

SAUDI ARABIA
Flawed Justice
The Execution of `Abd al-Karim Mara`i al-Naqshabandi

SUMMARY	3
THE SPECIAL VULNERABILITY OF FOREIGN WORKERS.....	4
THE ORIGINS OF THE “WITCHCRAFT” CHARGE	6
The Legal Basis for the Charge.....	6
The Background to the Charge	8
ARREST AND DETENTION.....	9
LEGAL PROCEEDINGS.....	12
SENTENCING AND EXECUTION.....	14
INTERNATIONAL HUMAN RIGHTS STANDARDS.....	15
RECOMMENDATIONS.....	18
APPENDICES	20

ABOUT THIS REPORT

This report was researched and written by Clarisa Bencomo, research associate at Human Rights Watch/Middle East. The report was edited by Eric Goldstein, research director of Human Rights Watch/Middle East, and Joe Stork, advocacy director of Human Right Watch/Middle East. Awali Samara, associate at Human Rights Watch/Middle East, prepared the report for publication. The author gratefully acknowledges information and assistance received from the al-Naqshabandi family and from several prominent lawyers and experts in Islamic law who cannot be named here.

SUMMARY

In stark contrast to the worldwide trend toward abolition of the death penalty, in Saudi Arabia its use has become increasingly frequent.¹ Since 1990 at least 540 people have been executed in Saudi Arabia, usually by public beheading; at least one hundred people were reported executed in the first nine months of 1997 alone. Most of these were foreigners accused of any of a variety of offenses, including drug-trafficking, murder, armed robbery, and sexual offenses. In at least some cases there was ample evidence to support victims' claims of innocence.²

On Friday December 13, 1996 (3 Sha'ban 1417), 'Abd al-Karim Mara'i al-Naqshabandi, age forty, was executed in Riyadh. A Syrian national who had worked for Saudi Prince Salman bin Sa'ud bin 'Abd al-'Aziz for over fourteen years, al-Naqshabandi was convicted of practicing witchcraft (*sihr*) against his employer, who is the son of the former king of Saudi Arabia and the nephew of the current king. The information Human Rights Watch has been able to collect about the al-Naqshabandi case indicates that gross violations of human rights took place, and that al-Naqshabandi may have been prosecuted and then executed to satisfy the wishes of his wealthy, well-connected employer.

In April 1997 Human Rights Watch obtained copies of some of the documents al-Naqshabandi submitted to the court during his trial. Our subsequent investigation included interviews with members of al-Naqshabandi's family, as well as efforts to contact the Saudi ministers of justice and interior and the Syrian ministers of foreign affairs and interior (see appendices). In all cases the ministries involved failed to respond to our repeated requests that they clarify key issues in the case.

Among the documents submitted to the court were three long handwritten letters addressed to Judge Sulayman al-Samhan of the Greater Court of Riyadh and signed by al-Naqshabandi. Written in simple, sometimes awkward Arabic, they are the letters of a man trying to construct a legal defense without access to a lawyer or to legal books, and with only the most rudimentary idea of how a legal argument is made. The cover letter implores the judge to read what follows, saying that

I can't make myself heard except through these papers. My fate lies in them, and the fate of my family which is threatened with destitution and expulsion and losing everything if you don't read these papers that clarify my case. Your Excellency, I was not able to clarify to you during the [court] sessions all that I have to say, because of the position that I am in when I attend [the session], with its terror, and the guards, and the insults in people's eyes. And also because the [length of the] time of the sessions is not sufficient.³

The letters themselves describe the events leading up to al-Naqshabandi's arrest, and contain detailed allegations concerning his abuse by the Prince Salman and by officers from the police and the Committee for the Propagation of Virtue and the Prevention of Vice (*hay'at al-amr bilma'ruf wa al-nahi 'an al-munkar*, CPVPV). He also provides the names of twenty-three individuals whom he says could verify his account if only the judge would call them to testify. According to al-Naqshabandi's family, the judge did not call a single defense witness, nor apparently

¹ By 1996 the number of countries that have abolished the death penalty for all crimes (fifty-eight) was more than twice what it had been in 1981 (twenty-seven). The figure reaches one hundred if countries that are abolitionist in practice are included. Amnesty International, *The Death Penalty Worldwide: Developments in 1996* (London: Amnesty International, June 1997), AI Index: ACT 50/05/97.

