

Examination of Saudi Arabia's Second Periodic Report

ESOHR - 28 March 2016



European Saudi organisation for Human Rights

المنظمة الأوروبية السعودية لحقوق الإنسان

Introduction

This report examines some aspects of Saudi Arabia's second periodic report,¹ which will be addressed within the upcoming second review of Saudi Arabia by the Committee against Torture. The report is based on research conducted in February and March 2016 and focuses on individuals detained by the Saudi authorities in the Eastern Province in relation to activities perceived as opposing the government. Government surveillance and restrictions on means of communication were among the obstacles to research for this report. A number of people declined to be interviewed out of fear that they or their detained relatives may risk repercussions by the Saudi authorities. We have therefore exercised extreme caution when including information on cases in this report, omitting names and other information that may identify interviewees or put people at risk. The last part of this report provides information on corporal punishment in Saudi Arabia. This report was commissioned by the European Saudi Organisation for Human Rights (ESOHR) and was researched and written by Cilina Nasser, an independent human rights researcher on the Middle East and North Africa. ESOHR identified cases for this report and liaised between the researcher and interviewees.

With regards to paragraphs 28, 30 and 31 of Part II of the State party report on the rights of suspects upon arrest and during detention:

Royal Decree numbered M/2 and dated on 22 Muharram 1435 of the Islamic calendar (26 November 2013)² amended the Law on Criminal Procedure of 2001 (the year 1422 of the Islamic calendar), including Article 114 relating to the length of the detention period of individuals permitted by law. Prior to the amendments, Article 114 of the 2001 Law on Criminal Procedure permitted the detention without trial for a maximum period of a 180-day limit, that is up to six months, following which detainees must be brought before a judge or released. The amendments introduced in November 2013 enabled authorities to extend the detention period successively and beyond the six-month limit for "exceptional cases", in Arabic *halat istithna'iya*. The law does not state what constitutes an "exceptional" case and does not set a time limit to the extension of detention without trial beyond the six-month period. Such vague legal provisions can be interpreted very broadly to arbitrarily deny individuals their basic rights.

Individuals arrested on suspicion of engaging in political or security-related activities perceived by the Saudi authorities as opposed to the government are usually held at detention facilities run by the General Directorate of Investigation (GDI), known in Arabic as *al-mabahith*, which is the main internal security force responsible for arresting and detaining people in the name of security. In the Eastern Province, most individuals held for security reasons are detained at the GDI prison in Riyadh Road in the city of al-Dammam. Minors detained on accusations related to anti-government activities are usually held at Dar al-Molahaza al-Ijtima'iya, which falls under the jurisdiction of the Ministry of Social Affairs, in al-Dammam, and they are transferred to the GDI if they turn 18 while in detention.

Research for this report shows that it is common for detainees held at the GDI in al-Dammam to be detained for over six months without charge or trial and without access to a lawyer. Most of the cases researched for this report were held or continue to be held without trial for periods exceeding

¹Kingdom of Saudi Arabia, Consideration of reports submitted by States parties under article 19 of the Convention, Second Periodic Report, CAT/C/SAU/2, 7 January 2015. Hereinafter "State Party Report".

² Link to the Law on Criminal Procedures after amendments were introduced on 22 Muharram 1435 (25 November 2013) at <http://fac.ksu.edu.sa/salissa/blog/70885> last accessed on 27 March 2016

six months, including at least one minor held at Dar al-Molahaza al-Ijtima'iyah.³ Other cases were either detained in recent months and they have not completed six months in detention or there is limited information about their circumstances.

