 36, Communication and contact with nationals of the sending state, guarantees detainees the right to have access to consular officers and to freely communicate with them. Also, consular officials have the right to be informed of the arrest of their nationals, to communicate with them, to visit them and to arrange for legal representation for them.

2 These choices are available in Saudi Arabia under Shari'a (Islamic law) to the nearest relatives or heirs of murder victims.

3 When citing testimonies of former prisoners or reporting on individual criminal cases, Amnesty International is taking no position on the guilt or innocence of prisoners, nor is it in any way condoning recognizably criminal acts with which they may have been charged or convicted. All prisoners have certain rights, such as the right not to be tortured, whatever crime they may have committed, and all have the right to a fair trial, from the moment of arrest to the final level of appeal. All prisoners have the right to be treated equally and fairly before the law.

4 Some laws in Saudi Arabia are unwritten or are not available to the public.

5 AI Index: MDE 23/01/00.

6 In General Comment 24, adopted by the Human Rights Committee at its 52nd session on 2 November 1994, the Human Rights Committee stated on the question of reservations made upon ratification or accession to the International Covenant on Civil and Political Rights that, "Reservations must be specific and transparent, so that the Committee, those under the jurisdiction of the reserving State and other States parties may be clear as to what obligations of human rights compliance have or have not been undertaken. Reservations may thus not be general, but must refer to a particular provision of the Covenant and indicate in precise terms its scope in relation thereto." Amnesty International considers that the reservations lodged by Saudi Arabia do not comply with the requirement that "reservations must be specific and transparent".

7 The Qur'an is Islam's holy book, the Sunna are the sayings and deeds of the Prophet Muhammad.

8 These include the UN Basic Principles on the Independence of the Judiciary.

9 The Supreme Judicial Council is, among other things, the highest judicial body for reviews in Saudi Arabia.

10 In case of absence of members of the Supreme Judicial Council at a meeting, it is the Minister of Justice who chooses their replacements (Article 9 of the Statute of the Judiciary).

11 See Dr Amal al-Fazayri, "The idea of a modern judiciary in the Kingdom of Saudi Arabia: reality and prospects", a paper presented at the First Conference of Arab Justice held in Beirut, Lebanon, from 14 to 16 June 1999, p11.

12 See Middle East Watch report Empty Reforms, Saudi Arabia's New Basic Laws, May 1992.

13 Article 15 states:

"Taking into account what is determined in statutes of the security of the borders and customs, the Board of Grievances, the committee for the control and investigation and the Committee for the

Propagation of Virtue and the Prevention of Vice, and other bodies and their executive statutes, and with the exception of those offences where royal decrees and directives rule that the release of the accused would be illegal, except after requesting permission of the Supreme Authorities or after making a submission to the Ministry, all of the following have in their jurisdiction the authority to detain the accused as a precautionary measure or to release him:

- 1) District Emirs and their deputies;
- 2) The Head of Public Security and his aides;
- 3) The Chiefs of Police;
- 4) The Aides of the Chiefs of Police and the Chiefs of Criminal Arrest and the Chiefs of the Police Departments with respect to those cases which are considered within their jurisdiction;
- 5) The Director of the Public Agency for the Combatting of Drugs and the Directors of its affiliated Branches with respect to drugs offences and the like;
- 6) The Director of the Public Agency for Traffic and the Directors of the Agencies for Traffic with respect to traffic accidents;
- 7) The Director General of Passports and the Directors of the Agencies for Passports with respect to cases concerning passports and residency.”

14 Article 10 of the Universal Declaration of Human Rights and Principle 38 of the Body of Principles.

15 According to Amnesty International’s Statute, a prisoner of conscience is anyone detained by reason of his or her political, religious or other conscientiously held beliefs or by reason of his or her ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, provided that he or she has not used or advocated violence.

16 Articles 7 and 18 of the Universal Declaration of Human Rights.

17 Article 39 states: “Mass media, publication facilities and other means of expression shall function in a manner that is courteous and fair and shall abide by State laws. They shall play their part in educating the masses and boosting national unity. All that may give rise to mischief and discord, or may compromise the security of the State and its public image, or may offend against man’s dignity and rights shall be banned...”

18 A Fatwa is an edict passed by the Council of Senior ‘Ulama (religious scholars).

19 Amnesty International opposes the death penalty in all cases in all countries of the world on the grounds that it is the ultimate cruel, inhuman and degrading punishment and violates the right to life.

20 The full text of the Fatwa was widely published in the media, including the Arabic daily newspaper Al-Jazeera, 30 August 1988.

21 Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by Economic and Social Council (ECOSOC) resolution 1984/50 of 25 May 1984.

22 See “Official source warns law breakers” in Arab News, 1 September 1988.

23 Al-Muslimoon, 22 August 1995.

24 See quotation in margin, p12

25 For example, Principle 10 of the Body of Principles states, “Anyone who is arrested shall be informed of the reasons for his arrest and shall be promptly informed of any charges against him.”

26 Principle 14 of the Body of Principles.

27 Name withheld for fear of reprisal.

28 Statute of the Judiciary of 22 July 1975.

29 Statute of the Judiciary of 22 July 1975.

30 See Fair Trials Manual, Amnesty International Publications, 1998 (AI Index: POL 30/02/98).

31 The Saudi Arabian authorities say that in capital and other serious cases, more than one judge is involved in a trial, and that many other judges might be involved at various levels of the court system. All findings, judgments and records of such hearings are kept secret.