² As in the case of 'Abd al-'Aziz Muhammad Isse, a Somali national who was executed in 1995 for a murder that occurred prior to his arrival in Saudi Arabia.

³ Cover letter to Judge Sulayman al-Samhan, Greater Court of Riyadh, undated.

did al-Naqshabandi know that he had to follow specific procedures to request formally that witnesses be called. This deadly lack of knowledge -- knowledge that any lawyer or the judge himself could have provided -- is apparent throughout al-Naqshabandi's written testimony, as he misses opportunities to argue against the legality of the charges against him, enter evidence to support his claims, challenge the jurisdiction of the arresting agency, or even bring a complaint against the officers who abused him and threatened him with torture to obtain a confession. It also appears that al-Naqshabandi may never have been formally convicted or sentenced. Family members who saw al-Naqshabandi only three days before his execution say he was in good spirits and had no knowledge of his conviction, nor of the death sentence that the Ministry of the Interior claims was ratified more than a week earlier. Al-Naqshabandi's wife only learned of her husband's execution when she received a telephone call from his brother, who had read about it in the newspaper.

While there are many other cases of individuals executed in Saudi Arabia after trials that failed to meet minimum standards of fairness, Human Rights Watch finds that this case deserves special attention. To begin with, the charges themselves are extremely vague, and suggest a dangerous expansion in the powers given to judges to define criminal activity and determine punishments. It is precisely this type of case that reveals the inherently cruel and irreversible nature of the death penalty, and the reason for Human Rights Watch's categorical opposition to its use.

Secondly, the case highlights the many serious shortcomings of a legal system that fails to provide minimum due process guarantees and offers myriad opportunities for well-connected individuals to manipulate the system to their advantage. At every step from his arrest to his execution, al-Naqshabandi's basic rights were violated in some way, and at no stage does it appear that any state agency intervened to protect his rights. Indeed, his arrest, detention and execution may have been part of an effort by the prince and individuals in authority to silence someone who simply knew too much about his employer's private life and business dealings, as al-Naqshabandi's family alleges.

Finally, this case reveals the special vulnerability of foreign workers in Saudi Arabia. Saudi labor laws give employers tremendous control over their employees' movements, including the power to prevent them from leaving the country. Often this control becomes a source of leverage for extracting concessions from employees, who have few opportunities for recourse. This vulnerability, coupled with a judicial system that fails to meet basic standards of independence and impartiality and that allows indefinite pretrial detention and convictions based on forced confessions, not only allows but encourages human rights abuses.

THE SPECIAL VULNERABILITY OF FOREIGN WORKERS

Foreign workers typically enter Saudi Arabia under the sponsorship (*kafala*) of a Saudi employer and are thus subject to significant restrictions on their freedom of movement, "giving rise to conditions that might involve forced labor," according to the U.S. Department of State.⁴ Sponsored employees cannot legally leave the country, travel outside the city of their employment, or change jobs without obtaining the written permission of their sponsors.⁵ Employers often confiscate workers' passports as well, leaving them subject to arrest as undocumented aliens.

⁴ U.S. Department of State, *Country Reports on Human Rights Practices for 1996* (Washington, D.C.: U.S. Government Printing Office, February 1997), p. 1375.

⁵ See for example Council of Ministers Resolution No. 826 of 1975, Rules for the Regulation of the Labor Force Movement, which prohibits workers from changing sponsors unless the original sponsor agrees to the transfer. In cases where a worker's contract with one sponsor has terminated and the worker does not agree to its renewal, that sponsor can still prohibit the worker from obtaining work with another sponsor; in such instances the worker is repatriated for at least one year (at least three years if "trade secrets" are involved). A worker who violates these rules is automatically deported. An English translation of Resolution No. 826 appears in Alison Lerrick and Q. Javed Mian, *Saudi Business and Labor Law: Its Interpretation and Application* 2nd Ed. (London: Graham & Trotman, 1987), Appendix 46, pp. 546-47.

