



# MUZZLING CRITICAL VOICES

POLITICIZED TRIALS BEFORE SAUDI ARABIA'S SPECIALIZED  
CRIMINAL COURT

AMNESTY  
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# ABBREVIATIONS AND GLOSSARY

## ENGLISH

ACPRA

Saudi Civil and Political Rights Association

BOARD OF GRIEVANCES

An administrative court established by a royal decree that has jurisdiction to review complaints brought against the state and its public services (known in Arabic as *Diwan al-Mazalem*)

COUNCIL OF MINISTERS

The cabinet of the Kingdom of Saudi Arabia. It is led by the King, who is prime minister, and consists also of the Crown Prince, who is First Deputy Prime Minister, and cabinet ministers.

CPVPV

Committee for the Prevention of Vice and Promotion of Virtue (see *Mutawa'een*)

GDI

General Directorate of Investigations (known in abbreviated form in Arabic as *al-Mabahith*)

**HADD/HUDUD**

*hadd* (plural: *hudud*) means a limit or boundary in Arabic. In Shari'a, a *hadd* offence has a divinely prescribed and fixed punishment that is not subject to pardon. The death penalty is prescribed for several *hadd* offences, including *hadd al-haraba* (see below).

**HARABA**

*haraba* is a *hadd* offence. It means banditry, armed robbery or "inflicting corruption on earth", and is punishable by the death penalty in Saudi Arabia.

**HUMAN RIGHTS COMMISSION**

The official body in charge of human rights issues in the country.

**PRESIDENCY OF STATE SECURITY**

An internal security agency comprising the GDI and the Special Security Forces, among other bodies.

<b>MUTAWA'EEEN</b>	Religious police or officers who are part of the Committee for the Promotion of Virtue and the Prevention of Vice
<b>NATIONAL SOCIETY FOR HUMAN RIGHTS</b>	A government-aligned human rights organization.
<b>QISAS</b>	A punishment equivalent to the crime committed, or retribution in kind. It applies to crimes of murder or bodily injury. In cases of murder, relatives of the victim can authorize the death penalty or pardon the offender and accept financial compensation, known as “blood money” ( <i>diyah</i> ).
<b>SCC</b>	Specialized Criminal Court
<b>SHARI'A</b>	Islamic law
<b>SHURA COUNCIL</b>	A consultative council comprising 150 members appointed by the King and which advises the King
<b>TA'ZIR</b>	Crimes that have no fixed punishments in Shari'a. The judge has the discretion to decide the sentence, including the death penalty.

# 1. EXECUTIVE SUMMARY

***“The presumption of innocence is not part of the Saudi Arabian judicial system.”***

Taha al-Hajji, a lawyer who has represented many defendants before the Specialized Criminal Court

Since 2011, Saudi Arabia’s Specialized Criminal Court (SCC) has been used as an instrument of repression to silence dissent. The impact has been chilling. Among those the court has punished severely are journalists, human rights defenders, political activists, writers, religious clerics and women’s rights activists. Resorting extensively to the country’s draconian counter-terror law and Anti-Cyber Crime Law, the SCC’s judges have presided over grossly unfair trials and handed down prison sentences of up to 30 years and numerous death sentences.

Amnesty International has documented the cases of 95 individuals, the vast majority men, who were tried before the SCC between 2011 and 2019. They include many individuals tried on charges arising solely from the peaceful exercise of their rights to freedom of expression, association and assembly. It has recorded the grim details of their cases and the patterns of human rights violations they expose.

At the time of writing, SCC trials were continuing of at least 11 individuals detained for peaceful expression and association. Some 52 others were serving prison terms of between five and 30 years imposed by the SCC. Several Saudi Arabian Shi’a Muslims, including young men tried for “crimes” committed when they were under the age of 18, were at imminent risk of execution following grossly unfair trials before the SCC. They have good reason to fear the worst – at least 28 Saudi Arabian Shi’a Muslims have been executed since 2016.

The Saudi Arabian authorities continue to bar Amnesty International from visiting the Kingdom to conduct research or meet officials. The research for this report was therefore conducted remotely, between early 2014 and September 2019. It included extensive examination of court documents, government statements and national legislation, as well as interviews with activists, lawyers and individuals close to the cases documented. Amnesty International wrote to several government bodies on 12 December 2019. It received one response, from the official Human Rights Commission, which summarized relevant laws and procedures, commented on some of Amnesty International’s observations, but failed to address the cases raised.

## **HUMAN RIGHTS REFORM: RHETORIC VERSUS REALITY**

The government’s rhetoric about reforms, which increased after the appointment in June 2017 of Mohammed bin Salman bin Abdulaziz Al Saud as Crown Prince, stands in stark contrast to the reality of the human rights situation. Alongside some positive reforms, particularly with regards to women’s rights, the authorities have unleashed an intense crackdown on citizens promoting change, including economists, teachers, clerics, writers and activists – peaceful advocates of the very reforms the Crown Prince was promising or enacting. Strikingly, by 2017 the authorities had targeted virtually all human rights defenders and other government critics through arbitrary arrests, torture and prosecutions before the SCC and other courts.

Indeed, King Salman bin Abdulaziz Al Saud and the Crown Prince have tightened their grip on the country's investigative, prosecutorial and security agencies. In October 2017, the Law on Counter Terrorism and its Financing replaced the 2014 counter-terror law. This consolidated state security-related powers in the hands of the King by delegating the authority to arrest, investigate, interrogate and refer individuals to the SCC to the newly established Public Prosecution and Presidency of the State Security, both of which report directly to the King. The new law also introduced the death penalty for "terrorist crimes", as well as provisions that punish severely acts that may amount to nothing more than people peacefully exercising their rights to freedom of expression, association and assembly.

### **SPECIALIZED CRIMINAL COURT: FROM COMBATING TERROR TO STIFLING DISSENT**

The SCC was established in October 2008 to try individuals accused of terror-related crimes. Initially, it tried suspected members and supporters of the armed group al-Qa'ida. However, the referral of a group of 16 "Jeddah reformists" to the SCC in May 2011 marked a decisive shift in the court's work to include cases involving individuals who the authorities simply wanted to silence. Soon after, the SCC tried and sentenced a founding member of the Saudi Civil and Political Rights Association (ACPRA). Since then, many others have faced grossly unfair trials before the court for peaceful exercise of their fundamental rights.

The SCC does not operate according to clearly established and defined procedures. The Supreme Judicial Council appoints the judges, without any transparent criteria for the appointments. Human rights lawyers and activists believe that the main criterion is a judge's perceived loyalty to the government rather than legal knowledge, expertise or integrity.

The authorities prosecute individuals before the SCC on vague or overly broad charges that are not clearly defined in law and which, in some cases, equate peaceful political activities with terrorism-related crimes. In the list of charges used in proceedings before the SCC made available to Amnesty International, the most common were:

- "breaking allegiance to and disobeying the ruler" of Saudi Arabia;
- "questioning the integrity of officials";
- "seeking to disrupt security and inciting disorder by calling for demonstrations";
- "disseminating false information to foreign groups"; and
- "forming or participating in forming an unlicensed organization".

Some of the charges are themselves contrary to human rights law and standards because they criminalize the peaceful exercise of human rights.

The 2014 counter-terror law gave the SCC exclusive jurisdiction to try those accused under the law and to apply the law retrospectively. Some individuals already convicted by other courts found themselves before the SCC facing similar charges but harsher sentences under the counter-terror law.

The 2017 version of the law, like its predecessor, contains overly broad and vague definitions of "terrorism", "terrorist crime" and "terrorist entity". It also introduced provisions that punish peaceful expression of views. For example, it imposes up to 10 years' imprisonment for directly or indirectly insulting the King or Crown Prince in a way that impugns religion or justice.

The authorities have also resorted extensively to the 2007 Anti-Cyber Crime Law when prosecuting government critics and human rights defenders before the SCC, citing tweets and other online messages as evidence.

### **MUZZLING PEACEFUL EXPRESSION AND ASSOCIATION**

Today, virtually all Saudi Arabian human rights defenders and independent voices, male and female, are behind bars serving lengthy sentences handed down by the SCC. Most were prosecuted for their peaceful human rights work and calls for reforms. Among them are all the founding members and many supporters of four independent human rights groups that the authorities closed down in 2013 who had remained in the country. Many dissidents, activists and independent thinkers have fled the country to avoid such persecution.

Many of those condemned by the SCC have been punished for expressing dissent, advocating change, criticizing the authorities, exposing abuses by the General Directorate of Investigations (GDI) or highlighting

the failures of the judiciary, often through the use of social media. Since 2011, Amnesty International has documented the trials and sentencing of 27 such individuals by the SCC. It considers 22 of the 27 still detained to be prisoners of conscience and calls for their immediate and unconditional release.

Since September 2017 and in several waves of arrests that followed in May 2018 and April 2019, the authorities have arbitrarily arrested scores of individuals, including prominent women's rights activists, writers, clerics and family members of activists. While many of those detained remain in detention without charge or trial, others are facing trial before the SCC and other courts following a terrible ordeal of prolonged pre-trial detention and torture and ill-treatment prior to the beginning of their trial.

For example, **Mohammed al-Bajadi**, who was previously prosecuted for his human rights work, was rearrested in May 2018 and remains in detention with other activists without charge or trial. **Salman al-Awda**, a reformist religious cleric arrested in September 2017, faces the death penalty in his trial before the SCC.

Women human rights defenders, including **Loujain al-Hathloul**, **Iman al-Nafjan**, **Aziza al-Yousef**, **Samar Badawi** and **Nassim al-Sada**, were expected to appear before the SCC but were instead brought before the Criminal Court in Riyadh to be tried for their peaceful human rights work and campaigning for women's rights.

### **CRUSHING SHI'A PROTESTS IN EASTERN PROVINCE**

Since 2011, the authorities have sustained a vicious crackdown on the country's Shi'a Muslim minority to defeat protests demanding greater rights and reforms as well as the release of detainees held without charge. Hundreds have been arrested in connection with protests in al-Qatif governorate in the Eastern Province, which is predominantly populated by Shi'a Muslims. Most of those arrested were subsequently released without charge. The rest were detained without charge or trial for a year or more, and then charged and brought to trial before the SCC.

As tensions mounted in the Eastern Province, two Shi'a clerics known for their critical stance towards the government – **Nimr al-Nimr** and **Tawfiq al-Amr** – delivered sermons on 25 February 2011 supporting calls for urgent political and religious reforms. Both were arrested. Arrests continued as the protests persisted and on 5 March 2011, the Ministry of Interior confirmed a long-standing ban on protests deemed to “contradict Islamic Shari'a law and the values and traditions of Saudi society”.

Since then, over 100 Saudi Arabian Shi'a Muslims have been brought before the SCC in relation to both peaceful criticism of the government in speeches or on social media and participation in anti-government protests. They have been tried on vague and varied charges ranging from organization or support for protests to alleged involvement in violent attacks and espionage for Iran.

In addition, Shi'a Muslims have been condemned to death and executed for crimes committed when they were below 18 years of age, after they were found guilty by the SCC on the basis of torture-tainted “confessions”. Three young men – **Ali al-Nimr**, **Abdullah al-Zaher** and **Dawood al-Marhoon** – who were arrested separately in 2012 aged 17, 16 and 17 respectively, are at imminent risk of execution after they were sentenced to death after grossly unfair trials before the SCC.

On 2 January 2016, the authorities announced that Nimr al-Nimr and 46 other death row prisoners had been executed, sparking renewed protests in Eastern Province. Adding to the tension, the SCC continued to hand down death sentences and long prison terms to Shi'a Muslims convicted of protest-related crimes. In July 2017, a number of Shi'a men sentenced to death by the SCC were executed, and in April 2019 a mass execution of 37 men, the majority of them Shi'a, was carried out.

### **GROSSLY UNFAIR TRIALS**

Trials before the SCC are a mockery of justice. The hearings are frequently held wholly or mostly in secret. The judges demonstrate clear bias against defendants. They do not rigorously examine and question prosecutors' assertions, and routinely accept defendants' pre-trial “confessions” as evidence of guilt without investigating how they were obtained, even when the defendants retract them in court and say they were extracted by torture.

The SCC has tried and convicted defendants in the absence of defence lawyers, in some cases after barring them. Judges have also used their powers to convict defendants on vague charges that do not constitute

recognizable crimes, and treat peaceful dissent, the protection of human rights and advocacy of political reform as crimes against the state or acts of terrorism.

Amnesty International closely reviewed eight SCC trials of 68 Shi'a defendants, the majority of whom were prosecuted for their participation in anti-government protests, and of 27 individuals prosecuted for peacefully exercising their rights to freedom of expression and association. In all cases, it concluded that the trials were grossly unfair, with defendants convicted on vague, "catch-all" charges that criminalize peaceful opposition as "terrorism" and in many cases sentenced to death on the basis of torture-tainted "confessions".

In fact, the whole process of justice linked to the SCC is deeply flawed from the moment of arrest to final appeal. Most defendants in the trials documented by Amnesty International were:

- arrested without a warrant;
- not told the reasons for their arrest;
- held incommunicado, often in solitary confinement, without access to their families or a lawyer, for days, weeks or months;
- tortured or otherwise ill-treated in pre-trial detention to extract "confessions", as punishment for refusing to "repent", or to force detainees to pledge to stop criticizing the government;
- held without charge or trial, without any opportunity to challenge their detention, for up to three and a half years.

One of the most striking failings of the SCC in the trials reviewed by Amnesty International is its unquestioning reliance on torture-tainted "confessions". At least 20 Shi'a men tried by the SCC have been sentenced to death on the basis of such "confessions", 17 of whom were executed.

**Hussein al-Rabi'**, a defendant in a mass trial of protesters from Eastern Province, told the SCC that his interrogator had slapped and hit him, and threatened to hang him by his arms and give him electric shocks unless he "confessed". He also told the SCC that his interrogator had threatened to torture him if he refused to confirm his "confession" before a judge. Indeed, when he did refuse to confirm it, he was denied food and water, causing him to lose consciousness and be taken to hospital. He was already suffering from eight bullet wounds sustained during arrest. Hussein al-Rabi' was executed in April 2019.

Every single defendant in the SCC trials reviewed by Amnesty International was denied access to a lawyer from arrest and throughout their interrogation in GDI prisons. The best they experienced was to meet their lawyer at the opening session of their trial. During the trials, defendants were denied the opportunity to prepare and present their case, or to contest arguments and evidence put against them on an equal footing with the prosecution.

Finally, the right to appeal is violated. Appeals against SCC judgements are conducted behind closed doors without the presence or participation of defendants or their lawyers. In many cases, defendants are not informed in advance of the SCC Appeal Court hearing and only find out after the fact that their appeal had been rejected. Often, the judicial authorities do not inform defendants, their lawyers or their families of the outcome of appeals, even when death sentences have been upheld.

## **CONCLUSIONS AND RECOMMENDATIONS**

The SCC is a weapon of repression for the government, rather than an independent court of law committed to upholding due process, the right to a fair trial and justice. Instead of standing up for justice and human rights, the SCC and its judges are willing accomplices in the state's ruthless suppression of those courageous enough to voice their opposition, stand with those most oppressed or call for meaningful reforms.

Amnesty International has made recommendations to various authorities to ensure that desperately needed reforms are introduced to end the travesty of justice embedded in the SCC. Among other things, Amnesty International calls on:

- **The King and Crown Prince of Saudi Arabia** to release all prisoners of conscience immediately and unconditionally, ensure their convictions and sentences are quashed, and declare an official moratorium on all executions with a view to abolishing the death penalty.
- **The Supreme Judicial Council** to fundamentally reform the SCC to ensure it is capable of conducting fair trials, is protecting defendants from arbitrary detention, torture and other ill-

treatment, and overseeing fair hearings deciding on appropriate reparation to all victims of torture and other human rights violations by state officials or those acting on their behalf.

- **The Public Prosecution** to ensure that all those against whom there is sufficient admissible evidence of responsibility for torture or other ill-treatment are promptly prosecuted on criminal charges in fair trials and, if convicted, given sentences commensurate with the gravity of the offence without recourse to the death penalty.
- **The Council of Ministers** to establish an independent commission of inquiry into the use of torture and other ill-treatment by the GDI and other state agents; to repeal or amend the counter-terror law and the Anti-Cyber Crime Law to make them compatible with international human rights law and standards; and to ensure the death penalty is not imposed on anyone under the age of 18 at the time of their alleged offence.
- **Saudi Arabia's strategic allies** to urge the Saudi Arabian government to fully respect and observe international human rights law and standards.
- **The UN Human Rights Council** to set up a monitoring mechanism of the human rights situation in Saudi Arabia.

# 2. METHODOLOGY

This report examines the authorities' crackdown on freedom of expression, association and assembly through the Specialized Criminal Court (SCC). Amnesty International has been monitoring and documenting Saudi Arabia's crackdown on dissent through legislative and judicial means and in trials before the SCC since 2011, which formed the basis of Amnesty's analysis for this report. Research of this report was conducted between January 2016 and September 2019 from outside Saudi Arabia. Despite repeated requests to visit and discuss concerns with the government, the Saudi Arabian authorities have not permitted Amnesty International access to the country.

In the course of its research Amnesty International examined 60 official court documents (including charge sheets and verdicts), 23 appeals and defence notes, and an official complaint against the Board of Grievances, an administrative court established by a royal decree that has jurisdiction to review complaints brought against the state and its public services (known in Arabic as *Diwan al-Mazalem*). It conducted interviews with 44 individuals, including lawyers and others with expertise on the SCC, as well as individuals close to the cases documented to verify information.

All interviews were conducted in strict confidence. Interviewees feared understandably that identification would put them at risk of arrest and prosecution under the counter-terror law on charges such as "harming the reputation of the Kingdom" and "communicating with foreign organizations", which are considered "terrorist" crimes. As a result, Amnesty International has protected the identity of sources by, in most cases, withholding their real names and using pseudonyms and not including details of the interviews, such as the date and means of communication.