Munir Al Adam, aged 23, was arrested on 17 Jamada al-Ula 1433 (8 April 2012) and his trial began in September 2015, that is he was detained without trial for three years and five months. **Haidar Al Leif**, aged 40, was arrested on 24 Jamada al-Akher 1434 (4 May 2013) and his trial started on 27 Sha'aban 1436 (14 June 2015), that is he was detained without trial for two years and one month. He was sentenced to death in January 2016. **Zaher al-Zaher**, aged 32, was arrested on 29 Safar 1433 (23 January 2012) and his trial started on 18 Zulhajja 1434 (22 October 2013), that is he was detained without trial for one year and nine months. He was sentenced to eight years' imprisonment. **Reda Qreirees**, aged 26, was arrested on 3 Sha'aban 1435 (1 June 2014) and continues to be held without trial since one year and nine months. **Ali al-Nimr**, aged 21, was arrested on 22 Rabee al-Awal 1433 (14 February 2012) when he was a minor.⁴ His trial began on 25 Zulqada 1435 (1 October 2013), that is he was detained without trial for one year and seven months, and was sentenced to death. **Mortaja Qreirees**, aged 15, and the brother of Reda Qreirees, was arrested on 26 Zulqada 1435 (20 September 2014), one month before he turned 14.⁵ He continues to be held without trial at Dar al-Molahaza al-Ijtima'iyah for juveniles in al-Dammam since one year and six months. **Salem Abu Abdallah**, aged 31, was arrested on 11 December 2014 and continues to be held without trial since one year and three months. **Mohammed Bin Saleh al-Zinadi**, aged 34, was arrested on 30 Rabee al-Akher 1433 (23 March 2012) and his trial began in the second half of 1434 or 2013, that is he was detained without trial for at least one year and three months. **Mohammed Abu Abdallah**, aged 35 and the brother of Salem Abu Abdallah, was arrested in January 2015 and has been held without trial since one year and two months.⁶

As far as ESOHR is aware, none of these detainees was allowed access to a lawyer or a legal representative during their detention without trial, including those who continue to be held without trial, and none of them was allowed to challenge the legality of their detention.

Prior to the amendments to the Law on Criminal Procedures introduced in November 2013, ESOHR documented cases of detainees who were held for a period that exceeded the maximum six-month limit on detention without trial permitted under the 2001 Law on Criminal Procedures. Such cases include Salman Qoreish,⁷ Reda Abd Rabb al-Rassool al-Baharna,⁸ Ali al-Qassab,⁹ Munir al-Qallaf,¹⁰ and Salah al-Seisaban.¹¹

³ Detainees researched for this report were selected because of the availability of credible sources and information.

⁴ Ali al-Nimr was born on 18 Rajab 1415 (21 December 1994).

⁵ Mortaja Qreirees was born on 24 Rajab 1421 (22 October 2000).

⁶ Information on the age of the detainees under this section, and the dates specifying the time of arrest and start of trial were based on different sources, including sources knowledgeable on these cases, court rulings and other documents reviewed by the researcher.

⁷ Information on this case is found at <http://esshright.blogspot.co.uk/2013/10/269-02102013-06012013-01101993.html>

⁸ Information on this case is found at <http://esshright.blogspot.co.uk/2013/10/24102013-19122012-19122012.html>

⁹ Information on this case is found at <http://esshright.blogspot.co.uk/2013/11/07112013-21032012-900-2011-200.html>

¹⁰ Information on this case is found at <http://esshright.blogspot.co.uk/2013/11/15112013-23091997-4-1.html>

¹¹ <http://esshright.blogspot.co.uk/2013/12/06122013.html>

Consistent testimonies gathered for this report shows that detainees held at the GDI are usually allowed to make one phone call to a family member lasting around two minutes within a week or 10 days of their arrest, after which detainees have no access to the family or a lawyer for a period usually ranging between one month and seven months.¹² During this period, the family receives no further information about the detainees.¹³

With regards to paragraphs 25, 38, 39, 40, 51, 52, 53, 57, 58, 59 of Part II of the State party report on the prohibition of torture and paragraphs 96, 97, 101, 141 and 142 of Part II of the State party report on the rights of accused persons to make statements free of coercive measures:

Determining the true scale and extent of torture and other ill-treatment in Saudi Arabia is extremely difficult. In part this is due to the crackdown on civil society actors not affiliated to the government, particularly the arrest and detention of prominent human rights defenders in recent years, including several who were tried and received lengthy prison sentences on charges stemming from their right to freedom of expression and association. Human rights defenders who are still operating inside the country are unable to work freely, including on torture, out of fear that they too could be charged, tried and sentenced to imprisonment.

In addition, there are incidents when accused persons on trial report to court that they were subjected to torture and that confessions they had made during interrogation were extracted under torture, but the court does not respond effectively, including by failing to order an investigation into the torture allegations. Accused persons tried before the Specialised Criminal Court, a tribunal set up in 2008 to try those charged with security-related offences, and researched for this report had asked the court to obtain evidence that could prove they had been subjected to torture, particularly at the GDI, and that confessions they had signed were made under torture. The court, however, neither obtained the requested evidence nor investigated the torture allegations. Moreover, the court used confessions made under torture as evidence and, in some cases, issued death sentences.