Taken together, these practices make it easy for unscrupulous employers to pressure their employees to relinquish their legitimate claims for compensation or to submit to labor conditions other than those specified in their contracts.⁶ The 1996 U.S. Department of State report on Saudi Arabia states that

[t]here have been many reports of workers whose employers have refused to pay several months, or even years, of accumulated salary or other promised benefits The labor system abets the exploitation of foreign workers because enforcement of work contracts is difficult and generally favors Saudi employers. Labor cases can take many months to reach a final appellate ruling, during which time the employer can prevent the foreign laborer from leaving the country; alternatively, an employer can delay a case until a worker's funds are exhausted and the worker is forced to return to his home country.⁷

The Asia-Pacific Mission for Migrant Filipinos (APMMF) reported in August 1997 that more than one hundred Filipino citizens stranded in Riyadh without exit visas had staged a sit-in at the Philippine Labor Compound in Riyadh to protest the Philippine government's failure to aid in their repatriation. According to APMMF, there are approximately 500 stranded workers in Riyadh alone. "Most of them have grievances lodged at the Saudi Court against their employers or sponsors for contract violations such as non-payment of wages, long hours of work, poor working and living conditions, sexual and physical abuses. Others become stranded after they were forsaken by their sponsors and 'run away' (sic) from their employers."⁸

⁶ In theory Saudi Arabia's Labor Commission provides foreign and local workers with a neutral agency to adjudicate and arbitrate labor disputes. In reality a large segment of the working population -- domestic or household workers -- is excluded from the Commission's jurisdiction. Commission offices are often difficult to reach and successfully pursuing a complaint may require several visits, a costly and dangerous proposition for workers not in possession of a passport who must travel to an office in another city. For a detailed description of the functioning of the Commission and case examples, see Lerrick and Mian, *Saudi Business and Labor Law*, pp. 305-29.

⁷ U.S. Department of State, *Country Reports on Human Rights Practices for 1996*, p. 1375.

⁸ Quoted in Asian Human Rights Commission (ahrchk@HK.Super.Net), "Stranded Workers in Saudi Arabia," E-mail to Asia Human Rights Alert Mailing List, August 22, 1997.

Workers who resist such abuses can be subject to deportation or trial on unrelated spurious charges;⁹ individuals awaiting deportation often spend long periods of time in substandard deportation facilities awaiting processing of the required paperwork. While in custody these individuals may be subject to ill-treatment, including face slapping and beatings on the soles of the feet (*falaqa*), at the behest of the employer.¹⁰ In some cases torture or the threat of torture has been used to extract confessions. Foreigners who have been arrested will often be deported, regardless of the outcome of their trial, and thus be unable to claim any back pay or other benefits stipulated in their contracts. Foreigners found guilty of crimes often receive harsher sentences than do citizens, both because of *de facto* discrimination against foreigners and because Saudi law favors Muslims over non-Muslims in many kinds of legal disputes, and only Muslims are allowed to become citizens.¹¹

THE ORIGINS OF THE "WITCHCRAFT" CHARGE

The Legal Basis for the Charge

Saudi Arabia has no written penal code, code of criminal procedure, or code of judicial procedure, allowing police and judges wide discretion in many cases to determine what activities constitute criminal offenses and what sentences such "crimes" deserve.¹² Because there is no constitutional court there is no way for an individual to challenge a sentence without directly or indirectly appealing to the king.¹³ The king and his appointed Council of Ministers have near absolute authority to interpret written law, while the government-appointed Council of Senior Religious Scholars has final authority over interpretations of the Shari'a. The Council's interpretations give precedence to the Hanbali school of jurisprudence, especially as explicated by the fourteenth century jurist Ibn Taymiya.¹⁴ The Hanbali school is considered to be the most conservative of Sunni Islam's four schools of jurisprudence.

⁹ U.S. Department of State, *Country Reports on Human Rights Practices for 1996*, p. 1371.

¹⁰ Human Rights Watch/Middle East telephone interview, a lawyer practicing in Saudi Arabia, name withheld on request, August 1997. See also U.S. Department of State, *Country Reports on Human Rights Practices for 1996*, p. 1369.

¹¹ U.S. Department of State, *Country Reports on Human Rights Practices for 1996*, p. 1369.

¹² There are a number of royal decrees and ministry-issued regulations, but they are not usually widely disseminated. Ministry-issued regulations also lack the force and scope of a code, and can be amended without notice. A judicial procedure act was passed by the Council of Ministers and ratified by King Fahd in June 1990, only to be repealed by the king two months later. See Middle East Watch (now Human Rights Watch/Middle East), *Empty Reforms: Saudi Arabia's New Basic Laws* (New York: Human Rights Watch, May 1992), pp. 21-23.

