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***Fatally Flawed: An Analysis of the Judgment against a Youth Protestor  
Sentenced to Death by Saudi Arabia's Specialized Criminal Court***

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**A. Introduction**

1. On 9 June 2014, the Saudi Arabia Specialized Criminal Court<sup>2</sup> (SCC) passed judgment on three young Saudi men for their alleged roles in anti-government demonstrations between 2010 and 2013 in Qatif City, Eastern Province, Saudi Arabia.<sup>3</sup> This analysis focuses on one of these men, Mohamed bin Faisal bin Mohamed Al-Shioukh (Defendant), who was sentenced to death and subsequently executed on January 2, 2016.<sup>4</sup> The Defendant was accused of a number of offences related to demonstrations against Saudi Arabia's ruling authorities.<sup>5</sup> At trial, the only evidence presented by the Prosecutor was the Defendant's confession, handwritten not by the Defendant

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<sup>2</sup> This analysis refers to the SCC as a court, however, it should be noted that its independence has been questioned by numerous observers, who have noted that it appears to function more as a quasi-judicial body and extension of the Ministry of the Interior than a properly functioning and independent court. *See, e.g.*, U.N. Committee Against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia*, ¶ 17, U.N. Doc. No. CAT/C/SAU/CO/2 13 June 8, 2016, ("In addition, the Committee is concerned that the Specialized Criminal Court, which was established in 2008 to try cases of terrorism, is insufficiently independent of the Ministry of the Interior. The Committee notes the reports received that judges of the Court have repeatedly refused to act on claims made by defendants facing terrorism charges that they were subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession, including in the cases of Fadel al-Manasef, Ali al-Nimr, Dawoud al-Marhoun and Abdullah al-Zaher (arts. 2 and 15).").

<sup>3</sup> The author was able to obtain a copy of the SCC Judgment and a translation of the Judgment (Judgment). The translated copy of the Judgment was used for the purposes of review and analysis, which culminate in this report. All references are in line with this translated document. *See Kingdom of Saudi Arabia v. Al Shioukh, et al.*, Specialized Criminal Court, 1, (June 9, 2014) [hereinafter *Judgment*].

<sup>4</sup> Another young man was convicted and sentenced to 25 years in prison during the same flawed proceedings. This report is focused solely on the Judgment as it relates to Mr. Al-Shioukh, who was sentenced to death and then executed. To the extent that these fair trial issues are also implicated in similar cases before the SCC, a retrial or other remedy would be appropriate. This report is concerned with one of the several defendants for whom no such remedy is available.

<sup>5</sup> *Judgment*, 1.

himself but by the investigating authorities. The Defendant had signed the statement during interrogations and allegedly under torture.

2. This Report reviews the SCC's Judgment in the Defendant's case and considers how it aligns with Saudi Arabia's obligations under international human rights law. With the dictum of Lord Diplock that "the fundamental human right is not to a legal system that is infallible, but to one that is fair" in mind,<sup>6</sup> the Report concludes that the Judgment raises serious concerns over a number of potential violations of international human rights law, including the length and condition of the Defendant's pre-trial detention; the apparent use of torture to abstract confessions; the failure to launch an investigation into the allegation of torture; and the use of evidence allegedly procured under torture to convict the Defendant. The Report also raises serious concerns over apparent violations of international human rights law related to the sentencing of the Defendant, including the imposition of the death penalty for non-serious crimes and as a result of flawed proceedings. Sadly, despite these violations of Saudi Arabia's international responsibilities and the Defendant's right to a fair trial, the Defendant has been executed and beyond possible retrial or remedy. However, other protesters have been detained and charged with substantially similar charges to those faced by the Defendant in this case and similar patterns of torture and other violations have emerged. It is vital that the fair trial issues raised in this Report be resolved before any other executions are carried out.<sup>7</sup>
3. It is important to note that Saudi Arabia has suffered from a number of serious terrorist attacks and has a duty to protect its citizens from such events. However, to prevent further violence and disrupt future attacks, it is essential that it conduct serious investigations to ascertain the true perpetrators,

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<sup>6</sup> *Maharaj v. Attorney-General of Trinidad and Tobago*, Privy Council, (1979) AZ 385; (1978) 2 AER 670; (1978) 2 WLR 902.