Amnesty International documented the cases of at least 95 individuals, the vast majority men, who were tried before the SCC, some in individual trials and others in mass trials, between 2011 and 2019. Cases include individuals tried on charges related to exercising their rights to freedom of expression, association and peaceful assembly, such as calling for social and political reforms, as well as cases of political activists and Shi'a minority rights activists tried, sentenced and, in some cases, subsequently executed following SCC trials.

The organization reviewed government statements and royal decrees related to legal and political developments where available; the counter-terror laws of 2014 and 2017; academic sources on the legal system; reports by UN Working Groups and UN Special Mandates, including the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism and the UN Special Rapporteur on extrajudicial, summary or arbitrary killings; and media sources.

This report does not look into cases of those tried by the SCC for affiliation to armed groups such as al-Qa'ida or for planning or conducting violent attacks in their name. Amnesty International was unable to examine such cases given the difficulty in obtaining information about them, particularly because the Saudi Arabian authorities neither publicize nor share information details about them.

Amnesty International requested information from the government during the research, including requesting copies of royal decrees, information about the mandate, jurisdiction and structure of the SCC and other information not available in the public domain, as well as court records and judgements. Amnesty International also shared its findings with the Royal Court, the Presidency of State Security, the Ministry of Justice and the official Human Rights Commission on 12 December 2019, seeking comments and

clarifications. On 9 January 2020, the Human Rights Commission provided a seven-page response, which summarized relevant laws and procedures, commented on some of Amnesty International's observations regarding patterns of human rights violations, but ignored others and failed to address any of the cases raised. Amnesty International has reflected key elements of the response and its comments on them in this report.

# 3. BACKGROUND

In 2013, the authorities closed down all independent human rights organizations and ordered them to shut down their websites and other online presence. By early 2014, most of Saudi Arabia's prominent and independent human rights defenders had either been imprisoned, threatened into silence, or fled the country. Most of them had already been subjected to arbitrary travel bans, and had endured intimidation and harassment by security forces, particularly by the Ministry of Interior's General Directorate of Investigations (GDI, also known as *al-Mabahith*), before being prosecuted and given harsh sentences. The SCC sentenced many of them after grossly unfair trials.

The systematic repression of freedom of expression is part of a larger campaign by the authorities to silence any activity that has revealed, directly or indirectly, human rights violations in Saudi Arabia. People targeted include prominent human rights defenders, including women's rights activists; religious clerics; writers; relatives of victims of human rights violations; dissident Shi'a Muslims who criticize discrimination against members of their community; and, more generally, those communicating with international human rights organizations such as Amnesty International.

The escalating repression of dissent crushed any hopes that the state's long-term plans would see social and economic liberalization – encapsulated in Vision 2030 the flagship project of the Crown Prince, Mohammed bin Salman bin Abdulaziz Al Saud – accompanied by greater tolerance of freedom of expression.

At the beginning of 2018, Mohammed bin Salman, recently designated Crown Prince, embarked on a coast-to-coast tour of the USA, followed by visits to a number of European capitals, to promote his ambitious plans for economic and social reforms. In an interview in January 2016, he spoke of the Kingdom's values, stating: "It is important to us, the participation in decision making; it is important to us to have our freedom of expression; it is important to us to have human rights."<sup>1</sup>

A few meaningful reforms accompanied the drive to rebrand the image of Saudi Arabia and its leadership. In June 2018 a royal decree allowed women to drive for the first time in three decades, a testament to the women's rights defenders who had fought for this for many years. In August 2019, the authorities announced major reforms to ease some of the restrictions on women's rights to freedom of movement, as well as laws that are part of the male guardianship system. The reforms allow women to obtain a passport and travel without the permission of a male guardian. They also give women equal rights to head households and in relation to some family-related matters.

However, in general, the rhetoric of the Kingdom's leadership has stood in stark contrast to the reality. The authorities have cracked down on citizens promoting change, including economists, teachers, clerics, writers and activists who are peaceful advocates of the very reforms the Crown Prince has been promising or indeed enacting. The authorities have targeted virtually all human rights defenders and other government critics in a campaign of arrests that began in late 2017. The few human rights activists and dissidents who remain at liberty or who have been conditionally released in recent months have been coerced into silence.

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<sup>1</sup> *The Economist*, "Transcript: Interview with Muhammad bin Salman", 6 January 2016, [www.economist.com/middle-east-and-africa/2016/01/06/transcript-interview-with-muhammad-bin-salman](http://www.economist.com/middle-east-and-africa/2016/01/06/transcript-interview-with-muhammad-bin-salman)

The extrajudicial execution of prominent Saudi Arabian journalist Jamal Khashoggi in the Kingdom's consulate in Istanbul in October 2018 jolted the world into seeing just how far the authorities were ready to go to silence critics. Jamal Khashoggi was last seen alive when he entered the consulate on 2 October 2018 to obtain papers needed for his planned marriage to a Turkish national.<sup>2</sup> An inquiry by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions concluded in June 2019 that Jamal Khashoggi was the victim of a deliberate, premeditated execution, an extrajudicial killing for which Saudi Arabia is responsible. The Special Rapporteur found "credible evidence, warranting further investigation of high-level Saudi officials' individual liability, including the Crown Prince's".<sup>3</sup>

Since 2017, when Mohammed bin Salman became Crown Prince, major political changes have concentrated power in the hands of his father, King Salman bin Abdulaziz Al Saud. In June 2017, a royal decree shifted control of the country's investigative, prosecutorial and security agencies from the Ministry of Interior to the monarch. The decree renamed the Bureau of Investigation and Prosecution, which had been part of the Ministry of Interior, as the Public Prosecution and placed it directly under the King's authority. It also created a new internal security agency, the Presidency of State Security, comprising the GDI, the Special Security Forces and other bodies that formerly reported to the Minister of Interior, and appointed the head of the GDI to lead it.<sup>4</sup> The Presidency of State Security reports to Saudi Arabia's Council of Ministers, the Kingdom's cabinet, which is headed by the King and consists also of the Crown Prince and cabinet ministers.

According to the Saudi Press Agency, these changes aim to enable the government to "confront all security challenges with the most needed flexibility" while allowing the Ministry of Interior to focus on other responsibilities.<sup>5</sup>

Following the decision by Saudi Arabia and several other Arab states to sever ties with Qatar, also in June 2017, the authorities warned people against expressing sympathy with Qatar or criticizing actions by the Saudi Arabian government. It announced in government-aligned media that this would be considered an offence punishable under Article 6 of the Anti-Cyber Crime Law.

In October 2017, a new counter-terror law came into force, replacing the 2014 Law on Counter Terrorism and its Financing. The new law consolidated state security-related powers in the hands of the King by delegating the authority to arrest, investigate, interrogate and refer individuals to the SCC to the newly established Public Prosecution and Presidency of State Security. Meanwhile a wave of arbitrary arrests had begun.

Alongside this, Saudi Arabia continues to have one of the highest execution rates in the world. Among those executed in recent years are members of the country's Shi'a Muslim minority, including individuals sentenced and executed for crimes that occurred while they were under 18, in breach of international human rights law and Saudi Arabia's obligations under the Convention on the Rights of the Child.<sup>6</sup>

In August 2018, King Salman issued the Law on Juveniles. This stipulates a maximum prison sentence of 10 years for juveniles in cases where they might otherwise be sentenced to death, except for crimes punishable by death under Shari'a (Islamic law), such as *hadd* and *qisas* crimes.<sup>7</sup> While this is a step in the right direction, it falls short of international human rights law, which strictly prohibits the use of the death penalty against people below the age of 18 at the time of the crime.

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<sup>2</sup> Saudi Arabian authorities denied knowledge of his fate and whereabouts and claimed that he had left the consulate shortly after entering it. In the days following his disappearance, leaked reports from Turkish investigators stated that Jamal Khashoggi was killed in a pre-planned murder inside the consulate. For over two weeks following his disappearance, the Saudi Arabian authorities continued to deny any involvement and denounced the murder allegations. On 15 October, King Salman ordered the public prosecution to open an investigation into Jamal Khashoggi's disappearance, which concluded five days later that he had died after a "fist-fight" inside the consulate.

<sup>3</sup> UN Human Rights Council, Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi, 19 June 2019, UN Doc. A/HRC/41/CRP.1.

<sup>4</sup> *Arab News*, "Saudi Arabia forms new apparatus of state security", 21 July 2017, [www.arabnews.com/node/1132466/saudi-arabia](http://www.arabnews.com/node/1132466/saudi-arabia)

<sup>5</sup> Royal Decrees No. 293-208/A, 20 July 2017, [www.spa.gov.sa/viewstory.php?lang=ar&newsid=1649683](http://www.spa.gov.sa/viewstory.php?lang=ar&newsid=1649683)

<sup>6</sup> Convention on the Rights of the Child, Article 9.

<sup>7</sup> See section 7.7.

# 4. THE SPECIALIZED CRIMINAL COURT

## 4.1 ESTABLISHMENT OF THE COURT

In the years following 11 September 2001, when aeroplane attacks by mostly Saudi Arabian members of al-Qa'ida killed over 3,000 people in the USA, members and affiliates of al-Qa'ida carried out a wave of gun and bomb attacks in Saudi Arabia.<sup>8</sup> They targeted government officials and members of the security forces as well as US and other foreign nationals, including civilians, and US installations. The attacks increased in frequency and intensity after US military forces invaded Iraq in March 2003.<sup>9</sup>

In response, the Saudi Arabian authorities launched a massive security clampdown, arresting thousands of suspected al-Qa'ida members and supporters for interrogation, and holding many of them in prolonged detention without charge or trial. For years, there was barely any official information about these arrests and detentions. In February 2007, the authorities arrested a former judge and eight other men in connection with a public petition calling on the authorities to ensure the fair trial or release of the detainees, as well as for the creation of a human rights organization to protect detainees' rights. The group of nine (plus seven others detained subsequently) became known as the 16 "Jeddah reformists".<sup>10</sup> The authorities accused them of collecting money to fund terrorism-related activities and detained them without trial for more than two years, until they were brought to court in October 2010.<sup>11</sup>

In July 2007, the Ministry of Interior announced that the security forces had detained 9,000 people in counter-terrorism operations between 2003 and 2007, including 3,106 who remained in detention.<sup>12</sup> In 2008, thousands of individuals were still being detained, some having spent years behind bars without charge and without any means of appeal or remedy. Many were unlawfully detained, as Saudi Arabia's Law of Criminal Procedure limits pre-trial detention to six months.<sup>13</sup>

According to one human rights activist, a number of detainees lodged complaints against the Ministry of Interior with the Board of Grievances, an administrative court established by royal decree that has jurisdiction to review complaints brought against the state and its public services.<sup>14</sup> The Board began issuing release orders for detainees who had been held beyond the six-month limit. The Ministry of Interior did not

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<sup>8</sup> Fifteen of the 19 hijackers, all of whom died in the attacks, had Saudi Arabian nationality.

<sup>9</sup> Amnesty International condemns all attacks against civilians. See, for example, Amnesty International, *Saudi Arabia: Amnesty International condemns ongoing killing of civilians by armed group in al-Khobar* (Index: MDE 23/006/2004).

<sup>10</sup> Seven other men were detained before the trial of the 16 men began in 2010.

<sup>11</sup> In July 2007, the authorities also briefly detained a group of women who had been peacefully protesting against the indefinite incarceration of their male relatives. See Amnesty International, *Saudi Arabia: Repression in the name of security* (Index: MDE 23/016/2011).

<sup>12</sup> Other detainees had been sent to a Ministry of Interior programme for "re-education" conducted by religious and psychological experts. In November 2007, the authorities said they had released 1,500 detainees who had changed their political and religious orientation after successfully completing this programme. For further details, see Amnesty International, *Saudi Arabia: Assaulting human rights in the name of counter-terrorism* (Index: MDE 23/009/2009).

<sup>13</sup> Law of Criminal Procedure, Article 114.

<sup>14</sup> Royal Decree No. M/51 of 10 May 1982, which was replaced by Royal Decree No. M/78 of 1 October 2007.

comply, but the orders put pressure on the Minister to find legal grounds to justify the detentions or release those arbitrarily detained.

The Minister, according to the activist, issued a decree instructing the Board of Grievances not to consider detained suspects' complaints against the GDI. He then established the SCC, with the mandate to try individuals accused of terrorism-related crimes. The Board of Grievances could no longer consider complaints by detained suspects against the GDI; instead, the SCC was set up to try individuals of "terrorism"-related crimes. Unlike the mechanism for complaints against other courts, the Board of Grievances is not the competent authority to look into complaints against the GDI or the SCC. Complaints related to SCC cases can only be examined by the SCC.

In their first public reference to the SCC on 28 October 2008, the authorities announced that the Supreme Judicial Council had decided to convert a special section of the General Court in Riyadh responsible for trying state security-related cases into a special anti-terrorism court, to be known as the SCC, and had appointed a judge as its head.<sup>15</sup> They expected that the SCC would move to new premises and that the number of SCC staff would increase from 60 to 170 within a year. Little was known about this special section of the General Court or how it functioned.<sup>16</sup>

The Minister of Justice issued a decree establishing the SCC on 29 January 2009, but has never made it public.<sup>17</sup> The decree made no provision for appeals against SCC verdicts. In April 2011, the Minister of Justice issued a decree establishing the SCC Appeal Court.<sup>18</sup>

The SCC spent its formative years trying suspected members and supporters of al-Qa'ida. In May 2011, the referral to the court of the 16 "Jeddah reformists", after prolonged detention without charge, indicated that the authorities were expanding the profile of those who would be tried before the SCC. The 16 men faced an array of accusations, including that they had formed a secret organization, attempted to seize power, financed "terrorism" and engaged in money laundering. They were also accused of "incitement against the King". They denied all the charges. In November 2011, the SCC convicted them of these offences and sentenced them to prison terms ranging from five to 30 years. The trial was initially conducted in closed sessions, but some family members and journalists were allowed to attend later sessions.

At the same time, the government was clamping down on those calling for judicial and other reforms and anti-corruption measures, mainly through online petitions, in the wake of the uprisings taking place across the region. In parallel, the government was increasing public spending, directing it to higher wages and benefits for public sector employees.

Trials of other political activists and human rights defenders before the SCC followed, although in some cases similar proceedings took place before other courts at the same time. For example, Mohammed al-Bajadi, a founding member of the Saudi Civil and Political Rights Association (ACPRA), an independent human rights organization, was tried before the SCC following his arrest in 2011 while two other ACPRA co-founders, Abdullah al-Hamid and Mohammad al-Qahtani, were tried before the General Court in Riyadh. All three men faced similar, vague charges arising from their peaceful activities.

This ambiguity continued for many months as more human rights defenders, political activists and government critics were brought to trial on charges arising from their peaceful activism. For example, after his arrest and detention in April 2013, Abdulkareem al-Khoder, another of ACPRA's founders, was sent for trial before the General Court in Buraydah on charges that included "disobeying the ruler", "inciting disorder by calling for demonstrations" and participation in "founding an unlicensed organization". The General Court

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<sup>15</sup> The Supreme Judicial Council is an 11-member body headed by the Minister of Justice whose members are appointed by the King for a renewable four-year term. In addition to supervising the courts and judiciary, it reviews all legal decisions that the Minister of Justice refers to it, provides legal opinions on judicial questions and approves all amputation and death sentences before they are carried out. See Abdullah F. Ansary, Hauser Global Law School Program, New York University, *UPDATE: A Brief Overview of the Saudi Arabian Legal System*, August 2015, [www.nyulawglobal.org/globalex/Saudi\\_Arabia1.html](http://www.nyulawglobal.org/globalex/Saudi_Arabia1.html) and Law of the Judiciary (in Arabic), 2007, [www.moj.gov.sa/Documents/Regulations/pdf/O6.pdf](http://www.moj.gov.sa/Documents/Regulations/pdf/O6.pdf)

<sup>16</sup> Arabian Business, "Saudi Arabia establishes court specialized for terrorism cases" (in Arabic), 29 October 2008, [arabic.arabianbusiness.com/politics-economics/2008/oct/29/12359?url=%2Fpolitics-economics%2F2008%2Foct%2F29%2F12359&page=70](http://arabic.arabianbusiness.com/politics-economics/2008/oct/29/12359?url=%2Fpolitics-economics%2F2008%2Foct%2F29%2F12359&page=70)

<sup>17</sup> Decree No. 1422. Amnesty International wrote to the government on 23 February 2018 requesting a copy of the decree but received no response.

<sup>18</sup> Decree No. 5751.

convicted him and sentenced him to eight years in prison followed by a 10-year foreign travel ban. However, when the case was returned to the General Court for retrial following an appeal decision, the judge decided that, given the nature of the charges against Abdulkareem al-Khoder, the case fell under the SCC's jurisdiction.<sup>19</sup> The Court of Appeal subsequently confirmed this ruling and in October 2014, after convicting him at his retrial, the SCC sentenced Abdulkareem al-Khoder to 10 years in prison and banned him from travelling abroad for 10 years after his release.

Today, the SCC is based in Riyadh but moves to the coastal city of Jeddah during the summer months. The Supreme Judicial Council appoints the judges, without any transparent criteria for the appointments. Human rights lawyers and activists believe that the main criterion is a judge's perceived loyalty to the government rather than legal knowledge, expertise or integrity.

## 4.2 USE OF REPRESSIVE LEGISLATION

In February 2014 the Law on Counter Terrorism and its Financing (counter-terror law) came into force. It gave the SCC exclusive jurisdiction to try those accused under the law.