Salem Abu Abdallah,¹⁴ aged 31, has been detained since 11 December 2014 without charge or trial. He is held at the GDI detention in al-Dammam. He is reported to have been subjected to torture during at least four different periods of his detention, including the first month of his arrest in December 2014, which was interrupted after he passed out under torture and was taken to hospital; then again during the Islamic calendar month of Zulhajja, that falls in September and October 2015; then during the Islamic calendar month of Rabee al-Awal, that falls in December 2015 and January 2016; then in February 2016.

Salem Abu Abdallah was subjected to either waterboarding or another method of torture that leads to the same effect, the feeling of drowning, during which a torturer repeatedly forced his face under water until he felt like he was drowning, and when he was allowed to take a breath of air, his face would be forced back into the water.

On 18 February 2016, seven torturers beat Salem Abu Abdallah up and marks of cigarette burns were seen on his hands. Salem Abu Abdallah pleaded with his torturers to kill him and is reported to

¹² Interviews conducted for this report throughout March 2016 with credible sources. Name of and information on these sources are withheld to maintain anonymity of the individuals involved.

¹³ Ibid

¹⁴ Information on this case was given by a credible source interviewed for this report on 4 and 14 March 2016. The name of and information on the source are withheld to maintain anonymity.

have previously expressed relief that his brother, Ali Abu Abdallah, was killed during a security raid in December 2014,¹⁵ saying, “I’m glad he doesn’t have to suffer like I do.”

Haidar Al Leif,¹⁶ aged 40, is reported to have been forced into stress positions for long hours, beaten up on “sensitive parts of his body”, and threatened by interrogators that if he did not confess, they would detain other family members and bring his wife and force him to divorce her. During his pre-trial detention, he had marks of wounds that looked like burns. He was sentenced to death by the Specialised Criminal Court in the last week of January 2016.

Mortaja Qreires,¹⁷ aged 15, was arrested on 20 September 2014 and held at Dar al-Molahaza al-Ijtima’iya, including for around one month in solitary confinement during which he was slapped on the face and hit on other parts of his body. It is unclear which detaining authority was questioning him and whether or not officials at Dar al-Molahaza al-Ijtima’iya, which falls under the authority of the Ministry of Social Affairs, were aware of his situation. On at least one occasion, he was questioned by the GDI but it is unclear if Mortaja Qreires was taken to the GDI offices or if GDI members visited him at Dar al-Molahaza al-Ijtima’iya. His circumstances improved after he was taken out of solitary confinement. He has been allowed access to his family, continues his school studies and takes part in various activities organised by the Dar al-Molahaza al-Ijtima’iya. However, he is held without trial and if he continues to be detained until he turns 18, he will be at risk of torture, because he will be transferred to the GDI.

Munir Al Adam,¹⁸ aged 23, spent the first two weeks of his arrest in April 2012 at al-Qatif police station where he was repeatedly subjected to *falaqa*, a method of torture whereby the detainee is beaten by a stick on the sole of the feet, after which he started crawling for days because he could not walk on his feet. He was also subjected to torture after he was transferred to the GDI in al-Dammam where he continues to be held. At the GDI, a torturer threw him on the floor and as Munir Al Adam was lying face down, the torturer banged his foot while wearing his shoes forcefully on Munir Al Adam’s back and kicked him on the face and other parts of his body randomly. Also, a torturer stepped with his shoes on Munir Al Adam’s fingers and toes and crushed them, resulting in the removal of one fingernail and one toenail. Munir Al Adam has been on trial since September 2015 and is at risk of receiving a death sentence, as demanded by the prosecutor. Munir Al Adam told the judge at the Specialised Criminal Court that he signed documents containing confessions attributed to him, because he was exhausted from torture.

Zaher al-Bassri,¹⁹ aged 27, who was tried before the Specialised Criminal Court on charges that included shooting at security personnel, denied the charges throughout his trial and requested the court to notify the concerned security personnel to attend as witnesses and to testify against him. The witnesses did not attend or testify in court. Zaher al-Bassri received a death sentence earlier this year.

¹⁵ Ali Abu Abdallah was killed during a security raid in al-Awamiya on 20 December 2014.

¹⁶ Information on this case was given by a credible source interviewed for this report on 7 March 2016. The name of and information on the source are withheld to maintain anonymity.

¹⁷ Information on this case was given by two credible sources interviewed for this report on 17 and 27 March 2016. The name of and information on the sources are withheld to maintain anonymity.

¹⁸ Information on this case was given by a credible source interviewed for this report on 7 March 2016. The name of and information on the credible source are withheld to maintain anonymity.

¹⁹ Information on this case was given by a credible source interviewed for this report on 4 March 2016. The name of and information on the credible source are withheld to maintain anonymity.