<sup>7</sup> In this regard, it is noted that, any post-execution remedy will be almost meaningless. *See, e.g.*, Mohammed Jamjoom, *161 arrested in Saudi Arabia protest over detentions*, CNN, March 1, 2013, available at <http://edition.cnn.com/2013/03/01/world/meast/saudi-arabia-protest/>.

including careful investigations concerning financing of international terrorist organizations. Based upon the review of the evidence in this case, as summarized by the SCC in its judgment, it does not appear that such an investigation was undertaken in this case, notwithstanding the allegations of terrorism.<sup>8</sup> Instead, it appears that Saudi authorities are conflating the expression of political views with acts of terrorism and, as a result, are diverting the resources of the SCC from serious terrorism threats to the criminalization of political views. If this trend continues, in addition to demonstrating Saudi Arabia's failure to uphold its obligations under international human rights law, it could also undermine Saudi Arabia's counterterrorism efforts.

#### **B. The Defendant's Alleged Crimes**

4. The Defendant was alleged to have participated in the robbery of a pharmacy, as well as leading, planning and inciting demonstrations, chanting anti-government slogans, writing anti-government expressions on walls with spray paint, using a Blackberry to organise demonstrations with others wanted by the State, and attending speeches of others who incited protest and disobedience.<sup>9</sup>
5. The Defendant was alleged to have obtained a weapon for the purpose of attacking the police, the attempted murder of security forces by opening fire on security forces and a local police station, participating alongside another defendant in possessing and throwing Molotov cocktails at security forces, a local police station and a security vehicle, robbing the security vehicle, leading demonstrations and inciting, planning and organizing demonstrations with members of "his cell", chanting anti-government slogans, blockading streets during demonstrations, writing insulting messages about the State's rulers on walls, transporting loudspeakers, signs and Molotov cocktails to the location of demonstrations, photographing a demonstration with the intent to document and

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<sup>8</sup> See, e.g., *Judgment*, 1 (alluding to the formation of a "terrorist cell," whose goal was to undermine the Saudi Arabian government).

<sup>9</sup> *Judgment*, 1-2.

publicise the demonstration, participating alongside another defendant and others in robbing a pharmacy, inciting attendance at the speeches of another alleged protest leader, sending the timing of marches via his Blackberry, concealing meetings between others wanted for similar acts, concealing the location of others wanted for similar acts, concealing the whereabouts of items used for demonstrations such as loudspeakers, signs and Molotov cocktails, financing terrorism and terrorist operations by “donating money to provide for needs of the marches and demonstrations” such as purchasing gasoline for use in Molotov cocktails and “cold drinks” for demonstrators, and the possession of a pistol with the intent to breach domestic security.<sup>10</sup>

### **C. Saudi Arabia’s Obligations Under International Human Rights Law**

6. Saudi Arabia ratified the U.N. Convention Against Torture (CAT) in 1997. In addition, as a member of the United Nations, Saudi Arabia is generally obligated to respect the human rights and fundamental freedoms laid out in the Universal Declaration on Human Rights (UDHR).<sup>11</sup> In fact, Saudi Arabia has previously stated that the “Universal Declaration of Human Rights and the subsequent human rights-related covenants, conventions, instruments and protocols constitute one of the fruits of human civilization and progress in all fields.”<sup>12</sup> At the regional level, Saudi Arabia has ratified the Arab Charter on Human Rights (ACHR). There can be no doubt that Saudi Arabia

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<sup>10</sup> *Judgment*, 2-3.

<sup>11</sup> The Universal Declaration on Human Rights is not a binding treaty, however, upon its adoption by the General Assembly in 1948 it became a constitutive document of the United Nations. In addition to being generally recognized as a part of customary international law and the basis for modern international human rights law, it was adopted to elaborate upon the terms “human rights” and “fundamental freedoms” within the United Nations Charter, which is binding upon all Member States of the United Nations.