A decree issued by the Minister of Interior on 7 March 2014 extended the reach of the counter-terror law by adding a number of peaceful activities to the list of offences considered to be "terrorist crimes". These included:

- "calling for, participating in, publicizing, or inciting protests, demonstrations, gatherings, or group petitions" in order to disturb "the social fabric or national cohesion";
- "attending conferences, lectures, or gatherings" within Saudi Arabia or abroad that "target" national security and stability or incite social strife;
- "inciting" other states, international organizations or other bodies against Saudi Arabia;
- "contact or correspondence with any groups, currents or individuals" deemed "hostile" to Saudi Arabia
- "calling for atheist thought";
- questioning the fundamental principles of Islam.<sup>20</sup>

In July 2014, the Minister of Justice issued a "confidential and urgent judicial decree", a copy of which Amnesty International has seen. This confirmed the role of the SCC as the competent court to try cases involving alleged offences against national security.<sup>21</sup>

Some individuals who had already been convicted by other courts found themselves facing similar charges but heavier sentences before the SCC. For example, in October 2013 the Criminal Court in Jeddah sentenced human rights lawyer Waleed Abu al-Khair to three months' imprisonment on charges that included questioning a judge's integrity and accusing him of corruption, harming the reputation of the state by communicating false information to international organizations and "offending" state authorities. Three weeks later the authorities brought a new case against him before the SCC on charges that were similar but this time based on provisions of the counter-terror law. In July 2014, the SCC sentenced him to 15 years in prison. He was the first human rights defender to be convicted by the SCC under the counter-terror law.

The 2014 counter-terror law was replaced by a new one, the Penal Law for Crimes of Terrorism and its Financing, in October 2017. Both laws contain overly broad and vague definitions of "terrorism", "terrorist crime" and "terrorist entity". A "terrorist crime" is defined as acts that "endanger national unity" or "destabilize public order and the security of the community".<sup>22</sup> According to the new law, these acts must be

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<sup>19</sup> An appeal court overturned his sentence in January 2014 and sent the case back to another judge in the Criminal Court after ruling that the judge had not been impartial and had a personal conflict with Abdulkareem al-Khoder. See Amnesty International, *Saudi Arabia: Sentence overturned, but still in prison: Abdulkareem Yousef al-Khoder* (Index: MDE 23/005/2014).

<sup>20</sup> Decree No. 44/A.

<sup>21</sup> Decree No. 13/T/5462.

<sup>22</sup> Penal Law for Crimes of Terrorism and its Financing, 2017, Article 1.

aimed at terrorizing a civilian population.<sup>23</sup> A “terrorist entity”, as defined in the new law, is “a group of two or more individuals – inside or outside the Kingdom – who commit any of the [aforementioned] crimes.”

The new law introduced the death penalty for “terrorist crimes”, as well as provisions that punish with imprisonment acts that may amount to nothing more than people peacefully exercising their rights to freedom of expression, association and assembly. For example, it imposes a prison sentence of up to 10 years for directly or indirectly insulting the King or Crown Prince in a way that impugns religion or justice.<sup>24</sup> It imposes a prison sentence of up to 25 years for establishing a “terrorist entity” and up to 20 years for joining or participating in a “terrorist entity”.<sup>25</sup> Furthermore, it criminalizes any interaction with any form of technology “with the aim of using it in the commission of any of the crimes specified in this law”.<sup>26</sup>

The new law confirms that the SCC is the judicial body with jurisdiction to prosecute terrorism-related crimes. Like the old law, it allows the authorities to conduct searches, seizures and arrests without a warrant in exceptional circumstances.<sup>27</sup> These powers now reside with the Public Prosecution and the Presidency of State Security. There is no procedure for judicial review of these actions.<sup>28</sup> Like its predecessor, the new law legalizes incommunicado detention for 90 days, including not having a lawyer during interrogations, by allowing the prosecution to restrict these rights if deemed necessary.<sup>29</sup> Such provisions facilitate torture and other ill-treatment.

Following his visit to the Kingdom between 30 April and 4 May 2017, the UN Special Rapporteur on human rights and counter-terrorism concluded that “Saudi laws on terrorism do not comply with international standards” and that the definition of “terrorism” has “serious restrictive impact on civil society as almost any non-governmental political action can be criminalised as an act of terrorism”. In his analysis, provisions in the [2014] law can also criminalize peaceful advocacy for political reform and suppress intellectual and academic freedom.<sup>30</sup>

Another piece of legislation, the Anti-Cyber Crime Law, had been introduced by royal decree in March 2007.<sup>31</sup> It states that the “production, preparation, transmission, or storage of material impinging on public order, religious values, public morals and privacy, through the information network or computers” is a crime punishable by up to five years’ imprisonment and a fine.<sup>32</sup> The SCC has repeatedly invoked this law, and particularly this provision, when convicting and sentencing government critics and human rights defenders for peacefully exercising their rights to freedom of expression and association, citing tweets and other online messages as evidence, according to court judgements analysed by Amnesty International.

## 4.3 FLAWED PROCEDURES AND PRACTICES

Following the consolidation of prosecutorial powers and intelligence agencies in the hands of the King and Crown Prince in June 2017 and the crackdown on civil society in September 2017, reports emerged of the arbitrary arrests of several SCC judges. Analysts interpreted this as part of a move by the new Saudi Arabian

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<sup>23</sup> Michael Newton, Vanderbilt Law School, *A legal assessment of the Penal Law for Terrorism and its Financing*, 9 May 2018, [www.esohr.org/en/wp-content/uploads/2018/08/May\\_2018\\_A\\_Legal\\_Assessment\\_of\\_the.pdf](http://www.esohr.org/en/wp-content/uploads/2018/08/May_2018_A_Legal_Assessment_of_the.pdf)

<sup>24</sup> Penal Law for Crimes of Terrorism and its Financing, 2017, Article 30.

<sup>25</sup> Penal Law for Crimes of Terrorism and its Financing, 2017, Articles 32 and 33.

<sup>26</sup> Penal Law for Crimes of Terrorism and its Financing, 2017, Article 36.

<sup>27</sup> Penal Law for Crimes of Terrorism and its Financing, 2017, Article 7.

<sup>28</sup> Michael Newton, Vanderbilt Law School, *A legal assessment of the Penal Law for Terrorism and its Financing*, 9 May 2018, [www.esohr.org/en/wp-content/uploads/2018/08/May\\_2018\\_A\\_Legal\\_Assessment\\_of\\_the.pdf](http://www.esohr.org/en/wp-content/uploads/2018/08/May_2018_A_Legal_Assessment_of_the.pdf)

<sup>29</sup> Penal Law for Crimes of Terrorism and its Financing, 2017, Article 20.

<sup>30</sup> UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Saudi Arabia, Preliminary findings of the visit to Saudi Arabia, 4 May 2017, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21584&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21584&LangID=E)

<sup>31</sup> Royal Decree No. M/17, 26 March 2007, [www.citc.gov.sa/en/RulesandSystems/CITCSys/Docs/LA\\_004\\_%20E\\_%20Anti-Cyber%20Crime%20Law.pdf](http://www.citc.gov.sa/en/RulesandSystems/CITCSys/Docs/LA_004_%20E_%20Anti-Cyber%20Crime%20Law.pdf)

<sup>32</sup> Anti-Cyber Crime Law, Article 6.

leadership to consolidate their political power within the judiciary.<sup>33</sup> At the same time, the King appointed or promoted 110 judges of various ranks.<sup>34</sup>

According to the Human Rights Commission, “The SCC follows the same rules and procedures that other criminal courts follow” and “The only difference is the subject-matter jurisdiction”.<sup>35</sup> However, while the procedures of non-specialized courts are defined under the law on the judiciary, there is no publicly available information on how the SCC operates.<sup>36</sup>

According to the Human Rights Commission, “The crimes that are decided on by the SCC and their corresponding sentences are specifically defined in the Penal Law for Terrorism and its Financing. Therefore, judges have no discretion except within the framework of the law.”<sup>37</sup> However, in the cases documented in this report, Amnesty International found that SCC trials were conducted before a single judge, who exercised wide discretion in characterizing offences and determining punishments, including the death penalty. The breadth of discretion was facilitated by the vagueness of the law. Judges used their powers to convict defendants on vague charges that do not constitute recognizable crimes and treat peaceful dissent, the protection of human rights and advocacy of political reform as crimes against the state or acts of terrorism. Prosecuting individuals on such charges not only violates the rights to freedom of expression, association and peaceful assembly. It also violates the principle of legality, which obliges states to define criminal offences precisely within the law. An individual must be able to know from the wording of legal provisions what acts and omissions would make them criminally liable.<sup>38</sup>

While SCC judgements are subject to appeal, it is a deeply flawed process. In all cases, recommendations and comments by the SCC Appeal Court on the SCC’s judgements are sent back to the SCC for its final judgement without the defendants ever brought before the Appeal Court. Appeals against SCC verdicts and sentences are first reviewed by the SCC Appeal Court and, if upheld, then go automatically to the Supreme Court. If confirmed by the Supreme Court, the verdict and sentence are final. Death sentences, however, are referred to the King for ratification prior to execution.

In practice, the appeal process is opaque and shrouded in secrecy.<sup>39</sup> Appeals do not conform to international standards and cannot be considered genuine reviews of the issues of the case. They are considered behind closed doors, in the absence of the appellants and their lawyers. The SCC Appeal Court does not appear to render judgement on the sufficiency of incriminating evidence or on whether due process was followed, and does not give reasons or issue a written judgement. Defendants often are not even informed of the outcome of their appeal.

According to the Human Rights Commission, “All hearings of the SCC have been public, with the presence of the accused, their counsels, their interested family members, HRC representatives, and a number of media outlets.”<sup>40</sup> However, Amnesty International has documented in numerous cases SCC trials being conducted wholly or mostly in secret, with the media and families and supporters of defendants excluded from a courtroom packed with an intimidating presence of security officials. This use of closed or mostly closed proceedings during trials of human rights defenders and peaceful critics has not been justifiable on grounds of state secrecy or national security. Rather, it appears to be intended to deny defendants a platform to express their opinions, explain or justify their actions and disclose any abuses they suffered in detention.

Since 2015, diplomats of the EU and EU member states have attended some sessions of trials before the SCC of several human rights defenders. While their presence has provided Saudi Arabian human rights

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<sup>33</sup> Abdullah Alaoudh and Nathan J. Brown, “The Saudi regime is shaping the country’s legal sector in profound ways”, Carnegie Middle East Center, 8 January 2018, [carnegie-mec.org/diwan/75155](https://carnegie-mec.org/diwan/75155)

<sup>34</sup> *Arab News*, “King Salman promotes, appoints 110 judges at the Saudi Arabian Ministry of Justice”, 13 September 2018 [www.arabnews.com/node/1371521/saudi-arabia](https://www.arabnews.com/node/1371521/saudi-arabia)

<sup>35</sup> Human Rights Commission, written response, 9 January 2020.

<sup>36</sup> Law of the Judiciary, 2007, [www.moj.gov.sa/Documents/Regulations/pdf/06.pdf](http://www.moj.gov.sa/Documents/Regulations/pdf/06.pdf)

<sup>37</sup> Human Rights Commission, written response, 9 January 2020.

<sup>38</sup> International Criminal Tribunal for the former Yugoslavia (ICTY) Appeals Chamber, *Prosecutor v. Zlatko Aleksovski* (IT-95-14/1-A), 24 March 2000, paras 126-127.

<sup>39</sup> Fair trial rights must be respected during appeals, including the general rule that proceedings should be held in public, with the parties present. The appeals court must be competent to review both the sufficiency of evidence and the law. See UN Human Rights Committee (HRC), General Comment 32, paras 48-49. And the appeals court must give a reasoned judgement. See HRC, *George Winston Reid v. Jamaica*, UN Doc. CCPR/C/51/D/355/1989 (1994), para. 14.3.

<sup>40</sup> Human Rights Commission, written response, 9 January 2020.

defenders with a sense of moral support, the diplomats have not put their observations on record. This has allowed the Saudi Arabian authorities to use the presence of European diplomats to portray trials as open and fair.<sup>41</sup>

Individuals tried before the SCC are prosecuted on vague or overly broad charges that are not clearly defined in law and which, in some cases, equate peaceful political activities to terrorism-related crimes. The SCC also continues to try individuals accused of affiliation to al-Qa'ida or the armed group Islamic State.

In the list of charges used in proceedings before the SCC made available to Amnesty International, the most common were:

- “breaking allegiance to and disobeying the ruler” of Saudi Arabia;
- “questioning the integrity of officials”;
- “seeking to disrupt security and inciting disorder by calling for demonstrations”;
- “disseminating false information to foreign groups”;
- “forming or participating in forming an unlicensed organization”.

These and other charges are contrary to human rights law and standards because they criminalize the peaceful exercise of human rights.

According to the Human Rights Commission, “People [tried before the SCC] have been detained or imprisoned due to their being charged with or convicted of acts punishable by law, not for their exercise of freedom of expression or defense of human rights.”<sup>42</sup> It stated that it “attends all hearings of the SCC and has made a number of observations, which have subsequently been addressed according to legal procedures” and “is closely monitoring all cases of prisoners and detainees to ensure they enjoy the rights guaranteed to them by the relevant laws and obligations under the international human rights standards”. It also presented relevant human rights guarantees under Saudi Arabian laws, many of which Amnesty International has referenced in this report, and “notable reforms and developments in the area of criminal justice”.<sup>43</sup> However, the Human Rights Commission largely confined its comments to the legal and institutional framework, thereby failing to address the serious concerns that Amnesty International has identified in the cases documented in this report.

SCC judges have demonstrated a clear bias against defendants. The Human Rights Commission told Amnesty International that confessions before the SCC “are accepted by the court after it ensures that they were informed confessions made of the accused’s own volition and not under coercion or intimidation... [and that] the accused can also retract their confessions during the trial period”.<sup>44</sup> Moreover, according to the Human Rights Commission, “The court does not depend on confessions alone as evidence.” However, in the cases Amnesty International examined, judges accepted defendants’ pre-trial confessions as evidence of guilt without investigating how they were obtained. In several cases involving individuals who were eventually executed, defendants told the court about torture and other ill-treatment they endured during interrogations and retracted their confessions as they alleged they were coerced. In all such cases, the SCC judges failed to order an investigation into the allegations.

SCC judges have routinely failed to rigorously examine and question prosecutors’ assertions against defendants. They have also failed to require prosecution witnesses, such as security interrogators, to come before the court to give evidence in person, depriving defendants and their lawyers of the opportunity to challenge their testimony. Furthermore, the judges have prevented defendants calling witnesses in their own defence, and tried and convicted defendants in the absence of defence lawyers, in some cases after barring them from the court.

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<sup>41</sup> See, for example, Response from the Saudi authorities to the appeal of UN Special Rapporteurs regarding the case of Mohammad al-Otaibi and Abdullah al-Attawi, 13 February 2017, [spcommreports.ohchr.org/TMResultsBase/DownloadFile?glid=33388](https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?glid=33388), p. 3.

<sup>42</sup> Human Rights Commission, written response, 9 January 2020.

<sup>43</sup> These included: “Issuance of the Statute of the Saudi Bar Association on 27<sup>th</sup> April 2015, which includes a number of articles strengthening the role of lawyers in promoting and defending human rights”; “Issuance of a high order on 21<sup>st</sup> March 2016 which required the activation of the Centre for Justice Training in the Ministry of Justice be expedited”; and “The conducting of training under the MoU between the Saudi HRC and OHCHR in Geneva”.

<sup>44</sup> Human Rights Commission, written response, 9 January 2020.

# 5. MUZZLING PEACEFUL EXPRESSION AND ASSOCIATION

## 5.1 RISE AND REPRESSION OF HUMAN RIGHTS ACTIVISM

In the 1990s and the decade following the year 2000, reformists of all professional backgrounds in Saudi Arabia presented petitions to then King Fahd, calling for political reforms, including the formation of a Shura Council, the reviving of municipal councils, greater press freedoms and the empowerment of women in public life.<sup>45</sup> Subsequently, King Fahd's government introduced a number of measures that appeared to be part of a process of change – albeit gradual and carefully controlled – that brought about limited internal reform and enhanced Saudi Arabia's standing internationally, particularly in relation to human rights. In 2008, it was reported that the Shura Council had approved a draft law on associations, fuelling speculation that such a law, if enacted, would allow for the legal registration of independent associations, including human rights groups. The Shura Council submitted the draft law to the Council of Ministers in 2008, but it was subsequently shelved.

It was in this climate of hope that government representatives attended in 2009 the first Universal Periodic Review of human rights in Saudi Arabia by the UN Human Rights Council, the main intergovernmental body within the UN system focused on human rights, and committed to further reforms. Three months later, probably swayed by these commitments, other states elected Saudi Arabia to membership of the Council for the first time.<sup>46</sup> It was not until 2015 that the Council of Ministers passed the Law on Associations and Foundations, which King Salman enacted by decree in December that year. However, it was a severely restrictive law.

Domestically, newly formed groups also sought to build on what seemed like a new climate following Saudi Arabia's election to the Human Rights Council. In October 2009, 11 academics and other individuals concerned about human rights, particularly about the rising number of detainees held without charge or trial as well as their treatment and conditions in detention, formed the independent human rights group ACPRA. Adopting the slogan "Know your rights", ACPRA's founders committed the organization to promoting in Saudi Arabia the rights enshrined in the Universal Declaration of Human Rights and other international treaties and standards, and applied for permission to operate legally.

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<sup>45</sup> Ahmad Adnan, "Reform in Saudi Arabia: Where did the liberals go wrong and is reconciliation possible?" (in Arabic), *Al-Akhbar*, 9 April 2009, [al-akhbar.com/Archive\\_Articles/138889](http://al-akhbar.com/Archive_Articles/138889)

<sup>46</sup> Saudi Arabia has successfully retained its seat on the 47-member Human Rights Council since 2009. It was most recently re-elected to the Council for a new three-year term in October 2016 despite continued serious human rights violations in Saudi Arabia and evidence of war crimes and other violations of international law by the Saudi Arabian-led military coalition engaged in the armed conflict in Yemen.

For a couple of years, although they refused to accord them legal registration, the authorities tolerated the existence of ACPRA and other human rights groups. This changed when, in late 2010 and early 2011, the Middle East and North Africa region was convulsed by mass protests that saw hundreds of thousands of citizens take to the streets.