¹³ Article 53 of the 1992 Basic Law provides for a Board of Grievances where administrative decisions may be contested, but Article 9 of the regulations governing this board prevents it from hearing cases involving "acts of sovereignty," and thus effectively excludes challenges to rulings on security or constitutional issues. Since its 1982 reorganization the Board reports to the king, and its chairman, who is appointed by the king, holds the rank of minister. See Lerrick and Mian, *Saudi Business and Labor Law*, pp. 238-243.

¹⁴ The government-sanctioned preeminence of the Wahabbist variant of Hanbali jurisprudence has led to severe restrictions on religious practices deemed to be "deviant," whether by Muslims or non-Muslims. Non-Muslims are forbidden to practice their religion while in Saudi Arabia, and the country's Shi'a population has been a favorite target for abuse. Religious rulings issued by the Council of Senior Religious Scholars have referred to the Shi'a as polytheists and apostates, a crime that under the Shari'a is punishable by death. See Amnesty International, *Saudi Arabia: Religious Intolerance: The Arrest, Detention and Torture of Christian Worshipers and Shi'a Muslims* (London: Amnesty International, September 1993). The text of one such fatwa appears in Committee for the Defense of Human Rights in the Arabian Peninsula, *Al-taqrir al-sanawi lilajnat al-difa' 'an huquq al-insan fi al-jazira al-'arabiyya haula intihak huquq al-muslimin al-shi'a 1417* (The Annual Report on Abuses of the Rights of the Shia Muslims: 1417 H., 1996-1997 C.E.), p. 30/3.

All four schools of jurisprudence agree on three main categories of crimes. Boundary crimes (*hudud*) are those whose punishments and evidentiary and procedural requirements are clearly delimited in the Quran and the collected deeds and sayings of the Prophet Mohammed (*al-sunna*). Equity crimes (*qisas*) are those crimes causing physical injury or death to another person, and their punishments are also specified in the Quran and the Sunna. Discretionary or reform crimes (*ta'zir*), include crimes whose punishments are not specified in the Quran or Sunna, or which do not meet the evidentiary and procedural requirements of the first two categories.¹⁵

Punishments for boundary crimes include execution by beheading or stoning, crucifixion, amputation (of a hand, or a hand and a foot, depending on the crime), banishment, or flogging, and persons convicted of boundary crimes cannot be pardoned. Equity crime punishments are intended to punish the criminal by means equivalent to the harm inflicted on the victim, and thus the judge is allowed discretion in designing a punishment suitable to the specifics of the particular case. In an equity crime the victim or his or her family can choose to accept monetary compensation in lieu of other punishments. Reform crimes allow the greatest judicial discretion in sentencing, including allowing for pardons in cases where the criminal repents of the crime. The only limit on reform punishments is the condition that these sentences be less than those for boundary crimes. Different schools of jurisprudence differ on whether this means that reform punishments must be less than the harshest boundary punishment, less than the least harsh boundary punishment, or less than a parallel boundary punishment.¹⁶

Based on this division, the charges against al-Naqshabandi -- "the practice of works of magic and spells and possession of a collection of polytheistic and superstitious books"¹⁷ -- would appear to fall into the category of reform crimes described above, where the Quran and the Sunna do not specify a punishment for witchcraft. Indeed, a statement by the Ministry of Interior makes clear that in this case "it was decided he be sentenced to the discretionary punishment of death (*qatlihi ta'ziran*)."¹⁸

¹⁵ For a detailed discussion of all three categories of crimes and the associated punishments, see Hilaly `Abdullah Ahmad, *Usul al-tashri' al-jina'i al-islami ma' ishara ila tatbiqihi fi al-mamlaka al-'arabiyya al-sa'udiyya* (The Principles of Islamic Criminal Legislation with Reference to its Application in the Kingdom of Saudi Arabia) (Cairo: Dar al-nahda al-'arabiyya, 1995).

¹⁶ Ibid., pp. 297-301.