<sup>12</sup> Kingdom of Saudi Arabia, *Periodic Report to the U.N. Committee Against Torture*, ¶ 3, U.N. Doc. CAT/C/42/Add.2, (Sept. 20, 2001), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrUL716plQDmVAn%2BMEBJOASWo4wUR5Mm2uDcnBZhkbwK7qkC%2FxBPnJymxQNPIHvbdMBivUzkbeYZuUGLXscSUCmV1ReB6Glt hSRlepaNBmnrn>.

is bound and obligated to implement the content of these instruments in its domestic procedures and jurisdiction, including in the case of the Defendant.<sup>13</sup>

#### **D. Fair Trial Rights**

7. An undeniable central tenant of Saudi Arabia's obligations under international human rights law is its duty to ensure that those charged and tried for crimes receive a fair trial.<sup>14</sup> This section reviews the Defendant's fair trial rights, focusing on: (i) the length of pre-trial detention and (ii) the right to a lawyer whilst in detention.

##### *i. The Length of Pre-Trial Detention*

8. The Defendant was arrested on 27 February 2012.<sup>15</sup> It appears that the Defendant was not produced for an initial hearing until almost two months after his arrest, when he appeared before the SCC on April 23, 2012. At that time, he learned the nature of the charges against him and that the Prosecutor planned to seek the death penalty. The Defendant was then kept in pre-trial detention for almost two years. He was finally able to present his defence through his advocate during the trial, which commenced on 7 January 2014.<sup>16</sup> In total, the Defendant spent just under two years in detention before he had an opportunity to formally respond to the allegations against himself.
9. International human rights law is unanimous that suspects in criminal cases have a right to be tried within a reasonable time or to be released pending trial.<sup>17</sup> Article 14(5) of the ACHR states that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or

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<sup>13</sup> See Vienna Convention on the Law of Treaties, art. 2(b).

<sup>14</sup> See, e.g., UDHR, art. 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

<sup>15</sup> *Judgment*, 1.

<sup>16</sup> *Judgment*, 1.

<sup>17</sup> See, e.g., International Covenant on Civil and Political Rights (ICCPR), art. 9(3).

other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. Pre-trial detention shall in no case be the general rule.”<sup>18</sup> While there exists no internationally agreed upon test to determine whether the length of a detention is reasonable, it is generally held that no more than a few days should pass between arrest and the initial appearance wherein defendants learn of the charges against them.<sup>19</sup> In this case, two months passed before the Defendant was informed formally of the charges against him or brought before any judicial authority. At that point, the Defendant had, by his own account, already been subjected to intense intimidation and physical abuse. Unfortunately, even at that preliminary hearing in April 2012 there were clear violations of his right to fair procedures, whilst a period of almost two years detention before the Defendant had the opportunity to formally address the charges against him would also likely form a violation of international human rights law.

*ii. Right to a Lawyer Whilst in Detention*

10. According to the Judgment, the Defendant was first informed of his right to hire a lawyer on April 23, 2012, during his initial appearance before the SCC, at which time the Prosecutor set out his case and called for the death penalty to be imposed. At this juncture, it appears that the authorities had already obtained confessions during interrogation of the Defendant.<sup>20</sup> It therefore appears that

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<sup>18</sup>ACHR Article 14(5) *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *available at* <http://hrlibrary.umn.edu/instreet/loas2005.html>; *see also* Articles 7(5) and 5(3) of the American and European Conventions on human rights, respectively.

<sup>19</sup> The UN Human Rights Committee, the body responsible for monitoring compliance with the ICCPR, has determined that the reasonableness of the length of pre-trial detention must “be determined on a case-by-case-basis”, but that the delay between the arrest of an accused and the time before he is brought before a judicial authority “should not exceed a few days.” *L. Stephens v. Jamaica*, UN Doc. No. GAOR, A/51/40 (vol. II), ¶ 9.6 (Oct. 18, 1995).

<sup>20</sup> *Judgment*, 9.

the Defendant were interrogated without recourse to a lawyer, nor did he have access to a lawyer to prepare for the first hearing or to explain the proceedings and charges to him.