Amid calls for protesters to gather on 11 March 2011 in a “Day of Rage” on 5 March, the Ministry of Interior announced a ban on all public protests, including peaceful gatherings, and warned that anyone “participating in or calling for demonstrations” would face arrest, criminal prosecution and imprisonment for “disobeying the ruler.”<sup>47</sup> Nevertheless, there were a number of protests in the following months to which the authorities responded by launching a concerted crackdown. From the outset, those targeted by the authorities included human rights defenders, peaceful advocates of political and social reform and those courageous enough to publicly criticize the government in media interviews or comments posted on social media. One of the first victims of the crackdown was Mohammed al-Bajadi, a leading human rights defender and co-founder of ACPRA. After forcing ACPRA and the other independent human rights groups to shut in 2013, the authorities started to round up most of the human rights defenders associated with these groups, initially summoning them for interrogation. Eventually those targeted were detained and the SCC or the General Court in Riyadh then sentenced them to prison terms. By the end of 2013, the authorities had closed all four independent human rights groups, and had arrested and detained without trial or were in the process of trying most of their leaders and activists.<sup>48</sup>

### **THE LAW ON ASSOCIATIONS AND FOUNDATIONS**

The Law on Associations and Foundations of 2015 excludes any mention of “human rights” and extends wide discretionary powers to the Ministry of Social Affairs, including to deny licences to new organizations and to disband them if they are deemed to be “harming national unity”. The law also prohibits the legal registration of associations whose activities the authorities deem contrary or threatening to Shari’a, public morals or national unity, and restricts contact between Saudi Arabian associations and organizations abroad.

No independent human rights organizations have been able to register under the new law and several human rights defenders have been put on trial and accused of “harming public order and national unity” for establishing human rights organizations. The only two human rights groups that are currently in operation in Saudi Arabia are the Human Rights Commission and the National Society for Human Rights, both of which are government bodies.

The 2014 counter-terror law and ensuing decrees were used in new cases and led to harsher sentences. In existing cases, activists nearing the end of prison terms imposed after trials before ordinary criminal courts were given new sentences because of the counter-terror law’s retroactive effect.

In September 2017, the authorities arbitrarily arrested scores of individuals, including at least 20 prominent religious figures, journalists, academics and activists. The newly established Presidency of State Security stated that it was monitoring “the intelligence activities of a group of people for the benefit of foreign parties against the security of the kingdom and its interests, methodology, capabilities and social peace in order to stir up sedition and prejudice national unity.” The authorities also arrested Abdulaziz al-Shubaily and Issa al-Hamid, co-founders of ACPRA, who were detained to start serving prison sentences of respectively eight and nine years that the SCC had imposed on them.<sup>49</sup>

In May 2018, one month before the driving ban on women was lifted, the authorities launched a wave of arrests targeting scores of individuals, including prominent women human rights defenders who had been outspoken in campaigning against the ban on women driving and the male guardianship system. In July

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<sup>47</sup> Amnesty International, *Saudi Arabia’s Day of Rage: One year on* (Index: MDE 23/007/2012).

<sup>48</sup> In addition to ACPRA, the Adala Center for Human Rights, the Union for Human Rights and Monitor for Human Rights in Saudi Arabia were all forcibly shut down. In April 2012, the Adala Center challenged the Ministry of Social Affairs’ rejection of its December 2011 registration application before the Board of Grievances. On 27 May 2013, the Board upheld the Ministry’s decision, ruling that the Adala Center for Human Rights would have to await the enactment of the law of associations in order to establish itself and pursue its independent human rights activities. The authorities closed down ACPRA in March 2013, the Union for Human Rights in April 2013, the Adala Center in May 2013, and Monitor for Human Rights in Saudi Arabia in October 2013.

<sup>49</sup> Amnesty International, *Saudi Arabia: Arrest of two prominent activists a deadly blow for human rights* (Press release, 18 September 2017).

2018, two other prominent women human rights defenders, Nassima al-Sada and Samar Badawi, were arbitrarily detained and remain imprisoned for their peaceful human rights work.

## PROSECUTION OF WOMEN'S RIGHTS ACTIVISTS



Left to right: Loujain al-hathloul, Iman al-Nafjan, Aziza al-Yousef, Samar Badawi and Nassima al-Sada. © Private

Several women's rights activists detained in May 2018, including Loujain al-Hathloul, Iman al-Nafjan and Aziza al-Yousef, were initially accused in state-aligned media of forming a "cell" and posing a threat to state security for their "contact with foreign entities with the aim of undermining the country's stability and social fabric", in violation of Royal Decree 44/A, a follow-up decree to the 2014 counter-terror law. These accusations were followed by a chilling smear campaign in national media and on social media discrediting the work of women's rights activists and branding them as "traitors" and "agents of embassies". For several months, the activists were expected to appear before the SCC for trial.

At least 10 human rights defenders, including several of the women activists, were reportedly tortured and otherwise ill-treated, including through being sexually abused, during the first three months of their detention when they were held incommunicado and in solitary confinement. Several activists told the court that they had been repeatedly tortured with electric shocks and flogging, leaving some unable to walk or stand properly. According to testimony, one activist was hung from the ceiling and another was sexually harassed by interrogators wearing face masks. One of the activists reportedly attempted to take her own life repeatedly in prison. Prison authorities warned detained activists against disclosing any accounts of torture or prison procedures to family members.

On 11 March 2019, 10 months after their arbitrary arrest, 11 women activists, including Loujain al-Hathloul, Iman al-Nafjan and Aziza al-Yousef, were brought to trial before the Criminal Court in Riyadh rather than the SCC. The court session was closed, and diplomats and journalists were banned from attending. Several of the women were charged with, among other things, promoting reforms and women's rights; demanding an end to the male guardianship system through participating on online and offline campaigning; and contacting international human rights organizations such as Amnesty International and Human Rights Watch, as well as the UN, human rights activists, foreign diplomats and international journalists.

Iman al-Nafjan and Aziza al-Yousef were among eight women provisionally released in March 2019. Loujain al-Hathloul and several other women activists remained in prison at the time of writing. Women human rights defenders Nassima al-Sada and Samar Badawi, who were arrested in July 2018, were also brought to trial before the Criminal Court in Riyadh in July 2019, after a year of arbitrary detention, and remained in detention at the time of writing.

In total, 13 women's rights activists remained on trial at the time of writing; Amnesty International considers those of them still in detention prisoners of conscience and calls for their immediate and unconditional release.

Also in April 2019, at least 13 individuals involved in human rights advocacy and family members of such activists were arbitrarily detained. They included Salah al-Haidar, the son of human rights activist Aziza al-Yousef, and Ayman al-Drees, a writer, translator and women's rights advocate married to Malak al-Shehri, a women's rights activist who was arbitrarily arrested in 2016.<sup>50</sup> They also included Abdullah al-Duhailan, a

<sup>50</sup> *The Guardian*, "'Rebel' Saudi Arabia woman who posted photo without headscarf is arrested", 12 December 2016, [www.theguardian.com/world/2016/dec/12/saudi-arabia-headscarf-woman-twitter-arrest](http://www.theguardian.com/world/2016/dec/12/saudi-arabia-headscarf-woman-twitter-arrest)

journalist, novelist and advocate for Palestinian rights; and Fahad Abalkhail, who has supported the Women to Drive Campaign. All remained in detention without charge at the time of writing.

Human rights defenders are facing other forms of repression. The GDI, for instance, repeatedly summons many of them for interrogation and asks them to sign pledges that they will desist from any form of activism or criticism of the government. Most activists who did so ended up facing prosecution, unfair trials and imprisonment anyway.

Relatives of detained human rights defenders are reluctant to report abuses of their loved ones for fear this would lead to reprisals. In some cases, the authorities have threatened relatives with prosecution for passing information about serious abuses to Amnesty International and Human Rights Watch.<sup>51</sup> They have also faced administrative measures, such as travel bans.

The authorities also seek compliance by resorting to mass surveillance technologies to monitor online communications, particularly with international media and human rights organizations. Such action is then backed up by prosecutions on charges such as “communicating with foreign groups”.<sup>52</sup> In parallel, the authorities use state-controlled media to prevent any independent reporting and to publicly stigmatize human rights defenders and other peaceful government critics as unpatriotic, labelling some as criminals and terrorists.

## 5.2 TRIALS BEFORE SCC

The profile of people tried before the SCC for their peaceful expression and association and sentenced to prison terms and other penalties includes human rights defenders, lawyers, journalists, bloggers and others associated with pro-reform websites, intellectuals, religious clerics and political activists. Many have been convicted for expressing dissent, advocating change, criticizing the authorities, exposing abuses by the GDI, or highlighting the failure of the judiciary to uphold due process, often through the use of social media. Since 2011, Amnesty International has documented the trials and sentencing of 27 such individuals by the SCC. It considers 22 of those still detained to be prisoners of conscience, held solely for peacefully exercising their rights to freedom of expression, association and assembly. It calls for their immediate and unconditional release.

Such prosecutions, and the harsh sentences handed down, are clearly intended both to punish those who speak out and to suppress information about abuses. The authorities’ resort to multi-year bans on the exercise of free speech, including the use of social media and public appearance in the media, and to restrictions on leaving Saudi Arabia appear to have a similar purpose.

### MOHAMMED AL-BAJADI



 ↑ Mohammed al-Bajadi © Private

Mohammed Saleh al-Bajadi, one of the 11 founding members of ACPRA and a human rights defender, was arrested in March 2011 at his home in Buraydah after attending a peaceful protest outside the Ministry of Interior in Riyadh by families of long-term detainees held by the GDI without trial.<sup>53</sup> He was detained incommunicado for 10 months, including four months in solitary confinement, during which he was denied access to a lawyer and any contact with his family other than brief phone calls to his wife. He went on hunger strike several times to protest

<sup>51</sup> In one case, the SCC sentenced female relatives of a detained activist for protesting against the conditions of their detained loved ones and disclosing information about his prison conditions to Amnesty International.

<sup>52</sup> Nine months after the trial of ACPRA founding member Abdulaziz al-Shubaily began, he was additionally charged with “communicating with foreign organizations” and providing information to Amnesty International for use in two of its reports. The prosecution and the court have ignored Abdulaziz al-Shubaily’s repeated requests to be shown the evidence regarding this charge.

<sup>53</sup> He had previously been detained several times by the GDI for publicly calling for an end to arbitrary detention and torture. In 2007, he was detained without charge or trial in solitary confinement for four months after he drew the attention of international media representatives to a sit-in protest calling for the release of untried detainees, then released on the condition set by the authorities that he should “not organize any forum or gatherings, nor contact any foreign press”.

his detention and was force-fed intravenously by prison authorities who denied him access to adequate medical treatment.

His first trial session was held before the SCC in July 2011. The court convened in an unmarked villa in Ubhur, a Red Sea resort to the north of Jeddah. The session was held behind closed doors even though the case did not concern state secrets, national security or other issues warranting closure of the court.

The presiding judge did not permit Mohammed al-Bajadi to be represented by a defence lawyer. The judge also barred the presence of journalists, human rights monitors and others who sought to attend a session in October 2012 when additional charges were brought against him – membership of a banned organization, intent to “harm the reputation” of Saudi Arabia, and possession of prohibited publications. The SCC announced its verdict in April 2012 before a packed courtroom in which neither Mohammed al-Bajadi’s lawyer nor family members were present. Indeed, they had even not been informed of the session.<sup>54</sup>

In April 2012, he was sentenced to four years’ imprisonment followed by a five-year travel ban based on a range of charges linked to his peaceful human rights activism.<sup>55</sup> After an appeal behind closed doors to which neither Mohammed al-Bajadi nor his lawyer had access, the SCC Appeal Court overturned this conviction and sentence – and returned his case to the SCC for retrial – without informing him. He was released, rearrested and, after a delay of about a year, charged with offences under the 2014 counter-terror law. Due to the retroactive effect of the law, Mohammed al-Bajadi faced new charges that were related to the same activities listed in the previous charges, but which under the new law are considered to be “terrorist” crimes.

At the end of the second trial, he received a prison sentence of 10 years (five of which were suspended), a longer sentence than he had received at the first trial. He also received a travel ban until at least 2020 and was made to sign scores of pledges, including that he would stop his activism and refrain from communicating with media and foreign organizations.

He was finally released in April 2016 after completing his prison term, the last four months of which he spent in the Mohammed bin Nayef Center for Counseling and Care, the state custodial facility established in 2006 to “re-educate” and “rehabilitate” alleged members and supporters of al-Qai’da and other armed groups.

Mohammed al-Bajadi was arrested again in May 2018, during the wave of arrests of human rights activists at the time, and was being detained once again without charge at the time of writing. Amnesty International considers him a prisoner of conscience who has been detained solely for peacefully exercising his rights to freedom of expression and association, as well as his human rights work.



Front from left: ACPRA founding members Abdullah al-Hamid, Waleed Abu al-Khair and Mohammad al-Qahtani  
© Private

Following the trial of Mohammed al-Bajadi, all of ACPRA’s 11 founding members have been tried and sentenced for their human rights work and nine of them were in prison serving lengthy sentences at the time of writing. Amnesty International considers all of them to be prisoners of conscience detained solely for their peaceful human rights work. In March 2013 the General Court imposed long prison terms on two of them, Abdullah al-Hamid and Mohammad al-Qahtani. They were sentenced to 11 and 10 years in prison respectively 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”. The court also ordered the disbanding of ACPRA, the confiscation of its

<sup>54</sup> Amnesty International, *Urgent Action, Saudi Arabian human rights activist sentenced*, Further information on UA 91/11 (Index: MDE 23/010/2012).

<sup>55</sup> These included “undermining” state security by communicating with foreign organizations, harming the state’s image in the media, calling for protests by detainees’ families and possessing banned books.

property and the removal of its social media accounts, partly on the grounds that it was an unlicensed organization and therefore operating illegally.<sup>56</sup>



ACPRA founding member Abdulaziz al-Shubaily  
© Private

During the year following the introduction of the 2014 counter-terror law, a number of ACPRA members and other peaceful activists were charged, sentenced or retried under the law. In July 2014, Waleed Abu al-Khair became the first human rights defender to be sentenced by the SCC under the counter-terror law. The law was also invoked in the trial of Abdulaziz al-Shubaily, an ACPRA member and legal representative of several ACPRA defendants, and in the retrials of ACPRA members Mohammed al-Bajadi and Abdulkareem al-Khoder. In September 2017, ACPRA members Issa al-Hamid and Abdulaziz al-Shubaily started serving their prison sentences.<sup>57</sup>

## WALEED ABU AL-KHAIR



↑ Waleed Abu al-Khair © Private

The SCC sentenced lawyer Waleed Abu al-Khair to 15 years' imprisonment followed by a 15-year ban on travel outside of Saudi Arabia on 6 July 2014. He was the first human rights defender to be sentenced under the 2014 counter-terror law. The court suspended five years of the prison term, but also fined him 200,000 Saudi Arabian riyals (approximately US\$53,600). The SCC Appeal Court confirmed his conviction and sentence in January 2015 following a review conducted secretly; the Appeal Court reversed the trial court's decision to suspend part of the prison sentence, ruling that he should serve the full 15-year term because he had refused to "apologize" for his alleged offences.

The SCC convicted Waleed Abu al-Khair on vague charges that related solely to his peaceful exercise of free speech and his right to freedom of association, including statements he had made to the media or on social media criticizing the authorities' repression of peaceful

dissidents.<sup>58</sup> He refused to respond to the charges against him, maintaining that the SCC was not a legitimate court and, for the same reason, declined to lodge an appeal to the SCC Appeal Court.

Before his arrest during his fifth trial session in April 2014, Waleed Abu al-Khair had acted as the defence lawyer for other peaceful dissidents tried before Saudi Arabian courts, including imprisoned blogger Raif Badawi and several of the defendants in the "Jeddah reformists" trial, although in 2009 the authorities barred him from representing certain defendants in court. In 2008, he founded the Monitor of Human Rights in Saudi Arabia, an independent human rights organization; however, the authorities prevented its legal registration. In 2007, he signed a petition advocating democratic reform and the transformation of Saudi Arabia from an absolute to a constitutional monarchy. The Ministry of Justice also refused to issue Waleed Abu al-Khair with a licence to practise law because of his efforts to legally represent and defend peaceful critics of the government held without trial or facing prosecution.

In October 2013, the Criminal Court in Jeddah had sentenced Waleed Abu al-Khair to a three-month prison term for "insulting the judiciary" and "attempting to distort the reputation of the Kingdom" for

<sup>56</sup> Amnesty International, *Saudi Arabia: Further information: NGO founders jailed for activism, dissent* (Index: MDE 23/010/2013).

<sup>57</sup> Amnesty International, *Saudi Arabia: Arrest of two prominent activists a deadly blow for human rights* (Press release, 18 September 2017).

<sup>58</sup> He was convicted of "disobeying the ruler and seeking to remove his legitimacy", "insulting the judiciary and questioning the integrity of judges", "setting up an unlicensed organization", "harming the reputation of the state by communicating with international organizations" and "preparing, storing and sending information that harms public order".

criticizing the courts and judges for failing to uphold international fair trial standards. He had been arrested after hosting an informal gathering at his home to discuss human rights and political reform.

Prior to his sentencing in July 2014 Waleed Abu al-Khair told Amnesty International that the security authorities had sought to force him and other peaceful activists to cease their activities, giving them two options: “either sign a pledge to stop... and apologize” for their activism or “bear the heavy consequences for refusing to do so: prison, travel ban and deprivation of livelihood”. He said that, despite all the harassment by the GDI, he did not regret continuing his efforts to pursue his personal goals of “justice, rights, freedom of expression and to be able to stand up and say that the regime is unfair”.

In prison he has experienced many forms of harassment and ill-treatment. In June 2016, he went on hunger strike to protest against ill-treatment by prison authorities, including denial of adequate medical treatment.<sup>59</sup> Amnesty International considers Waleed Abu al-Khair a prisoner of conscience.

After protests in the Shi’a majority Eastern Province in 2011, the Saudi Arabian authorities launched repressive measures against suspected protesters and those suspected of supporting them and other reforms or expressing views critical of the authorities. Among those targeted and prosecuted by the SCC were religious clerics, including Tawfiq al-Amr.

