

2016

International Day in Support of Victims of Torture June 26

TORTURE PERSISTS IN SAUDI ARABIA IN A CLIMATE OF IMPUNITY



Introduction

Numerous reports bear witness to the fact that torture and other forms of ill-treatment are commonly practised in prisons and detention centres in Saudi Arabia. The judiciary is not independent. Courts routinely admit as evidence confessions allegedly made under duress, without attempting to investigate the allegations. ALQST has documentary evidence of a judge ordering a defendant to be re-interrogated under torture when the evidence against him was initially too weak. There is no independent monitoring of prisons and detention centres, and no effective mechanism for making complaints. Civil society organisations and human rights defenders who speak out against torture and other abuses are harassed and subject to reprisals including arbitrary arrest and lengthy prison terms.

ALQST would like to take the opportunity of the UN's International Day in Support of Victims of Torture to remind the Saudi authorities of their obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Kingdom of Saudi Arabia ratified in 1997, and to draw the attention of the international community to the kingdom's signal failings in this regard.



Saudi Arabia's legal obligations

Torture is a crime under international law. It is absolutely prohibited and cannot be justified under any circumstances. This prohibition is binding on every member of the international community, regardless of whether a state has ratified international treaties in which torture is expressly prohibited.

Article 5 of the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, states:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Subsequent to the adoption of the Universal Declaration, a number of legally binding human rights treaties were developed to supplement the basic principles, each one with a Committee of experts to monitor implementation by States Parties. The treaty dealing with torture is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in 1984. Article 1 of the Convention defines “torture” to mean:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

States Parties to the Convention are obliged to take effective legislative, administrative, judicial or other measures to prevent acts of torture, and to ensure that all acts of torture are offences under its criminal law, punishable by appropriate penalties which take into account their grave nature. Each State Party must keep under systematic review methods of interrogation and arrangements for the custody and treatment of anyone arrested, detained or imprisoned, with a view to preventing any cases of torture; and they must carry out a prompt, effective and impartial investigation wherever there is reason to believe an act of torture has been committed. Its legal system must provide fundamental safeguards against torture and ill-treatment, and allow victims access to redress, compensation and rehabilitation.



The Kingdom of Saudi Arabia ratified the Convention in 1997 but made reservations to Article 20 and paragraph (1) of Article 30, as follows:

“The Kingdom of Saudi Arabia does not recognise the jurisdiction of the Committee as provided for in Article 20” of the Convention, which enables the Committee against Torture to make a confidential inquiry into information that appears to it to indicate that torture is being systematically practised in the territory of a State Party, while at all stages of the inquiry seeking the cooperation of the State Party concerned; and

“The Kingdom of Saudi Arabia shall not be bound by the provisions of paragraph (1) of Article 30” of the Convention, which allows for disputes on the interpretation or application of the Convention to be submitted to arbitration or to the International Court of Justice.

In addition, Saudi Arabia has not yet signed or ratified the Optional Protocol to the Convention against Torture, adopted by the UN General Assembly in 2002, the objective of which is “to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”.

At the UN Committee against Torture’s 57th session, in April 2016 in Geneva, the Saudi delegation announced that the kingdom was considering ratification of the Optional Protocol and the lifting of its reservation to Article 20 of the Convention.

Saudi Arabia is also bound by the Arab Charter on Human Rights, adopted by the League of Arab States in 1994 and ratified by Saudi Arabia in 2009. The Charter seeks to promote universal human rights in the Arab region, reaffirming principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Cairo Declaration on Human Rights in Islam. With regard to torture, Article 8 states:

“No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment. Each State Party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes punishable by law and not subject to any statute of limitations. Each State Party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.”

Article 23 obliges States Parties to provide victims of such violations with effective remedy.



Saudi Arabia continues to violate the Convention against Torture

Under international pressure, the Saudi authorities have introduced some legislative and administrative reforms of the kingdom's judicial system, but many glaring shortcomings remain, and many of the safeguards written into its domestic laws are widely disregarded in practice. When making its long overdue periodic report to the Committee against Torture in Geneva earlier this year, the kingdom avoided addressing several of the Committee's outstanding concerns, and refused to answer many of its requests for data and detailed information.