11. The right to access legal advice in proceedings is fundamental to the right to a fair trial. It is enshrined in international human rights law and criminal procedures. In particular, Article 13 of the ACHR that relates to the guarantee of a fair trial explicitly calls for States to “guarantee to those without the requisite financial resources legal aid to enable them to defend their rights”.<sup>21</sup> Similarly, Article 14(3) of the ICCPR provides that “[i]n the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing... ”<sup>22</sup> So enshrined is this right that it can also be found in the domestic law of Saudi Arabia. Specifically, Article 4 of Saudi Arabia’s 2001 Law of Criminal Procedure declares that: “[a]ny accused person shall have the right to seek the assistance of a lawyer or a representative to defend him during the investigation and trial stages.”<sup>23</sup>
12. It is unclear when the Defendant first had access to legal advice, however, it appears it was not until after the authorities had finished their interrogations and begun the legal process against him, and therefore several months after his arrest. This lack of legal advice is particularly concerning as a lawyer would have been able to raise the question of torture at the preliminary hearing, including the allegation that the only evidence against him (his confession) had been obtained through torture and should be excluded as a result as discussed further below.

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<sup>21</sup> ACHR, art. 13(1).

<sup>22</sup> ICCPR, art. 14(3). In addition, Principles 11(1) and 18 (1) of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment state, respectively, that “a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law” and “a detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.” Rule 93 of the 1955 UN Standard Minimum Rules for the Treatment of Prisoners allows for detained persons to receive visits from their lawyer to prepare their case.

<sup>23</sup> Law of Criminal Procedure, Saudi Arabia, Art. 4 (2001), *available at* <http://hrlibrary.umn.edu/research/saudi-arabia/criminal-procedure.html>

### **E. Allegations of Torture**

13. According to the Judgment, upon “interrogation” one of the co-defendants confirmed that he attended demonstrations with the Defendant and attended meetings at which he encouraged others to attend demonstrations and “not to fear security forces”.<sup>24</sup> That co-defendant admitted to throwing Molotov cocktails and robbing a security vehicle and storming a pharmacy alongside the Defendant.<sup>25</sup> He acknowledged owning a Blackberry and participating in a group referred to as the “Eastern Province Revolution,” which was used by others to set out times of demonstrations and provide links to speeches urging demonstrations to continue.<sup>26</sup> He provided the names and details of the actions of other members of the group.<sup>27</sup>
14. Similarly, upon “interrogation,” the Defendant appears to have admitted to all the charges brought against him, including participating and organising demonstrations, throwing Molotov cocktails at police, chanting anti-government slogans and writing anti-government phrases, organizing equipment, such as loudspeakers, financing terrorism through donations to fund demonstrations, and recording demonstrations on video.<sup>28</sup>
15. The Judgment reveals that the Defendant was convicted based solely on him signing a description of events drafted by interrogators, referred to as their “acknowledgments” of the facts alleged.<sup>29</sup> It is notable that although the demonstrations that underpin all the alleged crimes were of significant size and apparently occurred on multiple occasions, the Prosecutor was unable to produce any additional evidence other than the confession itself, for example video recordings of demonstrations, exhibits such as the weapons used, or witnesses to testify against the Defendant.

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<sup>24</sup> *Judgment*, 4.

<sup>25</sup> *Judgment*, 4.

<sup>26</sup> *Judgment*, 4.

<sup>27</sup> *Judgment*, 4-5.

<sup>28</sup> *Judgment*, 6-8.

<sup>29</sup> *Judgment*, 8. For ease of understanding, the Report will refer to these “acknowledgements” as “confessions”.

This section shall not examine whether the State met its burden of proof in these cases, however, but address the allegation that these confessions were obtained after state officials tortured the Defendant.

*i. Alleged Use of Torture*

16. The Defendant made claims of forced confession following torture by the investigators. He alleged that he was subject to “physical and psychological torture” such as electric shocks, sleep deprivation, and beatings to his head, face, jaw and feet by the detectives and investigators whilst in detention and under investigation.<sup>30</sup>
17. The prohibition on torture in international human rights law is absolute, applying at all times and in all circumstances. Article 5 of the UDHR declares that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This prohibition is elaborated on in the CAT, which Saudi Arabia ratified in 1997. Article 1 of the CAT defines torture as “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.”<sup>31</sup> Indeed, so established in the prohibition on torture that in addition to treaty law, the ban on torture has achieved the rare level of

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<sup>30</sup> *Judgment*, 24, 26, 29, 31, 33.