## TAWFIQ AL-AMR



 ↑ Tawfiq al-Amr © Private

Sources close to Tawfiq al-Amr told Amnesty International that the cleric was repeatedly tortured and otherwise ill-treated in detention after his arrest. For the first week he was held incommunicado and in solitary confinement. Since then he has been moved to several prisons where his family has had limited access to him.

The SCC convicted Tawfiq al-Amr in December 2012 and sentenced him to three years’ imprisonment, followed by a five-year travel ban. However, the SCC Appeal Court judge sent the case back, recommending a harsher sentence, after he refused to sign a pledge to stop delivering religious sermons. In August 2014, the SCC Appeal Court upheld

the harsher sentence of eight years in prison, to be followed by a 10-year ban on overseas travel and on delivering religious sermons and public speeches.

The charges against Tawfiq al-Amr stemmed from his criticism of discrimination against the Shi’a minority in Saudi Arabia, expressed through public speeches made since 2011. The court found him guilty of defaming Saudi Arabia’s ruling system, ridiculing the mentality of its religious leaders, including sectarianism, calling for change and disobeying the ruler. Amnesty International considers Tawfiq al-Amr a prisoner of conscience.

<sup>59</sup> Amnesty International, *Saudi Arabia: Further Information: Waleed Abu al-Khair starts hunger strike* (Index: MDE 23/4221/2016).

Fadhel al-Manasif, one of the co-founders of the Adala Center for Human Rights, was detained from May to August 2011 and only released after signing a pledge that he would not take part in future protests. He was rearrested on 2 October 2011 and brought to trial before the SCC on 28 February 2012. On 17 April 2014, following the closure of the Adala Center, he was sentenced to 15 years in prison, to be followed by a travel ban of 15 years, and a fine of 100,000 Saudi riyals (about US\$26,600). The SCC Appeal Court upheld his sentence in early 2015. Amnesty International considers Fadhel al-Manasif a prisoner of conscience, who has been detained solely for his peaceful expression and association.



 ↑ Fadhel al-Manasif © Private

## MOHAMMAD AL-OTAIBI



 ↑ Mohammad al-Otaibi © Private

The SCC convicted human rights defender Mohammad al-Otaibi on 25 January 2018 on vague charges that included “setting up an organization without authorization” and “participating in preparing and publishing several statements which aim to divide national unity and undermine national security”, “publishing information about his interrogation”, “calling for the change of the system of governance”, “announcing a hunger strike” and “insulting the Kingdom on a satellite channel”. The court sentenced Mohammad al-Otaibi to 14 years in prison.<sup>60</sup>

The charges arose from his efforts in 2013 to form an independent human rights organization with Abdullah al-Attawi, with whom he was tried and sentenced. The NGO aimed to spread and defend the culture of human rights, including by advocating women’s participation in political and social activities in accordance with the principles of Shari’a. They applied to the Ministry of Social Affairs to register the Union for Human Rights as a lawful association. The Ministry rejected

the application, thereby exposing Mohammad al-Otaibi, Abdullah al-Attawi and others connected with the Union for Human Rights to prosecution for operating an unlicensed association. Following the rejection, the two men came under renewed pressure from the GDI; they were summoned for questioning and forced to pledge that they would cease their human rights activities. They were brought to trial before the SCC in October 2016.

Mohammad al-Otaibi and Abdullah al-Attawi remained at liberty while on trial. In February 2017, Mohammad al-Otaibi travelled to Qatar, from where he planned to travel on to Norway which had granted him political asylum. In May 2017, however, Qatari authorities detained him and forcibly returned him to Saudi Arabia, where he was detained. Qatar’s actions contravened the principle of *non-refoulement*, which prohibits the forcible return of anyone to a country where they are at real risk of serious human rights violations and persecution.

At the time of writing, Mohammad al-Otaibi was awaiting a session before the SCC for additional charges related to his communication with international organizations and attempt to seek political asylum. Amnesty International considers Mohammad al-Otaibi to be a prisoner of conscience.

In February 2018, following the sentencing of Mohammad al-Otaibi and Abdullah al-Attawi the previous month, the SCC sentenced two other human rights defenders, Issa al-Nukheifi and Essam Koshak, to respectively six and four years in prison. Both men were convicted of posing a threat to public order through their writing, including posts on Twitter. Essam Koshak was sentenced for tweets that, among other things,

<sup>60</sup> Amnesty International, *Saudi Arabia: First human rights defenders sentenced under leadership of ‘reformer’ Crown Prince Mohammad bin Salman* (Press release, 25 January 2018).

called for an end to discrimination against women and to the ill-treatment of human rights activists. Evidence against Issa al-Nukheifi included several tweets in which he called for the creation of a parliament and consultative council elected by the people to monitor the government and public spending. He also created a Twitter poll on whether the war on Yemen (“war on Houthis militias”) should end, and published the results that showed a majority favoured an end to the war. Amnesty International considers both to be prisoners of conscience

Several religious clerics and academics detained in the September 2017 crackdown were brought to trial before the SCC in August 2018 on charges related to exercising their rights to peaceful expression and association. Most alarmingly, the Public Prosecution called for several of the religious clerics, including reformist cleric Salman al-Awda, to be sentenced to death.

## SALMAN AL-AWDA



1 Salman al-Awda © Private

In August 2018, religious cleric Salman al-Awda was brought to trial before the SCC in a secret session, where he was accused of 37 charges, some under the counter-terror law, for financially supporting a pan-Gulf youth forum; his alleged affiliation with the Muslim Brotherhood; his participation in a petition calling for, amongst other things: an elected Shura Council, separation of the executive and legislative branches of government, reform of the judicial system, the establishment of civil society organizations and freedom of expression. He was also accused of supporting calls for government reforms and regime change in the Arab region. During his first trial session in August 2018, the public prosecution demanded his execution based on the above charges.

Salman al-Awda had been arrested on 7 September 2017 from his home without a warrant, a few hours after he posted a tweet reacting to a news story about the possibility of Saudi Arabia and Qatar reconciling amid an ongoing diplomatic crisis. He wrote, “May God harmonize between their hearts for what is good for their people”.

According to his family, the authorities had previously asked Salman al-Awda and other prominent figures to tweet in support of the Saudi

Arabian government during the dispute with Qatar, but he had refused to do so. In November 2017, men in civilian clothing and men in balaclavas believed to be from the Presidency of State Security searched Salman al-Awda’s house without a warrant, confiscating electronic devices and books.

Salman al-Awda had been calling for political and democratic reforms in Saudi Arabia and other Arab states since the early 1990s. He was an advocate of a consultative Shura council, which was later institutionalized and expanded in Saudi Arabia. He was detained in 1994 without charge or trial for five years, and released in 1999, when he continued his calls for reform. In 2011, Salman al-Awda published a book calling on Arab states to address the root causes of the popular uprisings. Prior to his arrest in 2017, Salman al-Awda had repeatedly been banned from travelling, speaking and writing in the media.

At the time of writing, the trial before the SCC of Salman al-Awda, who is being prosecuted along with other religious clerics and peaceful activists, were continuing. Amnesty International considers Salman al-Awda to be a prisoner of conscience.

# 6. CRUSHING PROTESTS IN EASTERN PROVINCE

## 6.1 PERSECUTION OF SHI'A MUSLIMS

Saudi Arabia's Shi'a Muslim community, which constitutes about 15% of the country's population, is also its largest religious minority.<sup>61</sup> They live mostly in the Eastern Province, Saudi Arabia's largest province, which is also where the country's principal oil fields are located.

The ruling authorities and the religious establishment consider the Shi'a faith to be incompatible with the Wahhabi interpretation of Sunni Islam to which they adhere. They have also historically discriminated against the Shi'a community. The authorities restrict Shi'a Muslims' right to freedom of religion, including by banning them from publicly commemorating *Ashura*, which marks the death of Imam Hussain. They also discriminate against Shi'a Muslims by banning them from a range of public services, including working in a range of public service jobs and other types of employment. For example, Shi'a men cannot become judges in ordinary courts, occupy senior military or diplomatic posts, or become religious teachers. Attempts to protest against these measures were met with arrests and detentions, mainly at the hands of the GDI and the Committee for the Prevention of Vice and Promotion of Virtue (CPVPV), otherwise known as the religious police or *Mutawa'een*.<sup>62</sup>

Emboldened by the popular protests that erupted in Tunisia and Egypt, thousands of Shi'a men and women took to the streets in February 2011 across the Eastern Province demanding political, economic and social reforms. Widespread arrests sparked further public protests, fuelled by calls for the release of individuals, some of whom had been arrested in previous years and were being held without trial.

As swelling protests by predominantly Shi'a demonstrators threatened the minority Sunni-dominated government of neighbouring Bahrain, the Saudi Arabian authorities took rapid action to prop up the government next door and respond to the perceived internal threat.<sup>63</sup> In February 2011, then King Abdullah announced a huge package of state payments and subsidies for Saudi Arabian citizens, and large numbers of security forces were deployed to quell protests at home, mainly involving Shi'a activists in the Eastern Province.

Between 2011 and 2012, hundreds of members of Saudi Arabia's Shi'a minority were reportedly arrested in connection to protests in al-Qatif governorate, Eastern Province. Most were subsequently released without charge.<sup>64</sup> Others, however, were detained without charge or trial for a year or more, and then charged and brought to trial before the SCC.

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<sup>61</sup> Minority Rights Group International, "Saudi Arabia", *World Directory of Minorities and Indigenous Peoples*, last updated March 2018, [minorityrights.org/country/saudi-arabia/](http://minorityrights.org/country/saudi-arabia/)

<sup>62</sup> *Al Riyadh*, "Regulating the work of the Committee: Committee is barred from pursuing suspects, carrying out arrests" (in Arabic), 13 April 2016, [www.alriyadh.com/1146183#](http://www.alriyadh.com/1146183#)

<sup>63</sup> On 14 March 2011, the government sent around 1,200 troops in armoured vehicles to assist the Bahraini authorities' efforts to forcibly quell mass protests by thousands of predominantly Shi'a demonstrators calling for political and social change.

<sup>64</sup> Many of those released without charge were reportedly released after they agreed to sign pledges not to participate in further protests. Some were banned from travelling abroad and some were reportedly dismissed from their employment.

As tensions mounted, two well-known Shi'a clerics joined the calls for urgent political and religious reforms on 25 February 2011. The sermon given by Nimr al-Nimr, imam of the mosque in al-Awamiyya, a village in al-Qatif governorate, reached a particularly wide audience and was used as a rallying cry by protesters. The authorities arrested the second cleric, Tawfiq al-Amr, in the Eastern Province's al-Ahsa governorate, two days after he delivered his sermon, and detained him incommunicado for a week before releasing him without charge.

Further arrests followed as the protests continued and, on 5 March 2011, the Ministry of Interior issued a statement confirming a long-standing ban on protests deemed to "contradict Islamic Shari'a law and the values and traditions of Saudi society."<sup>65</sup> The statement warned that the police were "authorized by law" to take "all measures needed" against those who sought to defy the ban. Five days later, police reportedly used firearms against protesters in al-Qatif, injuring three.<sup>66</sup>

The situation in the Eastern Province remained volatile throughout the rest of 2011, with security checkpoints, search operations and confiscation of electronic devices and footage of protests, and waves of arbitrary arrests of activists and protesters and occasional reported releases.<sup>67</sup> In October, protests flared up again, marked by clashes with security forces which, according to the Ministry of Interior, resulted in 11 police officers being injured by people intent on causing "strife and discord" and who were acting at "the behest of a foreign country seeking to undermine the security of the homeland", in apparent reference to Iran. The Ministry also declared that it would "strike with an iron fist" anyone who sought to compromise Saudi Arabia's security or stability.<sup>68</sup> In November, at least four people were killed in unclear circumstances. Tension remained high throughout the subsequent months, with 10 Shi'a men shot dead in unclear circumstances between January and July 2012.



 ↑ Nimr al-Nimr. © Private

Nimr al-Nimr was shot and injured in disputed circumstances on 8 July 2012. The Ministry of Interior said he was arrested as an "instigator of sedition" and shot by security forces at a checkpoint when he and those with him "resisted arrest, fired at the security forces and crashed their car into a security forces vehicle while trying to escape".<sup>69</sup> Nimr al-Nimr's family said he was alone and unarmed when the security forces shot, wounded and arrested him, and that he did not possess a firearm.<sup>70</sup> This incident sparked renewed unrest and protests across the Eastern Province, including attacks on security forces by armed Shi'a men.

Protests and security incidents continued into early 2013. In February, thousands of people demonstrated for the release of Nimr al-Nimr. The following month, the authorities said they had arrested 16 men accused of spying for Iran. Those arrested subsequently appeared with 16 other men as defendants in the trial of a case known the "Iran Spying Cell". The authorities referred Nimr al-Nimr to the SCC for trial, accusing him of *haraba* (banditry), an offence carrying the death penalty, and other crimes.

Security incidents continued throughout 2014 in the Eastern Province. In May and June 2014, the SCC sentenced to death at least five Shi'a activists arrested in connection with the 2011-12 protests after convicting them on trumped-up charges, and sentenced others to long prison terms of up to 25 years. Those sentenced to death following unfair trials included Ali al-Nimr, a nephew of Nimr al-Nimr, who was 17 at the

<sup>65</sup> *Al Riyadh*, "Ministry of Interior confirms ban on all demonstrations and marches" (in Arabic), 6 March 2011, [www.alriyadh.com/610995#](http://www.alriyadh.com/610995#)

<sup>66</sup> Reuters, "Update 2 – Saudi protest dispersed by police – Shots heard", 10 March 2011, [af.reuters.com/article/energyOilNews/idAFLDE7292NY20110310](http://af.reuters.com/article/energyOilNews/idAFLDE7292NY20110310)

<sup>67</sup> Amnesty International, *Saudi Arabia: Repression in the name of security* (Index: MDE 23/016/2011).

<sup>68</sup> Statement by an official source in the Ministry of Interior (in Arabic), SPA, 4 October 2011, [www.spa.gov.sa/details.php?id=931222](http://www.spa.gov.sa/details.php?id=931222); and Reuters, "UPDATE 2 – Saudi Arabia blames foreign power for unrest in east", 4 October 2011,

[af.reuters.com/article/energyOilNews/idAFL5E7L43BY20111004?pageNumber=1&virtualBrandChannel=0](http://af.reuters.com/article/energyOilNews/idAFL5E7L43BY20111004?pageNumber=1&virtualBrandChannel=0)

<sup>69</sup> See Ministry of Interior statement at *Al Riyadh*, "Nimr al-Nimr arrested after resisting security forces", 9 July 2012, [www.alriyadh.com/750431](http://www.alriyadh.com/750431)

<sup>70</sup> Amnesty International, *Saudi Arabia must charge or release detained dissident cleric* (Press release, 9 August 2012).

time of his arrest. In October 2014, the SCC sentenced Nimr al-Nimr to death following an unfair trial, which led to a new wave of protests.<sup>71</sup>

On 2 January 2016, the authorities announced that they had executed Nimr al-Nimr and 46 other death row prisoners. This triggered protests in the Eastern Province as well as in Iran, where demonstrators ransacked the Saudi Arabian embassy, leading to a severing of relations between Saudi Arabia and Iran. Adding to the tension, the SCC continued to hand down death sentences and long prison terms to members of the Shi'a minority for protest-related crimes.<sup>72</sup> Further executions of Shi'a men sentenced to death by the SCC on terrorism-related and other charges were carried out in July 2017, and a mass execution of 37 men, the majority Shi'a, was carried out in April 2019.<sup>73</sup>

## 6.2 TRIALS BEFORE SCC

Over 100 Saudi Arabian Shi'a activists have been tried before the SCC on vague and wide-ranging charges arising from their opposition to the government, including peaceful criticism in speeches or on social media, participation in anti-government protests and alleged involvement in violent attacks or espionage for Iran. Several Shi'a Muslims of other nationalities have also been tried by the SCC.

In Nimr al-Nimr's trial, evidence against the cleric comprised the written testimony of the security officers who arrested him, as well as nine religious sermons and a number of interviews given by the cleric in 2011 and 2012. Amnesty International's review of the evidence based on the cleric's nine sermons and other speeches indicates that he was merely exercising his right to freedom of expression and was not inciting violence.

The use of the death penalty as a political weapon against Shi'a dissidents is increasing. On 23 April 2019, there was a mass execution of 37 men, 32 of whom were from Saudi Arabia's Shi'a minority. They included 11 men convicted by the SCC of spying for Iran and sentenced to death after a grossly unfair trial. The 11 were among 15 men who had been convicted by the SCC in December 2016 in the "Iran Spying Cell" trial and sentenced to death on charges that included high treason, "supporting protests", "spreading the Shi'a faith" and "possessing banned books and videos". The mass execution also included 14 men convicted by the SCC in a mass trial for their participation in anti-government protests and a young man who was under 18 years old at the time of the alleged crime.

### CASE OF 14 EXECUTED PROTESTERS



↑ Munir al-Adam © Private

Among those executed on 23 April 2019 were 14 Saudi Arabian Shi'a men – Hussein al-Rabi', Abdullah al-Tureif, Hussein al-Mosallem, Mohammed al-Naser, Mustafa al-Darwish, Fadel Labbad, Sa'id al-Skafi, Salman al-Qureish, Mujtaba al-Suweyket, Munir al-Adam, Abdullah al-Asreeh, Ahmad al-Darwish, Abdulaziz al-Sahwi and Ahmad al-Rabi' – who were sentenced to death on 1 June 2016 following a grossly unfair trial of 24 men before the SCC. They were found guilty of violent offences related to their alleged participation in anti-government demonstrations in the Eastern Province between 2011 and 2012. They were convicted of a range of charges that included "armed rebellion against the ruler" by, among other things, "participating in shooting at security personnel, security vehicles", "preparing and using Molotov Cocktail bombs", "theft and armed robbery" and "inciting chaos, organizing and participating in riots".