An accused man,²⁰ who was tried before the Specialised Criminal Court in 2013 and 2014, told the judge that he was tortured and that he was forced to sign on documents containing confessions extracted under torture. The judge asked him: “How can you prove that you were subjected to torture? Do you have proof?” The accused replied that he was admitted to the GDI-run medical facilities after he had an injury to his ear as a result of torture and that he slept there for three days. He asked the court to obtain the medical report from the GDI-run medical facilities, which are located within the GDI premises where detainees are held in al-Dammam. The judge agreed to his request. On the trial sessions that followed, the judge told the accused that the court requested the medical report from the GDI-run medical facilities but that the court had not received it. The accused asked to postpone the trial session. On the fifth trial session, the judge told the accused that the court had not received the medical report and asked: “Until when do you want to wait for it?” The accused replied that he was willing to wait. The judge said, “Even if we get the medical report, it’s not going to make a difference.” The accused asked why, and the judge replied: “If we do get the medical report, it will prove that you had an ear injury. But it will not prove that the injury was as a result of torture, and it will not prove that an injury, even if it had resulted from torture, was inflicted during the period of interrogation. There may be several reasons why your ear was injured.” The accused asked for the trial to be postponed for one last time. On the following session, the court said that it had not received the medical report. The accused was sentenced to a prison term below 10 years.

In relation to paragraphs 49 and 50 of Part II of the State party report on the health of detainees:

Research conducted for this report indicates that security forces have prioritised interrogation over the treatment of suspects or detainees who need medical care and delayed, obstructed or interfered in the work of health workers providing treatment.

The medical care of **Salem Abu Abdallah**, aged 31, may have been compromised since his arrest on 11 December 2014 when he received several firearm injuries, including three to his hand, leg, and pelvis, as he tried to flee during a security raid apparently intended for his arrest in al-Qatif. According to credible information, Salem Abu Abdallah was taken to interrogation at the GDI, not to hospital, despite the injuries he sustained on his arrest. He was only admitted to the military hospital in Dahrhan only after he passed out under torture, around two to three weeks after his arrest, and he stayed at the hospital for several weeks. Salem Abu Abdallah was then transferred to the GDI-run medical facilities, which are located within its premises in al-Dammam. Upon arrival, a GDI officer told him, ‘how many people have you killed?’ Salem Abu Abdallah said, ‘none.’ The GDI officer replied: “And you know how to answer back?” He grabbed Salem Abu Abdallah from the neck and started beating him. The GDI officer then started questioning him as he beat him repeatedly.²¹ During his stay at the GDI-run medical facilities, Salem Abu Abdallah was not allowed to ask about anything, including questions relating to the time and day. Security personnel would tell him, ‘don’t ask.’ He may have stayed at the GDI hospital for over a month.

Available information on **Munir Al Adam**, aged 23, indicates that he was held in solitary confinement for around four months and the half, during which an interrogator slapped him so forcefully on his ear that he felt a sharp pain for weeks and a high pitched whistling sound. Munir Al Adam was taken to the military hospital in Dahrhan only after he was removed from solitary confinement. A doctor

²⁰ The name of this person and the exact prison sentence he received are withheld to protect the witness to this incident and who provided information for this report..

²¹ Interview conducted for this report with a legal representative who prefers to remain anonymous on 12 March 2016.

gave him a medication and told him that he needed an operation to his ear. On a later visit to the doctor, Munir Al Adam had lost his hearing in the affected ear and the doctor told him an operation would no longer be helpful.

The medical care of **Zaher al-Bassri**, aged 27, may have been compromised when he was arrested at the al-Mowasa Hospital in al-Qatif on 17 Sha'aban 1434 (25 June 2013) as he was preparing to have an operation to treat a waist muscle injury. Around a week earlier, he had an operation to his broken leg. A source familiar with his case said that Zaher al-Bassri's injuries were sustained during a car accident he had while riding his motorcycle in Sanabes in the Tarout Island near al-Qatif, during which he injured his leg and waist. The list of charges against him, however, says that Zaher al-Bassri's injuries were in connection with anti-government activities that he was allegedly engaged in.

Information gathered for this report suggests that Zaher al-Bassri was beaten up when he was arrested at the hospital. Zaher al-Bassri was initially taken to the GDI offices in 'Enak near al-Qatif and then transferred to the GDI in al-Dammam. During his solitary confinement and interrogation period, he was hit on his waist muscle injury and the leg that was operated on several days before his arrest. As a result, his leg was broken again. Zaher al-Bassri was taken to the GDI-run medical facility where he put a cast on his leg, but it has since swelled and has become curved differently. His muscle waist injury requires an operation that cannot be performed at the GDI-run medical facilities.