<sup>31</sup> The right to be free from torture and other ill-treatment is taken up in all major international and regional human rights treaties, including Article 7 ICCPR, Article 3 the European Convention on Human Rights, as well as the American Convention on Human Rights and the African Charter on Human and People’s Rights.

*jus cogens*.<sup>32</sup> It has been argued that torture is such an affront to the international community that even condoning torture is a violation of international law.<sup>33</sup> The treatment described by both Defendants clearly meets the definition of torture as set out in the CAT.<sup>34</sup>

18. With this in mind, and recalling that the Defendant requested video evidence of his interrogations, which he stated would prove his allegation and which the Government was unable or unwilling to provide, an investigation into these allegations was clearly warranted, as elaborated on further below.<sup>35</sup> Furthermore, given that the alleged torture is detailed in the Judgment itself, the SCC was clearly aware of these serious allegations and potential violations of international law. The failure to investigate these claims and the reliance on the confessions thus appears to constitute a grave breach of international law, sufficient to call into doubt the competency and independence of the SCC for failing to recognize it and/or to remedy the situation.

*ii. Procedure Under International Human Rights Law when Torture Alleged*

19. As to the procedure that the SCC should have followed, Article 12 of the CAT creates an obligation on states to investigate acts of torture committed in any territory under its jurisdiction. It holds: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” Similarly, Article 8 of the ACHR requires States

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<sup>32</sup> *The Prosecutor v. Furundžija*, International Criminal Tribunal for the former Yugoslavia (ICTY), Trial Judgment, ¶¶ 153–156 (1998), available at <http://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf>. The ICTY regarded that as a result of finding torture has the status of *jus cogens*, national acts condoning torture would be unlawful and that there was universal criminal jurisdiction to try suspected torturers.

<sup>33</sup> See Orakhelashvili, ‘The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions’, 16 EJIL59, 71–72 (2005).

<sup>34</sup> See also U.N. Committee Against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia*, ¶¶ 6-8, U.N. Doc. No. CAT/C/SAU/CO/2 13 June 8, 2016 (expressing concern over the use of torture).

<sup>35</sup> Although not directly applicable, it is worth noting that in response to cases of torture involving alleged terrorists, the European Court on Human Rights has stated that “The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct.” (*Chahal v. United Kingdom*, Nov. 15, 1996).

to investigate and punish acts of torture and other inhumane and degrading treatment and ensure victims have access to remedy.<sup>36</sup>

20. In this case, it appears there were reasonable grounds to believe that the Defendant's confession was obtained under torture and in the manner alleged by the Defendant. First, the content of the confession itself seems to provide a strikingly similar accounts of events to his Co-Defendants, which lends itself to the belief they were prepared at the same time and/or by the same actor. Second, the Judgment recalls that the Defendant's confession was written by investigators due to his allegedly "poor handwriting", yet the Defendant was a student (one of the Co-Defendants was a student with an "intermediate" level of education, while the Defendant was a "general secondary" student at technical college).<sup>37</sup> Given the Defendant and Co-Defendant's educational status, it seems implausible that both Defendants had handwriting was so poor that they needed to have investigators write the confessions for them. Instead, this gives rise to further suspicion that, as alleged by the Defendant, he was forced into signing pre-written, coordinating statements prepared by the investigator.
21. Saudi Arabia's failure to conduct a prompt and impartial investigation into the Defendant's allegations of torture is therefore a clear violation of its obligations under both the CAT and the ACHR. It is also an important factor in evaluating the fairness of the Defendant's trial and the imposition of the death sentence.

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<sup>36</sup> ACHR, Art. 8: 1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment. 2. 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 that are 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.

<sup>37</sup> *Judgment*, 1.