<sup>71</sup> Amnesty International, *Nimr al-Nimr at risk of execution* (Index MDE 23/2749/2015). Following the sentencing of Nimr al-Nimr, media reports stated that thousands took to the street in the Eastern Province, especially in al-Awamiyya. See: Middle East Eye, *Thousands protest cleric death sentence in Saudi Arabia as cross-sect solidarity flickers*, 16 October 2014, [www.middleeasteye.net/news/thousands-protest-cleric-death-sentence-saudi-arabia-cross-sect-solidarity-flickers-124708687](http://www.middleeasteye.net/news/thousands-protest-cleric-death-sentence-saudi-arabia-cross-sect-solidarity-flickers-124708687)

<sup>72</sup> Amnesty International, *Saudi Arabia: Mass death sentences in 'spy trial' a travesty of justice* (Press release, 6 December 2016); Amnesty International, *Fourteen men at imminent risk of beheading as Saudi Arabia continues bloody execution spree* (Press release, 24 July 2017).

<sup>73</sup> Amnesty International, *Saudi Arabia: Death penalty used as political weapon against Shi'a as executions spike across country* (Press release, 12 July 2017); Amnesty International, *Saudi Arabia: 37 put to death in shocking execution spree* (Press release, 23 April 2019).



 ↑ Hussein al-Rabi' © Private

Court documents show that all the defendants, including the 14 sentenced to death, were held in pre-trial detention for more than two years before their trial began and all alleged they had been tortured or otherwise ill-treated during interrogation to extract “confessions”. Some defendants asked the judges to request video footage from the prison that they said would show them being tortured. Others asked the court to summon interrogators as witnesses to describe how the “confessions” were obtained. In all cases judges ignored these requests and failed to order investigations into the allegations. The SCC appears to have largely based its decision on the “confessions”. All 14 men were executed on 23 April 2019.

Another of the 37 men executed on 23 April 2019 was a Shi’a man who was under 18 years old at the time of the alleged crime. Abdulkareem al-Hawaj was arrested at the age of 16 and convicted of offences related to his involvement in anti-government protests.<sup>74</sup> He was sentenced to death on 27 July 2016 by the SCC for a range of offences including “throwing two Molotov cocktails”, “participating in riots that resulted in the shooting of an armoured vehicle”, “participating in illegal gatherings and chanting against the state” and using social media to share photos and videos of demonstrations in al-Qatif and Bahrain and to “insult the leaders”. The court appears to have based its decision solely on “confessions” which he says he was forced to make while held incommunicado and tortured.



 ↑ Abdulkareem al-Hawaj © Private

Abdulkareem al-Hawaj was arrested on 16 January 2014 at a security checkpoint in al-Awamiyya. He was taken to the GDI prison in the city of al-Qatif, where he said the prison guards beat him with their hands, shoes and sticks. After a week he was moved to the GDI prison in Dammam, the capital of the Eastern Province, where he was allegedly tortured, including by being beaten and threatened with the death of his family, during interrogations by GDI officers to make him write and sign a “confession”. He had no access to a lawyer during pre-trial detention and interrogation and said that he was held incommunicado in solitary confinement for the first five months of his detention. His family looked for him in the police stations and prisons of al-Qatif governorate, but officials told them he was not held in these locations.

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<sup>74</sup> Amnesty International, *Saudi Arabia: 37 put to death in shocking execution spree* (Press release, 23 April 2019).

## ALI AL-NIMR, ABDULLAH AL-ZAHER AND DAWOOD AL-MARHOUN



 → Left to right: Ali al-Nimr, Abdullah al-Zaher and Dawood al-Marhoun. © Private

Ali al-Nimr, Abdullah al-Zaher and Dawood al-Marhoun have been sentenced to death for offences they are convicted of committing when they were under 18. They are due to be executed as soon as the King ratifies their sentences.

Ali al-Nimr, Abdullah al-Zaher and Dawood al-Marhoun were arrested on separate dates in 2012, when aged 17, 16 and 17 respectively, for offences they are said to have committed while participating in anti-government protests in the Eastern Province. They were all held in a centre for juvenile rehabilitation until they reached the age of 18, an indication that the authorities recognized and treated them as juveniles at the time.

On 27 May 2014, the SCC sentenced Ali al-Nimr to death for a range of offences, including taking part in anti-government protests, attacking security forces, possessing a machine-gun and armed robbery. Abdullah al-Zaher and Dawood al-Marhoun were also sentenced to death by the same court in October 2014 on a list of similar charges. In all three cases the court appears to have based its decision on “confessions” the young men say were extracted through torture and other ill-treatment.

In August 2018, the Public Prosecution called for the death penalty for five Shi’a activists – Israa al-Ghomgham, Ahmed al-Matrood, Ali Ouwaisher, Mousa al-Hashim and Khalid al-Ghanim – and one other individual who were tried before the SCC. Amnesty International obtained court documents indicating that the five Shi’a activists were accused of participating in protests in al-Qatif governorate and of documenting these protests on social media, in violation of Royal Decree 44/A, as well as of travelling to Iran to receive training on how to organize riots, which is punishable under the counter-terror law. Some of the defendants were also charged with providing moral support to rioters by participating in funerals of protesters killed during clashes with security forces. Amnesty International’s assessment of the charges faced by Israa al-Ghomgham and the five other defendants tried with her indicates that they may have been prosecuted and detained solely for exercising peacefully their rights to freedom of expression, association and assembly. Amnesty International has called for their release. The prosecution’s call for a death sentence for Israa al-Ghomgham was subsequently dropped. Four men tried with her still face the death penalty. Their trials were ongoing at the time of writing.<sup>75</sup>

<sup>75</sup> Amnesty International, *Saudi Arabia: Appalling plan to execute female activist must be stopped* (Press release, 22 August 2018); Amnesty International, *Saudi Arabia: Authorities must not resort to use of death penalty against protester aged 13* (Press release, 7 June 2019).

In another trial, which began in August 2018, the Public Prosecution demanded the death penalty for Murtaja Qureiris, a young man who was arrested aged 13 for allegedly participating in anti-government protests when he was 10 years old.

Murtaja Qureiris, now aged 18, was arrested in September 2014 and detained at Dar al-Mulahaza, the juvenile detention centre in the city of Dammam. He was held in solitary confinement for a month and beaten and intimidated during interrogation. His interrogators promised to release him if he confessed to the charges against him. In May 2017, he was moved to the GDI prison in Dammam, an adult prison, even though he was just 16 years old.



*Murtaja Qureiris © Private*

The charges against him include participating in anti-government protests; attending the funeral of his brother Ali Qureiris, who was killed in a protest in 2011; joining a “terrorist organization”; throwing Molotov cocktails at a police station; and firing at security forces. Throughout his detention, he was denied access to a lawyer until after his first SCC session in August 2018. In June 2019, following international pressure on his case, Murtaja Qureiris was sentenced to 12 years in prison instead of the death penalty.<sup>76</sup>

Between May 2014 and October 2019, Amnesty International documented the cases of at least 39 Shi’a men who were sentenced to death for alleged involvement in terrorism-related acts, espionage or other security-related offences in relation to the protests in the Eastern Province. At least 28 of them were executed between January 2016 and April 2019 following confirmation of their sentences by both the SCC Appeal Court and the Supreme Court and ratification by the King. During the same period, the SCC sentenced at least 30 other Shi’a men to prison terms of up to 30 years, sometimes accompanied by travel bans following their prison sentences, after convicting them on vague, overly broad charges arising from their participation in protests and other national security offences.

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<sup>76</sup> Amnesty International, *Saudi Arabia: Decision to spare teenager’s life must be followed by abolition of death penalty for all juveniles* (Press release, 17 June 2019).

# 7. UNFAIR TRIALS

Amnesty International has documented cases of scores of individuals prosecuted in unfair trials before the SCC for their activism and peaceful expression since 2011.<sup>77</sup> In all cases, Amnesty International concluded that the trials were grossly unfair, with defendants convicted and, in many cases, sentenced to death on vague, “catch-all” charges that criminalize peaceful opposition as “terrorism” and on the basis of pre-trial “confessions” that defendants recanted in court and claimed were obtained through torture or other coercive means.

Amnesty International closely reviewed eight trials before the SCC involving a total of 68 Shi’a activists in the context of protests in the Eastern Province and the trials of 27 individuals prosecuted for peacefully exercising their rights to freedom of expression and association, including human rights defenders, writers and clerics, in order to assess the degree to which the proceedings conformed with international law and standards on the right to fair trial. It examined all available official documentation, generally the judgement document, which includes the lists of charges, evidence submitted by the prosecution, including testimonies, the record of proceedings and the verdict. Amnesty International also examined some defence notes compiled during the trial and interviewed defence lawyers who participated in some of the trials and Individuals close to cases of defendants.

## 7.1 ARREST AND PRE-TRIAL DETENTION

Arrest and detention procedures are regulated by the country’s Law of Criminal Procedure, which states that “a person may not be arrested or detained without an order from the competent authority” and that a defendant should be informed of the reasons for detention and allowed to contact a person of their choice. The law does not specify a time frame during which a defendant is allowed to communicate with anyone.<sup>78</sup>

The Saudi Arabian authorities are bound by international law to immediately inform individuals of the reasons for their arrest, promptly inform them of charges brought against them and promptly bring them before a judge or other judicial officer. The authorities must also bring defendants to trial within a reasonable time or release them.<sup>79</sup>

Most defendants in the trials documented were arrested by security officials who failed or refused to produce judicial or search warrants or give reasons for the arrest. They were also detained incommunicado and in solitary confinement without access to the external world, including their families or a lawyer, for periods ranging from a few days to several months. Finally, they were held without charge or trial and without any means to challenge their detention for up to three and a half years.

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<sup>77</sup> The cases detailed in this report and listed in Annex I are not a comprehensive list of individuals tried before the SCC for their human rights work, peaceful expression or activism for greater rights for the Shi’a minority, but do represent the most emblematic cases documented by Amnesty International since 2011. Amnesty International monitored and documented cases of individuals who faced unfair trials before the SCC prior to 2011. For more information, see Amnesty International, *Saudi Arabia: Repression in the name of security* (Index: 23/016/2011).

<sup>78</sup> Law of Criminal Procedure, Articles 35 and 36.

<sup>79</sup> International Covenant on Civil and Political Rights, Article 9; Arab Charter on Human Rights, Article 14.

ACPRA founding member Mohammed al-Bajadi was held incommunicado for three weeks after uniformed security officials accompanied by others in plain clothes seized him, without producing a warrant, as he made his way to work on 21 March 2013. His family had no news of him until he was allowed to phone his wife on 5 April 2013. They were permitted to visit him for the first time only after he had been in detention for seven months.

Abdulrahman al-Hamid, also an ACPRA founding member, was told there was a warrant for his arrest but he never saw it. For 30 days he was detained incommunicado and interrogated about his role and activities with ACPRA, and about statements he had signed. He was moved to another place of detention and allowed to contact his family only after going on hunger strike.

According to a family member, reformist cleric Salman al-Awda was arrested at his home without a warrant. Two months later, men in plain clothes wearing balaclavas, who were believed to be from the Presidency of State Security, searched his house without a warrant and confiscated electronic devices and books. Salman al-Awda was held incommunicado and in solitary confinement for the first five months of his detention, with no access to his family or a lawyer except for one brief phone call a month after his arrest. In January 2018, his family learned that he was in hospital with deteriorating health. He was only allowed to call them a month later.

According to “Zeinab”, the wife of one of the defendants in the “Iran Spying Cell” case, a group of around 25 men – only two of whom were in uniform – brought her husband to their home on 6 June 2013.<sup>80</sup> He was handcuffed and neither she nor any of their four children, who were all present, were allowed to speak to him. She and her two daughters were forced to remain in a bedroom under guard while the security officials conducted a search lasting around two hours. Her husband was only allowed to tell her that he was being taken to Dhahban prison, near Jeddah, but she could obtain no other information. She explained:

**“The security officials did not introduce themselves, did not show us any warrant of arrest or a permission to search the place, and we were offered no explanation about what was happening or why exactly my husband was being detained. The experience left me and my children feeling traumatized.”**

In the three days following the arrest, “Zeinab” went to Dhahban prison but was told that her husband was being interrogated and that she could not see him. On the third day, she was told that he had been transferred to a place of detention in Riyadh.

Ali al-Nimr was held incommunicado for six months following arrest despite his family’s repeated requests to visit and talk to him. Similarly, Dawood al-Marhoon and Abdullah al-Zaher were held incommunicado for weeks following their arrest. They were both denied access to lawyers throughout their pre-trial detention and interrogation, and were only allowed contact with a lawyer at the second court hearing. Abdulkareem al-Hawaj said that he was held incommunicado in solitary confinement for the first five months.

Many of the 14 men executed on 23 April 2019 after being convicted of violent offences related to their alleged participation in anti-government demonstrations in the Eastern Province between 2011 and 2012 were held in prolonged detention without charge and in solitary confinement for several months during which they were denied access to their families and lawyers and were given no opportunity to challenge the legality of their detention. For example, Hussein al-Rabi’ told the SCC that he was detained in solitary confinement continuously for 14 months without any contact with his family or access to a lawyer or the Saudi Human Rights Commission, a government body.<sup>81</sup> Hussein Mossalem, another defendant, told the SCC that he had been held in solitary confinement without charge for 13 months and denied any contact with his family for more than nine months. Other defendants told the court they had been held incommunicado and in solitary confinement for shorter periods during which they were interrogated – 90 days for Mujtaba al-Suweyket and four months for Munir al-Adam.

The SCC’s judgement clearly shows that several defendants in the case were subjected to prolonged pre-trial detention before they appeared before the SCC. Abdullah al-Turaif was detained for three and a half years before being brought to trial. Fadhel al-Labbad, Hussein al-Muhsin and Nasser al-Mishkab were each

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<sup>80</sup> Name changed to protect the identity of the person for fear of reprisal.

<sup>81</sup> Amongst the Commission’s basic functions are visits to prisons and places of detention at any time and without requiring permission from the authorities concerned; submitting reports to the King; and receiving and investigating human rights concerns. For more details about its role see: Human Rights Commission, “About the HRC”, [www.hrc.gov.sa/ar-sa/aboutHRC/AboutHRC/Pages/HRCvision.aspx](http://www.hrc.gov.sa/ar-sa/aboutHRC/AboutHRC/Pages/HRCvision.aspx), accessed on 6 November 2019.

detained for around three years before they were brought to trial. Abdullah al-Asreeh, Mohammad al-Shakkak and Abdulaziz al-Sahwi were each detained for around two years before their trial started.

The 15 men sentenced to death in the “Iran Spying Cell” case all told the SCC that, upon arrest, they were allowed to make a short telephone call to their families but were then held in solitary confinement and denied any contact with the outside world for three months or more. They were eventually moved from solitary confinement and allowed to phone and receive visits from their families. However, they were not permitted access to their lawyers until about 10 minutes before their first court hearing. By then, they had been detained without trial for over two years. According to the official list of charges, all but two of the 32 defendants in the “Iran Spying Cell” trial were arrested between March and October 2013. Their trial began on 20 February 2016. Eleven out of the 15 men were executed on 23 April 2019.

## 7.2 TORTURE AND OTHER ILL-TREATMENT

Saudi Arabia’s Law of Criminal Procedure states that “a person under arrest may not be subjected to any bodily or moral harm, nor torture or degrading treatment”.<sup>82</sup> Nevertheless, torture and other ill-treatment are widely used against people deprived of their liberty.

Such practices violate Saudi Arabia’s obligations as a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and the prohibition of torture under customary international law. The Convention states that each state party “shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.<sup>83</sup> Saudi Arabia is also obliged to initiate “a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.”<sup>84</sup>

Torture and other ill-treatment of detainees brought before the SCC during their pre-trial detention and while imprisoned are common and widespread. Many detainees allege that torture and other ill-treatment are used to extract “confessions”, to punish them for refusing to “repent”, or to force them to undertake to not criticize the government.

The SCC took no serious steps to investigate the allegations of torture in the cases reviewed by Amnesty International and generally dismissed them on the grounds that the defendants were unable to prove their validity. The court appears to have taken no account of the fact that at the time that defendants say they were being tortured, they were detained incommunicado – a situation known to facilitate torture or other ill-treatment. The SCC also failed to consider the number and similarity of allegations made by defendants in different trials.

Several human rights defenders sentenced by the SCC said they had been tortured or otherwise ill-treated in detention, including by being kept in solitary confinement for prolonged periods, and in cold cells without adequate clothing.

During both periods of his detention in May-August 2011 and later after October 2011, Fadhel al-Manasif, co-founder of the Adala Center for Human Rights, was held incommunicado for periods ranging from a week to two months. He says he was tortured and otherwise ill-treated by interrogators in different detention centres, including by being punched, kicked, blindfolded and made to stand for hours while handcuffed and shackled from the ceiling, as well as being given electric shocks. He also says he was insulted in relation to his religious beliefs and practices as a Shi’a Muslim.

Since his arrest on 15 September 2012, human rights defender Issa al-Nukheifi has been moved several times to different prisons and has complained of torture and other ill-treatment, such as being kept in solitary confinement for two weeks and being intentionally exposed to cold temperatures without adequate clothing.

According to sources whom Amnesty International cannot name for security reasons, Tawfiq al-Amr was allegedly beaten by security guards in al-Malaz prison in Riyadh. At one point, he was moved to a section of

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<sup>82</sup> Law of Criminal Procedure, Article 2.

<sup>83</sup> Convention against Torture, Article 2.

<sup>84</sup> Convention against Torture, Article 12.

the prison where religious radicals of the Sunni Muslim faith are held and subsequently suffered threats and physical abuse. The prison authorities then moved him to a solitary cell and only provided him with light clothing and no blankets, despite being in a very cold cell.

Shortly after his detention, human rights lawyer Waleed Abu al-Khair was taken to al-Ha'ir prison in Riyadh, where it is believed he was placed in solitary confinement and deprived of sleep by constant exposure to bright lights. He was also reported to have been beaten and treated roughly while being moved from that prison to another without explanation.