In that report, Saudi Arabia stated that "torture is a criminal offence, punishable under the provisions of the Islamic Shariah, and the laws of the Kingdom forbid all forms of torture". However, Saudi legislation does not define the crime of torture in a manner consistent with Article 1 of the Convention, and the kingdom's Basic Law has still not been amended as required to incorporate an absolute prohibition of torture.

ALQST has documentary evidence of a judge ordering a murder suspect to be tortured in December 2014. When the case first came to court there was evidence against the defendant that the judge found strong but inconclusive, and the defendant, who had been confused and given inconsistent statements, persisted in contesting the charge laid against him. The judge ordered the case to be re-investigated with torture being applied to the accused.

Meanwhile, Saudi Arabia continues to sentence convicted offenders to, and impose, corporal punishments including flogging and amputation of limbs, citing the supremacy of Sharia law in justification. In international law, however, such punishments are considered to amount to torture and cruel, inhuman or degrading treatment and are thus in breach of the Convention. Furthermore, they are sometimes applied by Saudi courts in cases where no Sharia punishment is prescribed, and where judges can therefore exercise discretion in sentencing and the accused can be pardoned by the king.



Failure to maintain fundamental safeguards

In most countries there are basic procedures and protocols in place in the criminal justice system that help ensure that abuses do not and cannot occur. Such safeguards include the right of detainees to legal counsel; the right to contact a family member or other person of their choice to inform them of their arrest and whereabouts; the right to be notified promptly of the reason for their detention and to receive assistance with language translation and interpretation; the right to confidential communication between lawyers and clients; the right to have prompt access to independent medical assistance; and the right to appear promptly before a judge with the power to order their release.

Although Saudi Arabia's 2013 Law of Criminal Procedure claims to afford all detainees with legal safeguards against torture, many of these rights are frequently neglected or denied, and persons arrested are not routinely informed of their rights. Saudi investigators may at their discretion bar accused persons from having contact with other prisoners or detainees, or being visited by anyone other than their lawyers or legal representatives, for up to sixty days. Detainees can be held without charge for up to six months, and in practice are often held for much longer. There are particular concerns about the frequent violation of safeguards and lack of monitoring in the detention facilities of Al-Mabahith, the Ministry of Interior's General Investigation Directorate, where most of those held are kept in pre-trial detention for prolonged periods of time.

An important safeguard against torture and abuse is independent monitoring of detention centres and prisons. All such facilities should be under judicial supervision and be subject to regular and unannounced visits by independent institutions. In Saudi Arabia the body responsible for such monitoring is the Bureau of Investigation and Public Prosecution, which reports to the Ministry of Interior and thus has a clear conflict of interest. The purportedly independent Human Rights Commission also has a role in prison visiting and monitoring, but is likewise subject to the authority of government officials; its deputy president, H.E. Dr Nasser bin Rajeh al-Shahrani, headed the official Saudi delegation to the Committee against Torture session in Geneva. It has recorded only one case of serious abuse, and there has been no information about the outcome of any investigation or follow-up. The National Society for Human Rights, which the authorities describe as a civil society organisation, is financially supported by the Ministry of Social Affairs; it too is tasked with prison visiting and receiving complaints, but it is unclear what, if anything, it has achieved in this respect.

Furthermore, the detention facilities of Al-Mabahith are outside any judicial control and have no formal monitoring arrangements at all.



A climate of impunity

It is difficult to quantify the extent of torture in Saudi Arabia because victims are generally unwilling to discuss the violations they have suffered, due to a not unfounded fear of reprisals against themselves or their families. The mechanisms available for making complaints are ineffective because they do not ensure confidentiality, and complaints that are made rarely seem to be followed up. There are no data on investigations resulting in the punishment of perpetrators of abuse.

Civil society could play a valuable role in preventing the possibility of acts of torture by monitoring the conditions and treatment of detainees and prisoners; the authorities have publicly acknowledged this by allowing the creation of the Human Rights Commission and the National Society for Human Rights. However, as discussed above, these two bodies lack independence, effectiveness and credibility. No other human rights organisations are allowed to operate, as the ministry concerned refuses to license them, and the authorities have systematically harassed, arrested and imprisoned dozens of civil society activists for peacefully speaking out against abuse.