*iii. The Use of the Defendant's Confession as Evidence*

22. The Judgment reveals that instead of undertaking an investigation into the allegations of torture made by the Defendants as the SCC is obliged to under international human rights law, the SCC relied upon the impugned confession, and the confession alone, to convict the Defendant. Article 15 of the CAT states: "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." In addition to this explicit ban upon the use of evidence obtained through torture, there is abundant agreement amongst domestic and regional human rights courts that such evidence should be excluded.<sup>38</sup>
23. For example, in the UK case *A and Others*, Lord Justice Neuberger in the Court of Appeal stated that "Article (15) envisages that each contracting state will ensure that evidence obtained by torture cannot be relied on in its national courts."<sup>39</sup> This approach is also based on the unreliability of evidence obtained by coercion<sup>40</sup> and on the desire to help prevent torture by making sure that the torturers do not gain from their acts, i.e. that the evidence thus obtained does not have the intended effect.
24. Accordingly, the SCC's admission into evidence of the confession, and its reliance upon the confession to convict the Defendant contravenes Saudi Arabia's obligations under the CAT. The

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<sup>38</sup> See, e.g., *Bram v. United States*, 168 U.S. 532, 543–561 (1897); see also *Saunders v. United Kingdom*, ECHR RJD 1996-VI, 2044, at 2064; *Serves v. France*, ECHR RJD 1997-VI, 2159, at 2173–2174 (para. 46); *R v. Mushtaq* [2005] UKHL 25, [2005] 1 WLR 1513 (HL); see also U.N. Committee Against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia*, ¶¶ 22–23, U.N. Doc. No. CAT/C/SAU/CO/2 13, June 8, 2016.

<sup>39</sup> *A and Others* (CA), at ¶ 435 (per Neuberger LJ); *A and Others v. Secretary of State for the Home Department* (No. 2) [2004] EWCA Civ 1123, [2005].

<sup>40</sup> As Ali Soufan, a former FBI special agent considered one of the most successful al-Qaeda interrogators, explained in an interview on why he opposed the use of torture: "When they are in pain, people will say anything to get the pain to stop. Most of the time, they will lie, make up anything to make you stop hurting them ... That means the information you're getting is useless." Bobby Goush, *A Top Interrogator Who's Against Torture*, TIME, April 24, 2009, available at <http://content.time.com/time/nation/article/0,8599,1893679,00.html?imw=Y>.

fact that the Defendant was convicted solely on the basis of this inadmissible and inherently unreliable evidence is of clear concern.

25. It is also noted that the SCC appears to have based its decision to rely on the confession at least partly on the Defendant's failure to provide evidence to rebut the Prosecutor's insistence that the confessions were obtained without recourse to torture.<sup>41</sup> In interpreting Article 15 of the CAT, the Committee Against Torture (Committee), the body charged with interpreting and monitoring compliance with the CAT, has made clear that States bear the burden in such instances, not defendants. For example, in *Niyonzima v. Burundi*, the Committee held that Burundi was under an obligation to investigate Niyonzima's claims of torture and show that his confessions had not been obtained under torture where he had consistently claimed he had been tortured and where the confessions obtained thereby had served as the basis for the charges against him and his conviction.<sup>42</sup> The Committee held that in failing to verify that the confessions had not been obtained through torture and then using such confessions in judicial proceedings despite the allegations of torture, Burundi violated its obligation under Article 15 of the CAT.<sup>43</sup>
26. In the present case, the Judgment shows that the Defendant made clear and relatively detailed claims of torture throughout his defense submissions, as well as similar claims being made by his Co-Defendants. It was therefore for the SCC or other Saudi authority not only to investigate but also to reject the confession evidence absent verification of its provenance. Instead, the SCC relied solely upon this questionable evidence, in flagrant violation of Saudi Arabia's obligations under international law.

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<sup>41</sup> See *Judgment*, 37, 40, 45, 47.

<sup>42</sup> U.N. Committee against Torture, *Decision of the Committee concerning Communication No. 514/2012*, U.N. Doc. No. CAT/C/53/D/514/2012, ¶8.7 (2014).