At their trials, many defendants from Saudi Arabia's Shi'a minority told the SCC that they were tortured by security officials during pre-trial detention and forced to sign written "confessions" which the prosecution then submitted as evidence. In some cases, this was virtually the only purported evidence against them at their trial. Defendants sought to retract these "confessions" on the grounds that they were false, obtained unlawfully and should not be admitted by the court. In all the cases reviewed by Amnesty International, the SCC accepted the "confessions" as evidence and frequently cited them in judgements.

Yusuf al-Mushaikhass, a father of two, was convicted based on a "confession" obtained through torture in connection with his participation in anti-government protests. He told the court that he was deprived of sleep and hung from the ceiling and beaten with a bamboo cane and electrical cable on different parts of his body. He added that he was also handcuffed and forced to lie on the ground while he was beaten by four GDI officers.<sup>85</sup>

Talking to Amnesty International about the torture of Yusuf al-Mushaikhass, a person close to him said:

**"The first time I saw Yusuf I did not recognize him. The person who was in front of me was not Yusuf, he was not the same person. When he started talking about his torture during our first visit I needed to see for myself, so I asked him to show me what was under his robe. I was shocked. Even three months after his arrest and torture I could see the signs of torture all over his legs. He looked at me and said: 'You should see my back. It is even worse.' I also noticed that his right wrist was not moving, and he explained that this was because of the prolonged hanging. He even told me that on some occasions he was taken from his cell to the interrogation room but only recalls waking up again in his cell with ink on his thumb. He assumed that at some point through his interrogation he was asked to thumbprint his so-called confession without even being aware of it. It is these same confessions that were used as evidence against Yusuf to sentence him to death."**

Yusuf al-Mushaikhass was executed along with three other Shi'a men on 11 July 2017 for offences related to their participation in protests in the Eastern Province.

All 14 men executed on 23 April 2019 after being convicted of violent offences related to their alleged participation in anti-government demonstrations in the Eastern Province between 2011 and 2012 told the SCC at trial that security officials had tortured or otherwise ill-treated them during interrogation using methods such as beatings, denial of food and water until they lost consciousness, and prolonged standing in stress positions, to force them to sign false "confessions". Some said their interrogators threatened them with further torture if they refused to sign their "confession" in front of a judge and that the judge did not question them to ensure its validity or, in some cases, told detainees who complained of torture that they would be returned for further interrogation – and, potentially, renewed torture – if they failed to sign their "confessions".

One of the 14, Hussein al-Rabi', told the SCC that his interrogator had slapped his face at least 20 times, hit him on his back with a stick until he fell to the floor in severe pain, and threatened him by saying: "You will sign on everything I write whether you did it or not and, if you don't, I will hang you by your arms and tie your legs and then give you electric shocks."<sup>86</sup>

He also told the SCC that his interrogator had threatened to torture him if he refused to confirm his "confession" before the judge. When he was taken to the judge and did indeed refuse to confirm it, he was

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<sup>85</sup> Amnesty International, *Saudi Arabia: Death penalty used as political weapon against Shi'a as executions spike across country* (Press release, 12 July 2017).

<sup>86</sup> Court document made available to Amnesty International.

denied food and water for a day, causing him to lose consciousness and be taken to hospital. He was already suffering from the effect of eight bullet wounds sustained at the time of his arrest. He told the court:

**“The interrogator came to the hospital then and started beating me with his shoe. He slapped me more than 20 times on my face and ordered one of the guards present at the hospital to hold my thumb of my right hand and stamp confessions on several cases I did not commit.”<sup>87</sup>**

Munir al-Adam told the SCC that he had been severely beaten and subjected to psychological pressure during his interrogation:



**“I did not write a single letter of them [confessions]. They are fabrications written by the interrogator in his own hand and in his style and voice. Then he coerced me and forced me to say in front of the judge in the court in Dammam that they were mine, as he had threatened me with severe torture by beating with electric cables, hanging by the wrists, electric shock, and sleep deprivation for days and nights on end. One of the interrogators even said to me: ‘You are going say whatever we want. Nobody comes in here and gets out without a case, so save yourself.’ They also threatened to jail my father and brothers if I refused to confirm these fabrications, and used other methods as well to pressure me and break my will, like making me hear the screams of others under interrogation being tortured and flogged, until my endurance gave out and I feared for myself that I would perish and for my family that the interrogators’ threats against them would be carried out. So reluctantly I confirmed the statements and they handed me into the custody of a team of officers and soldiers, and I was brought in to the judge in the Dammam court bound hand and foot.”<sup>88</sup>**

Some defendants said they had been denied medical treatment for injuries sustained at the time of their arrest or during interrogation, leading to continued health problems.<sup>89</sup>

The SCC either ignored or dismissed all of the defendants’ torture claims, accepting the prosecution’s assertion that the burden of proof would rest with the defendants – despite evidence before the court showing that they had been interrogated behind closed doors, without the presence of a lawyer or any independent witnesses. The SCC also rejected requests to obtain information that would corroborate defendants’ torture claims, such as video recordings of interrogations that were conducted in rooms equipped with cameras and summoning GDI interrogators to the court to give evidence and face cross-examination by defence lawyers.

The authorities also routinely failed to inform families in advance when prisoners were about to be executed or to notify them when the executions were carried out. Unsurprisingly, this creates a persistent climate of fear among families of prisoners on death row. In fact, UN human rights bodies have found such practices can amount to inhuman treatment of the relatives of death row prisoners.<sup>90</sup> Moreover, the authorities do not return the bodies of those executed to their families for burial and a mourning ceremony, despite repeated requests by the families to the authorities, including the Presidency of State Security, to do so.

## 7.3 FAILURE TO INVESTIGATE TORTURE ALLEGATIONS

The Law of Criminal Procedure lacks any mechanism for the authorities to investigate claims of torture by defendants and their right to a remedy. While the law does provide detainees the right to submit, at any time, a written or oral complaint to the warden of a prison or detention centre and request that the warden refers it to a member of the Bureau of Investigation and Prosecution, now known as the Public Prosecution, it does not provide legal sanction or an investigative mechanism for torture.

The Convention against Torture requires the government to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture

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<sup>87</sup> Court document made available to Amnesty International.

<sup>88</sup> Court document made available to Amnesty International.

<sup>89</sup> Court document made available to Amnesty International.

<sup>90</sup> UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Interim report, 9 August 2012, UN Doc. A/67/279, para. 52.

has been committed in any territory under its jurisdiction.”<sup>91</sup> Individuals who have been tortured or otherwise ill-treated must have accessible and effective remedies, including reparation, and those responsible must be brought to justice.

Perhaps one of the most striking failings of the SCC in the trials reviewed by Amnesty International was the court’s repeated and unquestioning reliance on torture-tainted “confessions” in convicting defendants. This is a flagrant violation of Saudi Arabia’s obligations under the Convention against Torture.<sup>92</sup> In at least 20 cases of Shi’a men tried by the SCC, the defendants were sentenced to death on the basis of such “confessions”. Seventeen men were subsequently executed following these unfair trials. In case after case, the SCC failed to take any meaningful steps to investigate defendants’ detailed claims of torture or other ill-treatment. Its stock response was to reject them on the grounds that the “confessions” had been authenticated by the judge after interrogation. The response was maintained even when defendants testified that they had sought to inform the judge of the torture or other ill-treatment, but that they were either rebuffed or their appearance before the judge lasted a mere minute or so. During those few moments, the judge merely asked them to confirm their name and handwriting – not the content of their signed statement. Furthermore, the defendants were accompanied by their GDI interrogator.<sup>93</sup> On rare occasions, the SCC did request medical reports following defendants’ claims of torture, but it did not allow any independent medical examination of the defendants. The only reports permitted were those provided by doctors employed at the GDI prison.

Hussein al-Mossalem, one of the 14 men executed on 23 April 2019 after being convicted of violent offences related to their alleged participation in anti-government demonstrations in the Eastern Province between 2011 and 2012, said he sustained multiple injuries, including a broken nose, broken collar bone and leg fracture, when he was held in solitary confinement and subjected to torture, including “beating, kicking with boots, beating with an electric stick.”<sup>94</sup> He asked the SCC to ask the GDI to provide a medical report detailing his injuries. The prosecutor responded by saying that the claim of torture was not based on facts and must be proved by the defendant. Hussein al-Mossalem also testified that he was taken before a judge three times to sign the “confession” and every time he told the judge that he had been tortured. Each time, the judge took no steps to investigate his claim, returning the papers to the interrogators while Hussein al-Mossalem was taken back to detention.

In the case of another of the 14 men, the prosecution submitted “confessions” of a defendant who said that he could not read or write and claimed that he was tortured in order to sign statements written by the interrogator on his behalf. The SCC accepted these “confessions” without taking any steps to investigate the claims of torture.<sup>95</sup>

During his trial, Ali al-Nimr told the court that four GDI officers had beaten, kicked and otherwise ill-treated him to force him to “confess”. He said that he was deceived into signing statements that he was not allowed to read and was told were release orders.<sup>96</sup> These statements appear to have been the purported “confession” that the prosecution submitted to the court as its main evidence against Ali al-Nimr. Instead of ordering an immediate investigation into Ali al-Nimr’s claim of torture and other ill-treatment, the judge said he had asked the Ministry of Interior to look into the allegations against its own security officers. To Amnesty International’s knowledge, no investigation was carried out. Rather, the SCC accepted the “confession” as evidence and used it as the basis for convicting Ali al-Nimr and sentencing him to death. Despite this, the SCC Appeal Court and the Supreme Court both confirmed the SCC’s verdict and the death sentence. Ali al-Nimr remains at imminent risk of execution.

At his trial, Yussuf al-Mushaikhass told the SCC that he had been held incommunicado and in solitary confinement for almost three months following his arrest on 26 February 2014, and that he was tortured to force a “confession.” He also stated that his GDI interrogators had threatened him with further torture should

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<sup>91</sup> Convention against Torture, Article 12

<sup>92</sup> Convention against Torture, Article 15, which provides: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

<sup>93</sup> Court document made available to Amnesty International.

<sup>94</sup> Court document made available to Amnesty International.

<sup>95</sup> Court document made available to Amnesty International.

<sup>96</sup> See Amnesty International, *Saudi Arabia: Juvenile offender’s death sentence must shame the authorities into meaningful action*, 29 September 2015, [www.amnesty.org/en/documents/mde23/2557/2015/en/](http://www.amnesty.org/en/documents/mde23/2557/2015/en/)

he refuse to sign his “confession” when brought before the authenticating judge. The SCC verdict makes clear that the court rejected Yussuf al-Mushaikhass’ torture claims solely on the basis of a medical report issued by the GDI prison authorities. His lawyer requested an independent medical opinion, but the SCC judge refused, saying “this is all we have”. The SCC relied heavily on the “confession” to convict Yussuf al-Mushaikhass. He was executed on 11 July 2017; his family learned of his execution during a government statement broadcast on national television.

## 7.4 USE OF TORTURE-TAINTED ‘CONFESSIONS’ AS EVIDENCE

The Saudi Arabian judicial system requires that all confessions made during pre-trial investigations be certified by a judge in order to be used in trials. In a procedure called “confirmation of statements”, the judge checks the authenticity of the admissions and asks the defendants to thumbprint the document. Once approved, these confessions may be used as evidence. However, in all of the cases reviewed by Amnesty International, the judges appear to have authenticated defendants’ recanted “confessions” without taking any steps to investigate claims that they were coerced.

International law prohibits the use of statements obtained through torture, other ill-treatment or coercion as evidence against the victims at their trial.<sup>97</sup> Moreover, according to the UN Special Rapporteur on human rights and counter-terrorism, no statement by an accused or witness should be used against the accused when there are doubts about whether the statement was made voluntarily, even in the absence of direct evidence of physical abuse.<sup>98</sup>

The SCC, however, has consistently admitted such statements as evidence against defendants, particularly in the trials of Shi’a individuals, without taking any steps to investigate their torture claims, despite the similarities in the claims made independently by many different detainees and the consistent patterns of abuse that surface in these statements. Moreover, the court, in using these statements, ignored the prosecution’s failure to provide evidence that these “confessions” were given voluntarily. The SCC routinely relied on simple assertions by prosecutors that defendants’ “confessions” had not been obtained through torture or other duress. International fair trial standards require that the authorities disclose the circumstances in which statements were obtained if they are alleged to have been coerced, and the court must hold a separate hearing to consider the issue and decide whether to admit them as evidence at trial. Consistent with the presumption of innocence, the prosecution bears the burden of proving beyond reasonable doubt that the statements were obtained lawfully before they may be admitted as evidence at trial.<sup>99</sup>

The SCC has done none of this. In some cases, it went as far as ignoring altogether defendants’ requests to have GDI officers testify in court about the circumstances in which they allegedly “confessed”. In the few instances where GDI officers did testify, the judge did not allow them to be cross-examined by defence lawyers. For instance, in the case of the 14 men executed on 23 April 2019 after being convicted of violent offences related to their alleged participation in anti-government demonstrations in the Eastern Province between 2011 and 2012, the court refused to allow defendant Abdullah al-Turaif to call five other detainees who were with him when he had gone to court to ratify his “confession”. It also rejected the request of a number of other detainees to have access to the recording from the cameras in the interrogations’ rooms, or to call the GDI interrogators to appear before it for questioning.<sup>100</sup>

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<sup>97</sup> Convention Against Torture, Article 15. Arab Charter on Human Rights, Article 16(6). International Covenant on Civil and Political Rights (ICCPR), Article 14(3)(g).

<sup>98</sup> Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, UN Doc. A/63/223 (2008), para. 45(d). The Special Rapporteur has also stated that not only is the use of evidence obtained by torture or other ill-treatment prohibited but the use of evidence obtained otherwise in breach of human rights or domestic law generally renders a trial unfair.

<sup>99</sup> UN Human Rights Committee, General Comment 32, para. 41.

<sup>100</sup> Court document made available to Amnesty International.

## 7.5 DENIAL OF RIGHT TO LEGAL COUNSEL

Saudi Arabia's Law of Criminal Procedure states that "an accused person may seek the assistance of an agent or an attorney to defend him during investigation or trial."<sup>101</sup>

Under international law, Saudi Arabia must allow a defendant "to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."<sup>102</sup>

In practice, this requirement is routinely ignored by the Saudi Arabian authorities, including the Ministry of Interior, the prosecuting authorities and the judiciary, all of whom tolerate or even condone the continued refusal of interrogators – especially GDI officers – to permit detainees access to legal assistance. Every single defendant in the SCC trials whose case Amnesty International reviewed was denied access to a lawyer following arrest and throughout their interrogation in GDI prisons. At best, they were allowed to meet their lawyers only at the opening session of their trial before the SCC.

The defendants in the "Iran Spying Cell" case were not permitted access to lawyers during their interrogation or at any other point throughout their three years of pre-trial detention. Some met the lawyers whom their families had appointed to represent them only when they were taken to a courtroom at their first trial session before the SCC; some attended their first court session without any lawyers. This was clearly known to the judges, but they did not question why the right to legal counsel was not granted to the defendants.

Initially, at the beginning of their trial, the defendants were permitted to consult with their lawyers in prison no more than once. This denial of access fundamentally undermined the defendants' ability to prepare their defence, as their lawyers made clear to the SCC in a letter they submitted to the judges when boycotting the second hearing of the trial in March-April 2016.<sup>103</sup> Following this, defendants were allowed to meet their lawyers but with certain restrictions imposed, such as barring the lawyers from bringing in pen and paper to prepare the defence.

The wife of one defendant told Amnesty International that her husband said he had requested access to a lawyer after his arrest but had been told by GDI officers that prisons under their control were "excluded from the right to appoint a lawyer" and that he could only "appoint a lawyer in court when his trial starts because lawyers need to be approved by the court." As a result, her husband was detained for three years before he was allowed access to a lawyer.<sup>104</sup>

## 7.6 RESTRICTED DEFENCE RIGHTS

The Law of Criminal Procedure states that "if the accused appears and requests the court to grant him time to prepare his defence, the court shall grant him sufficient time". It does not specify the time frame or the circumstances that allow defendants to prepare their defence.<sup>105</sup>

The principle of "equality of arms" requires that the defence has a genuine opportunity to prepare and present its case, and to contest the arguments and evidence put before the court, on a footing equal to that of the prosecution. The principle includes the right to adequate time and facilities to prepare a defence, to legal counsel, to challenge evidence, to call and question witnesses, and to be present at the trial. Under international law, "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law", as well as to be entitled, in full equality, "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".<sup>106</sup>

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<sup>101</sup> Law of Criminal Procedure, Article 4. Penal Law for the Crimes of Terrorism and its Financing, Article 10: "Within a sufficient period of time to be decided upon by the investigatory body, any defendant accused of any crime cited in this law is entitled to hire a practising lawyer to defend him/herself before the case is sent to court."

<sup>102</sup> ICCPR, Article 14.

<sup>103</sup> Copy of letter made available to Amnesty International.

<sup>104</sup> Interview on 16 November 2016.

<sup>105</sup> Law of Criminal Procedure, Article 136.

<sup>106</sup> Arab Charter on Human Rights, Article 16; ICCPR, Article 14.

The retrial of ACPRA founding member Mohammed al-Bajadi began without him or his defence team present. Fowzan al-Harbi, another ACPRA founding member, had to meet his legal representative while standing with his feet shackled in a hallway crowded with detainees and was permitted no longer than 10 minutes. When he raised this issue in court, the judge dismissed his complaint saying that it was not his responsibility.