With regards to paragraph 30, 68, 113 of Part II of the State party report about the rights of accused persons to be defended by lawyers or other representatives during the investigations and trial stages:

Detainees held by the GDI in the Eastern Province usually have no access to a lawyer or other legal representative until the start of their trial. Such pre-charge and pre-trial detainees, who are denied access to a lawyer or legal representative, include those held for periods exceeding six months. Pre-trial detainees below the age of 18 held on accusations related to anti-government activities are also denied access to a lawyer or legal representative while being detained at Dar al-Molahaza al-Ijtima'iya, which falls under the jurisdiction of the Ministry of Social Affairs. If these pre-trial detainees turn 18 while in detention, they are transferred to the GDI and can only have access to a lawyer or legal representative at the start of their trial.

Usually, the accused appoints a lawyer or a legal representative at the first session of the trial, and thereafter the accused is given access to visits by lawyers and legal representatives, whom he or she has appointed at the court. The lawyers or legal representatives have visiting rights, referred to as *ziyarat al-wakeel*, to the detention facility where the accused is held. However, research for this report shows that lawyers and legal representatives are subjected to security searches that obstruct or interfere in the preparation of their defence and that compromise the confidentiality of the defence team's preparations.²²

Lawyers and legal representatives are usually taken by bus from the GDI main gate to the reception building, at which they are searched thoroughly. They hand in all possessions, except for the clothes they are wearing, to the security personnel. Among the things they are carrying and which they have to give to security are all documents relating to their client's case. They are then taken by bus to another building, where the rooms allocated for visits are, and they are subjected to another search there. They are then given blank papers and pens to use during their meeting with their client.

²² Interviews conducted for this report on various dates in March 2016 with lawyer Taha al-Hajji and a legal representative for a relative during his trial before the Specialised Criminal Court.

Lawyers and legal representatives are permitted to meet with their client privately usually for one hour and, sometimes, for an hour and the half. Security personnel usually come in to the room where the lawyer or legal representative is meeting with their client to give them back the documents that were taken away earlier during the search, and they usually do so around 10 to 15 minutes after the start of the meeting. Sometimes, the documents are returned to the lawyers or legal representatives around 30 minutes after the start of the meeting with their client. There are times when documents are given back to lawyers or legal representatives with missing pages. Legal representatives, who are ordinary citizens with no certification in law and are usually relatives of the accused, are subjected to additional restrictions, apparently because they are perceived by the GDI as unaware of their legal rights.

After the visit is over, lawyers or legal representatives have to hand security personnel the papers with the notes written down during their meeting with their client. The papers are then returned to the lawyers or legal representatives apparently after being reviewed by a security officer and/ or photocopied.

Fadhel al-Manasif, a human rights defender, was sentenced by the Specialized Criminal Court in Riyadh on 17 April 2014 to a 15-year prison term, to be followed by a 15-year travel ban, and a fine of 100,000 Saudi riyals (about US\$26,600). The court convicted him of charges including “breaking allegiance to the ruler”, “stirring strife and sectarian division between citizens by inciting protests and marches”, “communicating with foreign media to harm the Kingdom’s government, its people and national unity” and “founding a banned association”. Fadhel al-Manasif appealed against the ruling and the court reduced the length of the prison term by one year on 9 September 2014.

A lawyer, who represented Fadhel al-Manasif and interviewed for this report,²³ recounted an incident that happened after one of his visits to Fadhel al-Manasif at the GDI in al-Dammam while he was on trial:

“My visit to Fadhel ended and the security personnel took away the papers with the notes I’ve written during my discussion with Fadhel. They were unusually late in giving me back the papers and then I was told that the officer in charge wanted to speak to me. I went to his office and there he started arguing with me over my handwritten notes regarding Fadhel’s account of his arrest and he suggested that Fadhel was sending a codified message to others outside prison. The officer said he was not going to give me back my papers, but I insisted and told him that it was my right as a lawyer to hear my client’s account of events and that I needed the papers to prepare for his defence. He eventually agreed and gave them back.”