32 ‘Emad ‘Abd al-Raouf Said told Amnesty International that the theft charge against him related to a sum of money belonging to a friend who was staying with him. The money went missing following a burglary of ‘Emad ‘Abd al-Raouf Said’s house. After lengthy interrogation, during which ‘Emad ‘Abd

al-Raouf Said refused to admit to theft, the interrogator offered him the option of solving the problem amicably. ‘Emad ‘Abd al-Raouf Said understood this to imply his release in exchange for compensating his friend for the missing money, so he agreed. He signed an agreement which confirmed that the problem would be solved amicably. However, he was not released. He told Amnesty International that it was on the basis of the signed agreement that he was convicted and sentenced.

33 See Salah al-Hejailan, “Legal Developments in Saudi Arabia”, in *Yearbook of Islamic and Middle Eastern Law 1997-98*, Vol. 4 Kluwer Law International, London 1998, pp 346-347.

34 In principle, under Shari‘a coerced confession is not valid evidence.

35 Incommunicado detention (detention without access to the outside world) facilitates torture, ill-treatment and “disappearances”. Prolonged incommunicado detention can be in itself a form of cruel, inhuman or degrading treatment.

36 All judges in Saudi Arabia are men.

37 These are mainly non-Saudi Arabian nationals who left Saudi Arabia after their release.

38 Identity withheld for fear of reprisals.

39 Amnesty International’s requests were made in a letter dated 16 November 1995 and addressed to the Minister of Justice, Dr ‘Abdullah bin Muhammad bin Ibrahim al-Sheikh.

40 For more details on this case, see *Behind closed doors: unfair trials in Saudi Arabia*, November 1997, AI Index: MDE 23/08/97, pp 20-22.

41 Lucille McLaughlan was sentenced to eight years’ imprisonment and 500 lashes. Deborah Parry was not informed of her sentence, but would have faced the death penalty if blood money had not been paid. Both were granted an amnesty by the King and released after payment of a large sum of blood money to relatives of the murder victim.

42 See “Saudi Arabia — Defence Submission by Salah Ibrahim al-Hejailan in the case of Lucille McLaughlan and Deborah Kim Parry,” *Yearbook, of Islamic and Middle Eastern Law 1996*, Vol. 3 Kluwer Law International, London 1996.

43 *Op. cit.*, pp 346.

44 Article 11(1) of the Universal Declaration of Human Rights.

45 Safeguard 4 of the Safeguards guaranteeing the protection of the rights of those facing the death penalty, ECOSOC resolution 1984/50 of 25 May 1984.

46 See Salah al-Hejailan, “Legal Developments in Saudi Arabia”, in *Yearbook of Islamic and Middle Eastern Law 1997-98*, Vol. 4 pp 347, Kluwer Law International, London 1998.

47 *Op. cit.*, pp 347

48 See *Saudi Arabia: Questions of Human Rights*, p6, published in London in 1996 by the Saudi Arabian Embassy.

49 *Al-Sharq al-Awsat*, 1 June 1996.

50 See Salah al-Hejailan, “Legal Developments in Saudi Arabia”, in *Yearbook of Islamic and Middle Eastern Law 1997-98*, Vol. 4 pp 347, Kluwer Law International, London 1998.

51 See Ministry of the Interior statement in *Al-Jazeera*, newspaper, 14 December 1996.

52 These recommendations complement those issued in Amnesty International’s report, *A Secret State of Suffering* (AI Index: MDE 23/01/00).

53 ECOSOC resolution 1984/50 of 25 May 1984.

Captions

Sarah Jane Dematera © kanlungan

Farzana Kauzar with her three children, Mohamed Saad (left), aged nine, Mohamed Ijaz, aged three, and Fakeyha Ijaz (right), aged six. They were reportedly arrested on 8 October 1997 at their home in Dhahran by members of al-Mabahith al-‘Amma (general investigations) and held as hostages in order to force the father to return to Saudi Arabia from abroad. they were held until July 1998. © private

Mikhail Cornelius Mikhail, a 36-year-old Egyptian member of the coptic orthodox church, was arrested on 1 October 1992 and detained until his trial on charges of blasphemy. he denied the accusation that he had disparaged the Qur'an and the prophet Mohammad, and was reportedly told by the judge that he would be released if he converted to Islam. He refused and on 26 October was sentenced to seven years' imprisonment and 1,000 lashes. over a 10-week period he received 500 of the lashes. In January 1993 he was released and deported to Egypt. © nni

Sadiq 'Abd al-Karim Mal Allah, a Shi'a Muslim, was publicly beheaded in al-qatif in 1992. neither he nor his family knew that he was under sentence of death or for what "crime" he had been convicted. He was reportedly charged with smuggling a copy of the bible into Saudi Arabia and was requested to convert to wahabism, an interpretation of Islam favoured by the state. He denied the charge and refused the conversion, reportedly prompting the judge to say: "you abandon your rejectionist beliefs or I will kill you." © private

'Emad 'Abd al-Raouf Mohamed Said © Private