<sup>43</sup> *Id.*

## **F. Sentencing**

27. The Defendant was convicted of forming a terrorist group, incitement of demonstrations through the possession of a pistol and ammunition without licence, firing said pistol at security forces and police station, participating alongside a co-defendant in throwing Molotov cocktails at a police station, participating alongside the co-defendant in throwing Molotov cocktails at security patrols, causing others to set fire on to a security vehicle, stealing weapons and mobile phones from security forces, participating alongside his Co-Defendant in robbing the pharmacy, leading demonstrations, chanting anti-government slogans and writing anti-government slogans on walls, closing streets, transporting loudspeakers, signs and Molotov cocktails to demonstrations, recording marches with a video camera with the goal of publicizing it, concealing meetings between individuals involved in demonstrations, concealing loudspeakers, signs and Molotov cocktails, funding terrorism and terrorist operations by purchasing gasoline and providing “for the needs” of demonstrators.<sup>44</sup> For these crimes the SCC also sentenced the Defendant to death.<sup>45</sup>
28. It is highly concerning that the death penalty was imposed where such clear and egregious violations of the right to a fair trial apparently occurred. As highlighted above, the trial procedure laid out in the Judgment raise several concerns over Saudi Arabia’s violation of its obligations under international human rights. In a similar case, U.N. independent experts expressed deep concern over the flawed proceedings and noted that “[i]nternational law, accepted as binding by Saudi Arabia, provides that capital punishment may only be imposed following trials that comply with the most stringent requirements of fair trial and due process.”<sup>46</sup> Accordingly, where fair trial rights have been violated both in the pre-trial detention of the Defendant and the use of evidence

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<sup>44</sup> *Judgment*, 51.

<sup>45</sup> *Judgment*, 51.

<sup>46</sup> Press Statement, Saudi Arabia must immediately halt execution of children – UN rights experts urge, UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, Sept. 22, 2015, *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487&LangID=E>

procured through torture to convict, the execution of the Defendant could be considered arbitrary under international law.

## **G. Conclusion**

29. Having reviewed the Judgment, there appears to be strong grounds to suggest that the trial and sentencing of the Defendant before the SCC was in violation of Saudi Arabia's obligations under international human rights law. In particular, there appeared to be violations of:

- Article 1 Convention Against Torture (prohibition on torture)
- Article 12 Convention Against Torture (duty to investigate allegations of torture)
- Article 15 Convention Against Torture (inadmissibility of evidence obtained by torture)
- Article 8 of the Arab Charter on Human Rights (prohibition on torture)
- Article 14 of the Arab Charter on Human Rights (the right to be promptly informed of charges)
- Article 13 of the Arab Charter on Human Rights (access to counsel)

30. The Judgment also conflicts with fundamental principles of justice as enshrined in the Universal Declaration of Human Rights. In particular, Article 3 of the UDHR recognizes that all persons are entitled to life and security of person.

31. Despite these apparent violations of international human rights law, the Defendant was executed in January 2016. This appears to have been a grave miscarriage of justice, a violent and irremediable violation of his rights to life and security of person given the significant flaws in the proceedings through which they were convicted.

32. It is therefore recommended that Saudi authorities suspend any further executions of accused convicted by the SCC of similar charges pending re-trial subject to full fair trial guarantees,

including investigations into any allegations of torture.<sup>47</sup> In addition, it should be noted that no accused who were juveniles at the time of the commission of the alleged crimes should be given the death penalty, pursuant to Article 37(a) on the Convention on the Rights of the Child, to which Saudi Arabia is a state party.

33. Finally, any trials should be open to observation by the international community to ensure conformity with international law. If the Specialized Criminal Court continues to disregard the fundamental fair trial rights of accused and convicts those engaged in expressing their views without evidence of criminal misconduct whilst disregarding credible allegations of torture, it will greatly undermine the legitimacy of the court.

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<sup>47</sup> See, e.g., U.N. Committee Against Torture, *Concluding Observations on the Second Periodic Report of Saudi Arabia*, ¶¶ 41-42, U.N. Doc. No. CAT/C/SAU/CO/2 13, June 8, 2016.