An accused man, whose name is withheld to protect his legal representative interviewed for this report, appointed relatives as his legal representatives during his trial before the Specialised Criminal Court. One of his legal representatives described the restrictions imposed by the GDI personnel on him and the other legal representatives every time they visited their client:

“On one occasion, he had a trial session coming up in two weeks and we badly needed to meet him more than once to prepare for his defence and we explained that to the GDI. But they said they had to deal with many visitors for other detainees and allowed us to see him only once before the trial session.... Every time we visited [the accused], the security personnel would take away the documents related to the case and would not give them back during the meeting with my client. I once argued that I needed to raise points in the documents with my client. The officer said, ‘if you have any questions about the case, memorize the points you want to raise with your client, and we will give

²³ Interview conducted with Fadhel al-Manasif’s lawyer, Taha al-Hajji, on 15 March 2016.

you a pen and paper so that you can write down his answers.’ So I did that. After the visit ended and I was leaving, a security man took away the papers with the handwritten notes I’ve written. I asked that he gives them back to me, but he said that no letters were allowed to be sent to or from prison. I insisted that I take back my papers explaining that I need them to defend my client, so he referred me to the officer in charge. I argued with the officer until we reached a compromise: they’d give me back the papers with my defence notes after they make copies of them to be kept by the GDI. I had no choice but to agree. But how are we obliged to give our notes of defence to the GDI? How would I know that they won’t send them to the prosecution to help them to discredit our defence?”

Ali al-Nimr, who is a nephew of Sheikh Nimr al-Nimr,²⁴ was arrested on 22 Rabee al-Awal 1433 (14 February 2012) at the age of 17. Like other pre-trial detainees, he had no access to a lawyer throughout his detention. His trial before the Specialised Criminal Court began on 25 Zulqada 1434 (1 October 2013) on charges,²⁵ such as taking part in or supporting perpetrators of attacks against security forces with improvised Molotov cocktail explosives, as well as other charges relating to freedom of assembly and expression, such as attending and organising protests. On 28 Rajab 1435 (27 May 2014), Ali al-Nimr was sentenced to death on the basis of *ta’zir*, that is at the judge’s discretion and not on the basis of the ‘divinely’ prescribed punishments of *hadd* or *qisas*.

Ali al-Nimr was denied access to his lawyers throughout his trial. Ali al-Nimr appointed two lawyers for his defence along with his father, but all of them were denied the *ziyarat al-wakeel* visits allocated to legal representatives during the trial of the accused. None of his lawyers were allowed by the GDI to meet Ali al-Nimr on such visits²⁶ or to contact him by other means of communication throughout his trial. His father, who is also one of his legal representatives, was allowed to meet him only on visits allocated for families.

The lawyers complained to the court that the GDI was denying them the *ziyarat al-wakeel* visits. The judge informed the defence that the court had already sent a *khetab* or formal letter, numbered 4011/35 and dated 27 Safar 1435 (29 December 2013), to the GDI allowing the lawyers to meet with Ali al-Nimr.

One of Ali al-Nimr’s lawyers²⁷ interviewed for this report recounted how the GDI had continued to deny them the *ziyarat al-wakeel* visits:

“We requested to visit Ali and provided the GDI with the court letter’s reference number and date. An employee responded, ‘okay, we will check it out for you.’ Then the GDI got back to us saying, ‘we have not received anything.’ We again complained to the court about the GDI’s refusal that we meet with Ali. The court sent another letter [numbered 6190/35 and dated 4 Rabee al-Akher 1435 (3 February 2014)] but the GDI did not give us access to Ali. When I raised the issue again at the court, the judge replied, ‘our duty is to send the letter, and we have done that.”

In the early stages of the trial, the court gave Ali al-Nimr the option to respond to the charges against him either verbally or in writing. Ali al-Nimr said he wanted to submit written replies. On 17 Jamada al-Ula 1435 (18 March 2014), Ali al-Nimr told the court he was unable to prepare his replies for his defence because he was denied the *ziyarat al-wakeel* visits and, consequently, he could not discuss his case with his lawyers. In response, the judge warned Ali al-Nimr that if he failed to bring

²⁴ Sheikh Nimr al-Nimr was a Shi’a Muslim cleric opposed to the Saudi government and was among 47 people executed in January 2016.

²⁵ Information from the court ruling under which Ali al-Nimr was sentenced to death.

²⁶ Ibid

²⁷ Interview conducted for this report with Ali al-Nimr’s lawyer, Taha al-Hajji, on 15 and 26 March 2016

his written replies for the following trial session, the court would consider that he was refusing to respond to the case brought against him, and that the court would go ahead with its proceedings without his responses.