During Nimr al-Nimr's trial, he was denied the right to adequate time and facilities to prepare a defence and to respond to the charges brought against him. He was not allowed to conduct regular confidential conversations with his lawyer or even have access to pen and paper. The judge allowed the arresting officers not to testify at the trial or be cross-examined by the defence in court, but relied nonetheless on their written testimonies as the sole evidence that Nimr al-Nimr had opened fire at the security officers. His lawyer was not informed of the dates of a number of court hearings, was prevented from talking to the media about trial proceedings, and was forced to sign a pledge not to share court documents. In parallel, state-controlled media led a smear campaign against Nimr al-Nimr, referring to him as the "leader of the Awamiyya strife", depicting him as illiterate, uneducated and an advocate of violence, and reporting that he had lied to the judge. All this contravened his right to be presumed innocent.<sup>107</sup>

At the opening of the "Iran Spying Cell", the defendants received for the first time a list of charges more than 90 pages long that the prosecution had compiled over three years. During that period, the defendants were being held without trial and they and their lawyers were given less than a month to prepare their defence, despite the complexity of the case and the lawyers' objections.<sup>108</sup> Moreover, the SCC failed to ensure timely access to prosecution evidence and submissions needed by the defendants and their lawyers to prepare their defence.

The SCC ordered that the 32 defendants be tried in four groups of between six and 10, which were then brought before the court on a rotating basis of five hearings each. According to the wife of one defendant, her husband's trial took place over four sessions, lasting less than 10 minutes each. At the first session, she said, "he informed the judge about his willingness to appoint a lawyer and was presented with the list of charges". Three weeks later, during the second session, the lawyer requested additional time to prepare the defence, arguing that neither he nor his client had been given full access to case documentation.

The defendant's wife and lawyer were then allowed by the court registrar to examine the case file, but were not permitted to photocopy any of its contents, including her husband's "confession". They were allowed to copy the "confession" by hand. She said, "It was an important document for the lawyer to look into if he has to defend my husband and fairly challenge his case in court." Her husband was given a copy of his "confession", which he said he made under duress while detained incommunicado by the GDI, only at his third court appearance, "so that he could present his defence at the following session".

The fourth session was rescheduled to a time when his lawyer was unable to attend. The defendant asked the judge to adjourn it but "the judge replied that this might be the last session and if he does not submit his defence he will not have the opportunity to do so in court. My husband then gave the judge a few notes he prepared in writing to ensure that at least his side of events is mentioned in the case."

During his brief and perfunctory trial, her husband questioned or expressed concern several times about aspects of the proceedings but, his wife said, "The judge was completely absent, asking him to move on because he was wasting time". At the end of the trial, her husband was convicted on charges that included "communicating with Iranian intelligence over the years and meeting them at his place". He was executed along with 10 other men from the "Iran Spying Cell" case on 23 April 2019.

## 7.7 SENTENCING: *TA'ZIR* AND *HADD* OFFENCES

In all cases where defendants were sentenced to death for protest-related offences deemed to threaten state security or to constitute high treason, the SCC sentenced them to death for *ta'zir* offences (crimes that have no fixed punishments in Shari'a). The judge has the discretion to decide the sentence for *ta'zir* offences. This is unlike *hadd* offences, which are considered to have a fixed punishment under Shari'a. The prosecution

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<sup>107</sup> Amnesty International, *Cleric sentenced to death after flawed trial: Nimr Baqir al-Nimr* (Index: MDE 23/028/2014).

<sup>108</sup> The court scheduled the second session of the trial for 15 March 2016.

had also urged the court to sentence the defendants to death for *haraba*, which is considered a *hadd* offence. To be convicted of a *hadd* offence, there must be no doubt as to guilt. Defendants' retraction of alleged "confessions" introduce an element of doubt and therefore it appears that the SCC judges invoked the *ta'zir* offence to give them the discretionary power to sentence defendants to death despite doubts about the validity of their "confessions".

## 7.8 APPEALS PROCESS

The Law of Criminal Procedure gives a right of appeal to both the prosecution and those convicted of a crime, but allows them only 30 days to lodge their appeal, which must be done in writing.<sup>109</sup> In reality, the court often does not inform those convicted or their lawyers of the outcome of the appeal; those affected only learn about it if they contact the court themselves.

Under international law, everyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court.<sup>110</sup> The right to appeal is an essential element of a fair trial and the state is obliged to ensure that defendants can access and exercise this right effectively.

In the case of the 14 men executed on 23 April 2019 after being convicted of violent offences related to their alleged participation in anti-government demonstrations, the defendants were sentenced to death by the SCC on 6 June 2016. Their families learned that the SCC Appeal Court had confirmed the sentences only when they contacted court officials in May 2017. They were unable to find out when the SCC Appeal Court had considered the appeal. The families learned that the Supreme Court had also confirmed the death sentences only when they contacted the Supreme Court after the men were transferred from Dammam to Riyadh, raising fears that they could be executed as soon as the King ratified their sentences.

Similarly, the families of all four juveniles sentenced to death in the cases reviewed by Amnesty International were not informed in advance of the SCC Appeal Court hearing and only learned after the fact that the appeals had been rejected and the sentences confirmed. Ali al-Nimr was denied access to his lawyer to appeal the death sentence against him and neither the SCC Appeal Court nor the Supreme Court told him, his lawyer or his family that the sentence had been upheld until some time during the first half of 2015. In August 2015, Ali al-Nimr's family learned that the case had been transferred to the Ministry of Interior for implementation of the death sentence. Similarly, the SCC Appeal Court and the Supreme Court upheld the sentences against Dawood al-Marhoun and Abdullah al-Zaher without informing them.

The families of the defendants sentenced to death after the "Iran Spying Cell" trial remained in the dark as to the legal status of their relatives until they learned on state media that they had been executed. They subsequently found out that the SCC Appeal Court had upheld the sentence and sent the case to the Supreme Court, but it remained unclear whether the Supreme Court had upheld the sentence as some relatives received contradictory information from the courts. A relative of one of the defendants said:

**"I went to the Supreme Court and met court officials who confirmed to me that the sentence was indeed upheld. However, when I ask the SCC Appeal Court in Riyadh about it they deny it. I really do not know in which limbo I am, what should I do and whom I should address. We live in a constant fear as we do not know what to expect."**<sup>111</sup>

## 7.9 SMEAR CAMPAIGNS

The Saudi Arabian authorities have consistently used the media to influence public opinion on ongoing legal cases by smearing individuals as "terrorists", "traitors" and a threat to national security, even before the investigations and trial proceedings have concluded. There is no independent media in Saudi Arabia; all media is state-controlled and aligned with government policies.

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<sup>109</sup> Law of Criminal Procedure, Articles 193-205.

<sup>110</sup> ICCPR, Article 14(5).

<sup>111</sup> Interview on 28 September 2017.

Throughout the “Iran Spying Cell” trial, news articles were published in Saudi Arabian newspapers detailing developments based on biased information provided by the Ministry of Interior. Some of the articles distorted the facts, accusing the defendants and their lawyers of obstructing the course of justice.

According to Taha al-Hajji, who legally represented the majority of defendants in the “Iran Spying Cell” case, such information and its distorted interpretation is leaked on purpose into the public domain to influence and instigate public opinion against the accused.<sup>112</sup> The defence team believes that by doing so the authorities are preparing the public to accept the court verdict, including death sentences, before the SCC renders its decision. In a letter submitted to the court in March 2016, the lawyers announced their intention to boycott the trial in protest at the “media war” declared on their clients, and the unfairness of the trial.

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<sup>112</sup> Phone interview in 2016. Date withheld on request for security reasons.

# 8. CONCLUSION AND RECOMMENDATIONS

As this report shows, the SCC is a compliant, reliable instrument of government repression rather than an independent court of law committed to upholding due process, the right to a fair trial and justice. Indeed, rather than standing up for justice and human rights, the SCC and its judges have repeatedly acted as willing accomplices in the state's ongoing suppression of those courageous enough to voice their opposition, stand with those most oppressed or call for meaningful reforms.

The SCC's role has been to create a false aura of legality around the government's misuse of the counter-terror law to silence its critics and opponents. By doing so, the SCC and its judges are effectively complicit in a wide range of human rights violations – arbitrary arrests and detentions, unfair trials, death sentences, torture and other ill-treatment, threats, and repression of freedom of expression, association and peaceful assembly. Indeed, the authorities rely on the SCC to stifle freedom of expression, association and peaceful assembly, and to hand down harsh sentences, including the death penalty, following grossly unfair trials.

The current human rights situation in the country is bleak despite the recent positive reforms with regards to women's rights. The consolidation of prosecutorial powers and control over the security apparatus in the hands of the King has not improved matters. The Crown Prince's reforms have not resulted in the release of prisoners of conscience or the reining in of the feared security and intelligence forces. Indeed, the number of prisoners of conscience continues to rise and includes the country's leading women's rights activists.

Reforms are long overdue and desperately needed. The Saudi Arabian authorities must end fair trial violations before the SCC, stop the repression of freedom of expression, association and peaceful assembly, and strengthen the state's compliance with international human rights law and standards.

Amnesty International addresses the following recommendations to the respective authorities who have the remit to make the changes needed to end unfair trials before the SCC. In many cases, action on these recommendations will require authorization by the King and the Crown Prince. Amnesty International also addresses recommendations to other states and the UN Human Rights Council.

## TO THE KING AND CROWN PRINCE OF SAUDI ARABIA

- Release all prisoners of conscience immediately and unconditionally, ensure their convictions and sentences are quashed, lift all administrative bans and other penalties against them, drop any pending charges, and promptly afford them appropriate reparation for the violations of their human rights.
- Declare an official moratorium on all executions with a view to abolishing the death penalty. Pending full abolition:
  - commute all death sentences;
  - ensure legislation is in line with international law and standards, including by

- a) repealing the death penalty for people below 18 years of age at the time of the offence, and
- b) ensuring those sentenced to death are retried on recognizably criminal charges in proceedings that fully adhere to international fair trial standards, excluding coerced testimony and precluding the death penalty, or release them.

## **TO THE PRESIDENCY OF STATE SECURITY**

- Immediately revoke all bans on foreign travel imposed on prisoners of conscience.

## **TO THE SUPREME JUDICIAL COUNCIL**

- Fundamentally reform the SCC to ensure it is capable of conducting fair trials and protecting defendants from arbitrary detention, torture and other ill-treatment in accordance with international standards, or dismantle it. To conduct fair trials, the SCC and associated institutions must fully respect the rights to liberty and security of person, to a fair and public hearing and the presumption of innocence. This requires ensuring that anyone arrested is told the reasons for their arrest and promptly informed of any charges, promptly brought before a judge, and can challenge the lawfulness of their detention before a court with the authority to order their release. At a minimum, the SCC must respect the following rights for defendants:
  - adequate time and facilities to prepare their defence and to communicate with counsel of their choosing;
  - to be tried in their presence and with assistance of legal counsel of their choosing;
  - to examine prosecution witnesses and call witnesses on their behalf;
  - not to be compelled to testify against themselves or confess guilt;
  - to exclude from proceedings any evidence obtained through torture, coercion or other unlawful means; and
  - provide a meaningful review of convictions and sentences, by a higher tribunal, which should be conducted in the presence of the defendant and their legal counsel.
- Immediately revoke all judicially imposed bans that arbitrarily restrict the right to freedom of expression, including on the use of social media or other electronic means of communications, as well as bans on individuals giving media or other interviews.
- Oversee fair hearings aimed at affording appropriate reparation to all victims of torture and other human rights violations by state officials or those acting on their behalf. Such reparation should include, at a minimum, a formal apology by state authorities, financial compensation for loss of earnings and personal distress, and such medical treatment and psychological support as may be necessary in individual cases to address injuries or other trauma sustained in state detention or custody, which treatment and/or support should be provided at state expense. Such reparation should also include the return of the remains of individuals executed to their families or informing families where their loved ones are buried.

## **TO THE PUBLIC PROSECUTION**

- Ensure that all those against whom there is sufficient admissible evidence of responsibility for torture or other ill-treatment are promptly prosecuted on criminal charges in fair trials and, if convicted, given sentences commensurate with the gravity of the offence. In no case should anyone be sentenced to death or to punishments that violate the prohibition of torture and other cruel, inhuman or degrading punishment, such as amputation or flogging. Those suspected of torture should be suspended from positions where they exercise power or authority over detainees until the outcome of their cases. Those convicted should be barred from returning to such positions.

## TO THE COUNCIL OF MINISTERS

- Establish an independent commission of inquiry into the use of torture and other ill-treatment by the GDI and other security forces. Those conducting the inquiry should have the authority, powers and resources to:
  - visit and search all places of detention without advance notice;
  - seize and examine official documents and records they consider could be relevant to their investigations;
  - summon, question and take testimony under oath from officials they consider may possess information relevant to their investigation;
  - protect victims, witnesses and their families; and
  - compile evidence for use in bringing criminal charges against any state official or other individual, of whatever rank and status, who is found to have prima facie responsibility for torture or other ill-treatment – specifically, those suspected of responsibility for ordering, perpetrating, assisting, acquiescing in or covering up torture or other ill-treatment.
- Promptly repeal or amend the Penal Law for Crimes of Terrorism and its Financing, promulgated in October 2017, to make it fully compatible with international human rights law and standards, including by:
  - adopting definitions of “terrorism”, “terrorist crime” and “terrorist entity” that are not overly broad and vague or infringe on the peaceful exercise of human rights; removing provisions contained in the current law that criminalize peaceful exercise of the rights to freedom of expression, association and assembly; and
  - removing the law’s provisions that authorize up to 90 days’ incommunicado detention, arrests without warrants, and denial of access to lawyers during interrogations.
- Strike out provisions such as “disobeying the ruler”, “harming the reputation” of Saudi Arabia, “questioning the integrity of officials” and “questioning the independence of the judiciary” from Saudi Arabia’s legal lexicon, and replace them with enforceable, constitutional and legal guarantees of free speech, freedom of association and freedom of peaceful assembly.
- Repeal or amend the 2007 Anti-Cyber Crime Law and other regulations relating to the use of electronic media so as to abolish those provisions that criminalize the use of such media for peacefully exercising rights to freedom of expression, association and peaceful assembly.
- Amend the Law on Associations and Foundations, which came into effect in 2016, to remove restrictions that prevent the legal registration of independent human rights groups and other civil society organizations and thereby remove the powers of the Ministry of Labour and Social Development to prevent or impede the legal registration of such associations on grounds such as that the Ministry deems them to be breaching “national unity”.
- Review the cases of all prisoners currently under a death sentence with the aim of commuting their sentences and offering them a new and fair trial without recourse to the death penalty, or release them.
- Ensure that the death penalty is not imposed on anyone under the age of 18 at the time of their alleged offence, in accordance with Saudi Arabia’s obligations under the Law on Juveniles and the Convention on the Rights of the Child.
- Ratify without reservations the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- Lift Saudi Arabia’s reservations to the Convention of the Rights of the Child, which limit the enjoyment of rights enshrined in it.

## TO OTHER STATES

### TO SAUDI ARABIA'S STRATEGIC ALLIES, INCLUDING THE USA, EU MEMBER STATES AND THE EU:

- Urge the Saudi Arabian government to fully respect and observe international human rights law and standards, in general, and in its strategy, law and practice in combating terrorism, in particular.
- Raise the misuse of the counter-terror law at the highest levels and call for the repeal or substantial reform of the law to ensure it does not criminalize freedom of expression, association or peaceful assembly.
- Call on the authorities to significantly amend the Anti-Cyber Crime Law to ensure that criticism of government policy and practice, as well as other forms of protected speech, are not criminalized.
- Call on the authorities to amend the Law on Associations and Foundations to bring it into full conformity with international law and standards, to allow for the formation and operation of independent human rights organizations and to restrict the wide discretionary powers extended to the Ministry of Social Affairs to disband organizations deemed to be "harming national unity".
- Monitor trials of human rights defenders and ensure adequate follow-up to these efforts, including by raising fair trial rights violations with the authorities and publicly documenting and denouncing the violations.
- Use the broad range of diplomatic tools at the disposal of states, including public statements, and make regular assessments of their impact. Quiet diplomacy should not be the sole recourse. A combination of different tools applied at different levels of decision-making is often most effective at achieving impact. States should follow through on their actions, ensuring ownership and adequate follow-up.
- Ensure more systematic engagement with Saudi Arabian authorities on human rights. Reported efforts to build on political dialogue between the EU and Saudi Arabia should include the establishment of a dedicated human rights dialogue. The dialogue should define clear objectives, specific benchmarks and human rights indicators to measure progress, as outlined in the EU Guidelines on human rights dialogues. The objectives of the dialogue should be guided by priorities identified in consultation with Saudi Arabian human rights defenders.

## TO THE UN HUMAN RIGHTS COUNCIL

- Adopt a resolution to set up a monitoring mechanism of the human rights situation in Saudi Arabia. Such a mechanism should have a mandate broad enough to cover the situation of freedom of expression, association and assembly, human rights defenders, as well as efforts to repress civil society in the country, including through repressive laws and tools of the justice system such as the SCC.

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# MUZZLING CRITICAL VOICES

## POLITICIZED TRIALS BEFORE SAUDI ARABIA'S SPECIALIZED CRIMINAL COURT

Despite the Saudi Arabian authorities' rhetoric about reforms, it has unleashed an intense crackdown on citizens promoting change in the last few years. One of the instruments of that repression has been the Specialized Criminal Court (SCC), which was set up in 2008 to try individuals accused of terror-related crimes. Amongst those the court has prosecuted are human rights defenders, lawyers, journalists, religious clerics and political activists, including Shi'a activists from Saudi Arabia's Eastern Province.

Amnesty International has documented the cases of 95 individuals who were tried before the SCC between 2011 and 2019. It has concluded that the SCC's judges have presided over grossly unfair trials, handing down prison sentences of up to 30 years and numerous death sentences, in an effort to silence dissent. In many cases, they have tried defendants on vague charges under the counter-terror and Anti-Cyber Crime laws, which criminalize peaceful opposition as "terrorism", and convicted them on the basis of torture-tainted "confessions".

Amnesty International is calling on the Saudi Arabian authorities to release all prisoners of conscience immediately and unconditionally and fundamentally reform the SCC to ensure it is capable of conducting fair trials, is protecting defendants from arbitrary detention, torture and other ill-treatment.