¹⁷ "Qatl 'sahir wa musha'with' suri fi al-riyadh: Wizarat al-dakhiliyya tuhaththir mujaddadan: al-'iqab al-shara'i al-sarim bila hawada liman tasawwal lahu nafsuhu al-'abath biamn al-balad aw al-adrar bilmujtama'" (The Killing of a 'Sorcerer and Magician' in Riyadh: The Ministry of Interior Again Warns: The Severe Shari'a Punishment without Leniency to He Who Lets Himself be Seduced [by the Devil] to Play with the Security of the State or Damages to Society) *Al-jazira* (Saudi Arabia) December 14, 1996.

¹⁸ Ibid.

This criminalization of witchcraft would be highly problematic even without reference to international human rights law. Contradictory definitions and prescribed punishments for witchcraft appear in different classical Islamic texts, and modern Saudi law does not appear to prohibit any specific activities on the grounds that they constitute witchcraft, let alone to mandate the death penalty. Ironically, Hanbali jurist Ibn Taymiya's rulings (*fatawa*) explicitly permit the use of certain kinds of amulets (*hujub* or *ruqan*), and the use of amulets is not unusual in Saudi Arabia or in other parts of the Middle East. Several lawyers and experts in Islamic law contacted by Human Rights Watch expressed great surprise that someone would be executed for witchcraft under Islamic law, raising the question of whether the average Saudi resident is aware that the activities that al-Naqshabandi is accused of might constitute a punishable offense.¹⁹ The Saudi minister of justice did not respond to Human Rights Watch's request for clarification of the terms "witchcraft" and "polytheistic and superstitious books," nor to questions regarding what would constitute sufficient evidence for conviction, or the prescribed punishment for someone convicted of such a charge.

When considered in the light of international human rights law, the invocation of witchcraft in al-Naqshabandi's case highlights the way in which Saudi Arabia's lack of a written penal code both encourages and disguises serious human rights abuses. At a minimum, this criminalization of possession of religious amulets and books is a clear violation of international human rights law's guarantees of freedom of expression and belief.²⁰ Furthermore, if there is no existing law that mandates the death penalty for the activities al-Naqshabandi allegedly engaged in, this case also violates the most basic of due process rights, in that he was punished for an offence that was not a crime at the time it was committed.

The Background to the Charge

There has been speculation that the motive for al-Naqshabandi's prosecution and execution may have been religious persecution for Sufi religious practices. Al-Naqshabandi's family denies that he was a Sufi or that Sufism was an issue in his arrest.²¹ In his letters to Judge Sulayman al-Samhan of the Greater Court of Riyadh, Al-Naqshabandi makes no reference to Sufi belief or practice, but rather traces the source of the witchcraft charge to an incident in 1987. At that time he had been working for Prince Salman bin Sa'ud bin 'Abd al-'Aziz for six years, having started in 1981 as a secretary in the prince's international storage company and three years later as the company's administrative director (*mudir idari*). Al-Naqshabandi describes the prince as a particularly demanding employer, with a history of abusing his employees, and recounts the prince threatening him with death if a group of debtors defaulted on a loan made by the prince.²² In a "moment of weakness and fear," al-Naqshabandi writes, he followed the advice of a friend and approached a Sudanese *shaykh* known for writing amulets.²³ The shaykh provided him with an amulet "with nothing in

¹⁹ Several scholars of Islamic law denied that witchcraft existed as a punishable offense under Islamic law, while others argued that it was a crime, but not one punishable by death. No one contacted by Human Rights Watch had ever heard of anyone other than al-Naqshabandi being executed for witchcraft in modern times. If Islamic legal scholars familiar with Saudi Arabian laws are unable to give a precise definition of activities constituting witchcraft and the specified punishment, it seems highly unlikely that the average Saudi resident could do so.

²⁰ This would not be the only Saudi law restricting freedom of expression and belief. In addition to the previously cited restrictions on religious practices deemed deviant by Saudi religious authorities, Saudi law includes such vaguely-worded crimes as insulting the person of the king (*sabb that al-malikiya*). The latter is often used to punish foreign workers who have not committed any specific crime, but have somehow managed to annoy a well-connected individual or employer. Insulting the person of the king was one of the charges used to detain Ahmad al-Naqshabandi after his brother's execution.

²¹ Human Rights Watch/Middle East telephone interview, a close relative, name withheld, Syria, June 25, 1997.