In addition, the defence was allowed access only to the list of charges against Ali al-Nimr, but there was no full disclosure to the defence team of all the material held by the prosecution, including the recorded reports of investigations by both the GDI and the Bureau of Investigation and Public Prosecution, all statements made by Ali al-Nimr during the investigations, and the report detailing the messages, images, videos and other material found on Ali al-Nimr's mobile phone and other possessions that the authorities had confiscated and that were used as evidence against him in court.

Another detainee, **Munir Al Adam**, aged 23, was arrested on 17 Jamada al-Ula (8 April 2012) and his trial began on 22 Zulqada 1436 (5 or 6 September 2015). He was detained for three years and five months without access to legal representation. He finally appointed a lawyer on the first session of his trial but, so far, has been denied to contact his lawyer by phone or to receive *ziyarat al-wakeel* visits.

With regards to paragraph 166 of Part III of the State party report, Saudi Arabia has linked its continued use of corporal punishment to judicial rulings deriving from the provisions of Islamic shari'a:

It is significant to note that the Shari'a-based rules in Saudi Arabia that provide for the use of death penalty and corporal punishment are the following:

1. *qisas* (retribution), which is considered as divinely prescribed for intentional murder but allows relatives of the murder victim to pardon the convicted murderer, in which case the death penalty is dropped, sometimes in return for a financial compensation.
2. *hudud* (plural for *hadd*), which are divinely prescribed fixed offences, such as murder, theft, adultery and apostasy, that have divinely prescribed fixed punishments, including beheading, limb amputation, and flogging. *Hudud* punishments are not subject to pardon.
3. *ta'zir*, which refers to rulings made at the judge's discretion for offences that have no prescribed punishment under *hudud* or *qisas*. *Ta'zir* punishments can be pardoned by the king, because they do not carry the divine element.

Many executions and corporal punishment rulings have been handed down by judges using their discretion (*ta'zir*). As such, these executions and corporal punishment rulings do not fall under the divinely prescribed punishments, which arguably means that they could have been avoided.

A statement by the Ministry of Interior²⁸ on the mass executions of 47 persons, including Sheikh Nimr al-Nimr, on 2 January 2016 said that only four²⁹ of those executed received the death penalty based on the divinely prescribed *hadd al-haraba*. The remaining 43, including Sheikh Nimr al-Nimr, were executed after receiving death penalties based on *ta'zir*, that is at the judges' discretion.³⁰

²⁸"Issuance of a Statement by the Ministry of Interior on the Hadd Punishment of a Number of Offenders", Ministry of Interior website, 2 January 2016. Read at shortened url: <https://goo.gl/EPbbs4>

²⁹The names of the four persons who were executed on the basis of *hadd al-haraba* as mentioned in the MOI statement are 'Adel Mohammed Salem Abdallah Yamani, Abdul Aziz Rasheed Bin Hamdan al-Toweil'i, Abdallah Moslim Hameed al-Raheef, and Nimr Sahaj Zeid al-Kreizi.

³⁰"Issuance of a Statement by the Ministry of Interior on the Hadd Punishment of a Number of Offenders", Ministry of Interior website, 2 January 2016. Read at shortened url: <https://goo.gl/EPbbs4>

Death penalties on the basis of *ta'zir* issued by the Specialised Criminal Court are common, according to activists in the Eastern Province. **Ali al-Nimr** and **Haidar Al Leif**, whose cases were researched for this report, have been sentenced to death on the basis of *ta'zir*. Information is limited about the death sentence received by **Zaher al-Bassri**.

Also, the corporal punishment of flogging appears to be widespread in Saudi Arabia primarily because of rulings based on *ta'zir*. Government-affiliated media have linked the high number of flogging rulings and the excessive number of lashes given in these rulings to the great discretionary powers that judges enjoy when dealing with offences that have no divinely prescribed punishments.

According to a 2014 article³¹ by al-Hayat, an influential daily published by Prince Khalid Bin Sultan Bin Abdul-Aziz,³² some legal experts alarmed by the widespread *ta'zir* flogging rulings had called for setting a maximum number of lashes for the punishment when imposed on the basis of *ta'zir*, that is at the judges' discretion.

Al-Riyadh newspaper published several articles over the years about the *ta'zir* flogging. On 30 April 2010, the newspaper carried the headline, "Excessiveness in flogging punishment reaches unpalatable figures: disparity in *ta'zir* rulings is due to difference in judges' opinions and situation of convicts."³³ A year earlier, the same newspaper published an article with a headline carrying a similar alarming message, "Flogging Punishment Reaches Astronomical Figures."³⁴

Some legal experts were quoted in Saudi newspapers arguing that while the highest number of lashes in the *hudud* rulings of flogging stands at 100 in accordance with the holy book of the Quran, judges have used their discretionary powers to hand down hundreds and, sometimes, thousands of lashes in single flogging rulings.