Monitoring of prisons and detention centres, as described above, is weak to non-existent. The judiciary itself lacks independence, being heavily influenced by the Ministries of Justice and Interior, and the king having absolute control over the appointment and dismissal of judges. Defendants' claims in court that their confessions were extracted under torture are routinely dismissed, yet sentences up to and including the death penalty are passed in reliance on these confessions without the allegations being investigated. As a result, those who perpetrate acts of torture and abuse almost always go unpunished, and the victims receive no redress or compensation.

All of these factors contribute to the climate of impunity surrounding torture in the Kingdom of Saudi Arabia.



Prisoners of conscience

ALQST believes that torture occurs more often, though not exclusively, during the interrogation of terrorist suspects than in other cases. Methods reportedly include severe beatings; subjection to extremes of temperature; beatings on the soles of the feet; deprivation of food, sleep or light; hooding; suspension by the hands and feet; stress positioning; and being held in solitary confinement for long periods.

In cases known to ALQST directly, prisoners of conscience – those held solely for peaceful expression of their beliefs, including criticism of the authorities' human rights violations – have also been subjected to cruel, inhuman and degrading treatment or punishment, including beatings, being kept in solitary confinement or in a bitterly cold cell, and deliberate medical neglect. Convicted prisoners are sometimes held beyond their due date of release.



The war on terror

The introduction of the kingdom's anti-terrorism legislation, the Penal Law for Crimes of Terrorism and its Financing, in January 2014, and the establishment in 2008 of the Specialised Criminal Court for terrorism cases, have made matters worse by reducing still further the safeguards against torture, and by criminalising peaceful acts of expression. The SCC is heavily influenced by the Ministry of Interior and routinely declines to investigate claims of forced confessions.

ALQST would like to highlight the words of UN Secretary-General Ban Ki-moon in this regard:

“As states grapple with their response to violent extremism, it is essential to stress that torture can never be used to fight terror; in fact torture terrorises. The use of torture is wrong from a moral point of view and wrongheaded from a strategic standpoint. Practising torture hurts the very cause of democracy, justice and human rights that the terrorists seek to undermine, and it gives them fuel to gain new recruits”.



Recommendations

ALQST calls on the Saudi authorities to:

- incorporate into Saudi Arabia's domestic laws a crime of torture defined in a manner consistent with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with appropriate penalties;
- reform the kingdom's judicial and administrative processes so as to prevent violations of the existing protections enshrined in domestic law;
- ensure in practice as well as in law that detainees can exercise their rights to prompt access to legal support and medical attention, to family members and, in the case of non-Saudi nationals, to consular assistance;
- institute prompt, effective and impartial investigations of allegations of torture and coercion during pre- and post-trial custody and, where evidence of abuse is found, prosecute the perpetrators and give effect to the victims' right to redress, compensation and rehabilitation;
- recognise the right to peaceful expression of beliefs, including the defence of human rights, and the legitimacy of civil society organisations peacefully engaged in this area of work; and
- immediately and unconditionally drop all charges against human rights activists and release all detainees and prisoners held solely for exercising legitimate rights and freedom, including human rights defenders Waleed Abu al-Khair, Dr Abdullah al-Hamid, Sheikh Sulaiman al-Rashudi, Dr Mohammad al-Qahtani, Dr Abdulrahman al-Hamid, Dr Abdulkareem al-Khoder, Issa al-Hamid, Abdulaziz al-Shubaily, Saleh al-Ashwan, Fowzan al-Harbi, Mikhlif al-Shammari, Muhammed Saleh al-Muhaimeed, Mohammed Abdullah al-Turki, Fadel al-Manasef, and Abdulaziz al-Sunaidi.

ALQST calls on the international community to act by all available means to:

- hold the Saudi authorities responsible for all acts of torture and other cruel, inhuman and degrading treatment or punishment inflicted on any person within its territory of jurisdiction;
- bring pressure to bear on the Saudi authorities to implement the measures listed above; and
- urge the Saudi authorities to end the practices and omissions that currently maintain a climate of impunity within the kingdom for those who continue to carry out acts of torture.

ALQST, is an independent non-governmental organisation that advocates for human rights. We monitor and document human rights violations that occur in Kingdom of Saudi Arabia at the hands of authority figures.

® all rights reserved for ALQST 2016.
Printed by ALQST for Human Rights,



Website: www.ALQST.org
Email: contact@alqst.org
Address: Suite 193, 42 Watford Way,
Hendon, London NW4 3AL,
United Kingdom