²² Letter to Judge Sulayman al-Samhan, Greater Court of Riyadh, (hereinafter "Submission 2"), p. 3.

²³ The title "shaykh" has several meanings. In its most common usage it can denote an elder; a tribal leader; a pious man; a man with advanced religious training; or the master of a Sufi religious order. Its usage here appears to refer to someone with formal or informal advanced religious training, possibly a Sufi.

it but Quranic verses, and he wrote it in front of me. He said in it: 'O God, protect `Abd al-Karim Mara`i. God is the best guardian and He is the most merciful of the merciful.'" Fearing the prince would make good his death threats, al-Naqshabandi also sold his wife's gold jewelry and borrowed from friends so that he was able to pay an installment of 60,000 Saudi Riyal (approximately US \$15,950) for one of the debtors. Although Prince Salman acknowledged al-Naqshabandi's payment of the other man's debt, and promised to repay al-Naqshabandi, al-Naqshabandi alleges that the prince never repaid this debt, although he did eventually stop threatening al-Naqshabandi after al-Naqshabandi's son was killed in an auto accident in 1990.²⁴ When the loan crisis was over al-Naqshabandi "threw [the amulet] in the desk drawer" and forgot about it.²⁵ Although an aide to Prince Salman knew al-Naqshabandi had gone to the Sudanese shaykh, no one raised the issue at that time.

²⁴ Submission 2, p. 3.

²⁵ Letter to Judge Sulayman al-Samhan, Greater Court of Riyadh, (hereinafter "Submission 3"), p. 2.

In early February 1994, the prince had a dispute with another employee, F.S., a Saudi national who was the office director. In the course of his work, F.S. would sign letters on behalf of Prince Salman, and al-Naqshabandi's testimony recounts how after the dispute the prince decided to use these letters as evidence to have F.S. imprisoned on forgery charges, as al-Naqshabandi says he had done to other employees in the past.²⁶ Prince Salman pressured al-Naqshabandi to give false testimony against F.S., and when al-Naqshabandi attempted to resist the prince became threatening:

And when I refused the prince became intensely angry at me, and threatened to put me in prison for the rest of my life. When I persisted in refusing to give false testimony he put me in front of four witnesses to withdraw all my [contractual] claims against him, which consist of [severance pay and other benefits for] fourteen years and three months service.²⁷

Finally succumbing to the pressure, al-Naqshabandi agreed on February 10, 1994 (28 Sha`ban 1414), to accompany Prince Salman to the police criminal division "on the basis that I would only give the testimony."²⁸ Instead al-Naqshabandi was charged with forgery and held in solitary confinement for four days, until February 13 (2 Ramadan). It was during this four-day period, al-Naqshabandi charges, that the prince and two other employees collected and created incriminating material to place in al-Naqshabandi's office and arranged for his arrest.

ARREST AND DETENTION

Shortly after the evening Tarawih prayer on February 13, 1994 (2 Ramadan 1414), Prince Salman's aide (*wakil*) Shaykh Mansur al-`Anbari²⁹ and assistant director Nasir al-Sabi`i arrived at the criminal division to take al-Naqshabandi to the prince's office, telling him he had to hand over the office (*asallim al-maktab*) because he was being fired.

²⁶ The choice of this particular charge may be related to a clause in Article 83 of the Saudi Labor Regulations, which lists "hav[ing] committed an act affecting honesty or honor" as one of nine offenses that can be used to justify immediate termination of an employment contract without notice and without liability for payment of severance pay. Quoted in Lerrick and Mian, *Saudi Business and Labor Law*, p. 295.

²⁷ Submission 2, p. 3. Elsewhere al-Naqshabandi argues that the prince owes him a minimum of 224,875 Riyal (US \$59,816), consisting of 52,000 Riyal (US \$13,863) which he says was the difference between his contracted salary and the amount he was actually paid after the prince unilaterally lowered salaries; 20,250 Riyal (US \$5,398) for three months back wages that the prince had not paid at the time of al-Naqshabandi's arrest; 87,625 Riyal (US \$23,360) in severance pay for fourteen years of continuous service; 5,000 Riyal (US \$1,333) for the value of plane tickets home to Syria as specified in his contract, and the 60,000 Riyal (US \$15,950) loan installment that al-Naqshabandi paid in lieu of the prince's debtor. Al-Naqshabandi also noted that despite poor treatment by Prince Salman, "I wasn't late a single day nor did I have a single vacation in fourteen years, not a single day, in fact the opposite, I even worked during the holidays, and I was on call all day and all night." Submission 3, pp. 3-4. See Lerrick and Mian, *Saudi Business and Labor Law*, pp. 293-94 for a discussion of the formula for determining severance pay.