Those sentenced to flogging in Saudi Arabia are usually persons convicted on charges relating to moral offences, such as adultery, alcohol consumption, illegal drug use and smuggling, as well as religious crimes, such as blasphemy – as is the case with online activist Raif Badawi.³⁵

According to information received from the Saudi Organisation for Rights and Freedoms (SORF),³⁶ prior to each session of flogging, the convict is usually examined by a medical staff, who are usually general practitioners, at the prison's medical facilities, and they shall decide if the convict is 'fit' for flogging. If the prison doctors assess that the convict's health condition or state could deteriorate as a result of flogging, they report the convict as 'unfit' for flogging. The competent court then refers this convict to a medical committee. If the committee's assessment is consistent with that provided by the prison doctors, the court postpones the flogging punishment until the convict resumes his or her health. The court may cancel the punishment if the convict has serious health issues that could deteriorate if he or she is subjected to flogging.

³¹"Calls to Decrease the Sentence of Flogging and to Reject Its Application on Less Serious Offences", al-Hayat, 26 September 2014. Read at <http://www.alhayat.com/m/story/4788053>

³²Prince Khalid Bin Sultan is a member of the Saudi royal family and a former deputy minister of defence.

³³"Excessiveness in flogging punishment reaches unpalatable figures: disparity in *ta'zir* rulings is due to difference in judges' opinions and situation of convicts", al-Riyadh newspaper, 10 April 2010. Read at <http://www.alriyadh.com/521123>

³⁴"Flogging Punishment Reaches Astronomical Figures", al-Riyadh newspaper, 5 April 2009. Read at <http://www.alriyadh.com/420182>

³⁵ Raif Badawi was sentenced in 2014 to 10 years' imprisonment and 1,000 lashes.

³⁶ SORF provided information for this report on the application of the flogging punishment in Saudi Arabia on 16 March 2016.

According to SORF, the way flogging is carried out differs depending on the gender of the victim. If a male convict is found to be 'fit' for flogging, he shall be subjected to this physical punishment while in a standing position. The flogging is then carried out by a stick in a fast-paced manner on the back-side of the body, and is spread from the area below the neck to the ankles. Some male convicts suffering health issues that are not considered serious enough to suspend the flogging receive lashes only from the waist to their ankles, according to SORF.

If a woman is found to be 'fit' for flogging, she has to be in a sitting position, place her hands under her thighs, and bend forward until her face is parallel to the ground. She is then subjected to flogging only on her back, from the shoulders to her waist.³⁷

Many male convicts are flogged publicly – as is the case of online activist Raif Badawi - if the judge sees that the punishment shall achieve deterrence and serve as a warning to potential offenders about what will happen if they too commit a similar offence or crime.³⁸ Women and minors are usually flogged in the premises of the prison where they are held.³⁹

A reporter from Al-Sharq al-Awsat, a daily noted for supporting the Saudi government, who was given access to Briman Prison in Jeddah, described women convicts sentenced to flogging in an article published in 2005.⁴⁰ She wrote that a group of women wearing '*abaya*' would gather near the main prison gate in the prison courtyard waiting to be flogged in turn.

SORF reported that women are flogged every day in jails across the kingdom. According to SORF, female prison guards check the clothes worn by these women prior to the flogging session and if a woman is found to be wearing a thick layer of clothing or several layers to reduce the painful effects of flogging, prison guards will order her to remove them and wear only a thin layer of clothing. They should also wear the '*abaya*', which is a long, black cloak that women have to wear by law because the person carrying out the flogging is a man. They also wear a veil covering the entire head and face. After they are flogged, women are examined again by the prison doctors to check their blood pressure and they are given painkillers and creams to help heal the wounds on their back as a result of the flogging.

ENDS

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ "A Women's Jail Director: Order in the Life of Female Prisoners is the Best Support to Prepare Them in Leading Normal Lives", al-Sharq al-Awsat, 11 January 2005. Read at <http://archive.aawsat.com/details.asp?article=276647&issueno=9541#.VvT2ajhSHIU>

European Saudi Organization for Human Rights
Binzstr. 38, 13189 Berlin
T: +49 30 68071676
M: +49 152 09075691
info@eso-hr.org
www.eso-hr.org