

My reference: alGhamghametal/KSA/2019

## MEMORANDUM IN ANTICIPATION OF UPCOMING HEARING IN THE CASE OF AL-GHAMGHAM AND OTHERS

In my capacity as a lawyer specialising in international human rights law, I have been instructed to review and analyse the indictment containing charges against six Saudi human rights defenders; Ahmed Bin Hussein Bin Abdallah Al Matroud, Ali Bin Ahmed Bin Abdallah Uwayshir, Moussa Bin Jaafar Bin Amin al-Hashim, Israa Bint Hassan Bin Abdallah al-Ghamgham, Khalid Bin Abdallah Bin Saud al-Ghanim and Mujtaba Bin Ali Bin Mohammed al-Mazin (“Indictment” and “Accused” respectively). My report, and this memorandum, is based on a translated copy of the indictment (Arabic into English).

A review of the Indictment raises a number of concerns that will be fully explored in my completed report. Whilst I am currently in the midst of compiling this report, due for release by the end of January 2019, in light of the upcoming hearing scheduled for 13<sup>th</sup> January 2019 I can make the following initial observations on the Indictment.

- **The Reliance on Confessions.** All six individuals face trial before Saudi Arabia’s Specialised Criminal Court (SCC). The SCC is Saudi Arabia’s purported anti-terror court, although many observers note that its focus appears to have moved from terrorist suspects to human rights defenders and anti-government protesters over recent years. The Indictment explicitly sets out that all six individuals have provided full, legally certified confessions to all the crimes alleged. In a number of previous SCC cases concerns have been raised on the alleged use of torture to extract similar confessions. Saudi Arabia has ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”). The Convention Against Torture not only explicitly outlaws the use of torture and other forms of ill treatment, but also requires that allegations of torture are fully and independently investigated, and that evidence obtained from torture should never be used to underpin convictions. In the event that torture, or other ill treatment as defined in the Convention Against Torture, was used against the Accused in this case, it would not only be a violation of international human rights law but also call into serious question the initiation of prosecution of the Accused.

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- **The Non-Serious Nature of Crimes Alleged.** The imposition and use of the death penalty continue to decrease across the world. Whilst at present there is no complete international ban on the use of the death penalty, a ban on the imposition of the death penalty for crimes other than the most serious is recognised as an international standard. In this case, the Accused are charged with offences relating solely to the organisation of rallies or protests. In particular, the Indictment alleges the Accused travelled abroad to attend courses on organising rallies and protests and used social media to organise and document subsequent protests or rallies, including creating and joining Facebook groups and posting comments and videos online. The Indictment contains no allegations of serious crimes such as murder or even less serious offences such as physical violence or destruction of property. In my view, the offences alleged in the Indictment fall well short of the “most serious” standard. Accordingly, in my opinion, the imposition of the death penalty as called for in the Indictment likely violates international human rights law.
- **Violation of the Right to Freedom of Expression and Protest.** The Indictment raises several concerns over the right to freedom of expression and protest. The right to freedom of expression and the right protest are enshrined in many international human rights instruments including Article 19 of the Universal Declaration of Human Rights and Article 24 of the Arab Charter on Human Rights.

As an initial point, it is noteworthy that the Indictment appears to explicitly set out that demonstrations are banned in Saudi Arabia. Any such blanket ban is likely in and of itself to be a violation of international human rights law.

In addition, it is important to note that freedom of expression, relates not only to making agreeable comments or issuing laudatory statements with regards to government or officials, but also to making challenging and critical remarks. It is striking within this context however that the majority of the slogans allegedly shouted by protestors including the Accused are relatively benign in nature. Slogans including “we shall not be humiliated”, “we demand the annulment of capital punishment sentences” and “we demand penalties for those who fired bullets”, even if proved to be true, would appear to fall well within permitted forms of expression under international human rights law.

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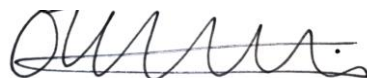
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It should also be noted that international human rights law does permit restriction on freedom of expression, but this can only occur when such restrictions are necessary to protect the rights or reputations of others, national security, public order, public health, or public morals. Importantly, any such restriction must also be provided for by law and be proportionate. The Indictment seems to demonstrate that Saudi Arabia's current legislation in effect criminalises even seemingly nonthreatening comments if related to the Saudi government. Applying the test of necessity, lawfulness and proportionality, the legislation under which the Accused are prosecuted appears, in my view, to be a disproportionate restriction on freedom of expression even if argued it exists for the protection of society.

Moreover, even if the existence of the legislation were to be considered a legitimate restriction, the call by Saudi Arabia's Public Prosecutor for the execution of five of the six individuals for these offences is, in my opinion, a sentence lacking any sense of proportionality. On this point it is worth recalling once again that the Indictment contains no allegations of murder or even physical harm or destruction of property. All charges relate to the organisation of rallies and protests. Accordingly, the request for the imposition of the death penalty is, in my view, a violation of international human rights law.

As a final point, I stress that what is analysed here, and in greater detail in my final report, is an indictment not a judgement. The Indictment can be seen as the prosecution's case at its highest. The Indictment contains only allegations and the Accused remain innocent until proven guilty.

All these points and more will be examined in greater detail in my completed analysis. It suffices to say at this stage that, in my opinion, based on the Indictment before me, the prosecution of the Accused raises serious concerns over Saudi Arabia's obligations under international law and may well constitute multiple violations of international human rights law.



Oliver Windridge

10 January 2019