²⁸ Submission 2, p. 4. It isn't clear from al-Naqshabandi's written account whether he intended to give false testimony against his colleague. Had al-Naqshabandi had access to a lawyer his lawyer would most certainly have advised him to clarify this point, given that by leaving it in doubt he leaves the credibility of his testimony in his own case open to doubt.

²⁹ The use of the term "shaykh" is not clear here, but seems to imply that al-`Anbari had religious training. See footnote 22.

I didn't realize what was secretly planned against me. Not more than five minutes passed after my arrival in the office when the Committee [for the Propagation of Virtue and the Prevention of Vice] arrived.³⁰

The Committee for the Propagation of Virtue and the Prevention of Vice (*hay'at al-amr bilma'ruf wa al-nahi 'an al-munkar*, CPVPV), sometimes known as the morality police or *al-mutawwi'un*, has broad powers to arrest, investigate, and mete out summary punishments or refer to the courts individuals suspected of violating religious or moral precepts. Unlike the regular police (*al-shurta*) and the General Investigations police (*al-mubahith al-'amma*), which report to the Ministry of Interior, the CPVPV reports only to the Council of Ministers. The CPVPV has been widely criticized inside Saudi Arabia for being overzealous in pursuing its ill-defined mandate, and in many cases has been reported to have ill-treated or tortured individuals in its custody.³¹

Al-Naqshabandi alleges that Prince Salman's director of relations was an expert (*khabir*) in amulets who frequently had amulets and spells made for himself, while the prince's aide, Shaykh Mansur al-'Anbari, coveted al-Naqshabandi's job and used his connections in Riyadh's Suwidi district CPVPV to ensure that al-Naqshabandi would be arrested:

The Suwidi Committee [for the Propagation of Virtue and the Prevention of Vice] in particular was chosen because of the relationship between al-'Anbari and this Committee, and knowing that the [prince's] office is in the al-Nasiriyya district . . . and there are a number of Committees closer than the Suwidi, those being al-Nasiriyya, al-Khazan, and al-Marraba'.³²

Al-Naqshabandi also calls upon the judge to check police records to verify that "the difference between my exit from the criminal [division] and my arrest by the Committee is less than one hour."³³

After searching al-Naqshabandi's office the CPVPV officers took him into custody, apparently on the basis of testimony from Prince Salman and Shaykh al-'Anbari and the "evidence" they found. Al-Naqshabandi's testimony refers to pictures of naked women, amulets, phone numbers, and "the picture of the man who writes horoscopes for one of the magazines," all of which he denies belongs to him and some of which he identifies as property of a Sudanese telephone company worker who was given a visa to leave Saudi Arabia only days after al-Naqshabandi's arrest.³⁴ Al-Naqshabandi also goes to great length to argue that Prince Salman has a long history of improper religious, financial, and sexual behavior that preceded al-Naqshabandi's employment,³⁵ apparently as a rebuttal to a charge that al-Naqshabandi had used witchcraft to harm the prince "in his religion, soul, money and rationality."³⁶

³⁰ Submission 2, p. 4.

³¹ See, for example, Amnesty International, *Saudi Arabia: Religious intolerance*.

³² Submission 2, p. 4.

³³ Ibid.

³⁴ Submission 3, pp. 3, 6. The Saudi government has failed to respond to Human Rights Watch's inquiries about the evidence used to convict al-Naqshabandi.

³⁵ See, for example, Submission 2, pp. 5-8.

³⁶ "The Killing of a 'Sorcerer and Magician' . . ." *Al-jazira*.

Al-Naqshabandi alleges that while in the CPVPV's custody he was subject to physical abuse, threats, and other improprieties in the conduct of the investigation, and that as a result of this abuse he signed a false confession. His interrogation took place while Prince Salman and his director of general relations were in the next room, listening, and was conducted by one person only, although others signed that they had witnessed the interrogation. The interrogator refused to listen to or record al-Naqshabandi's testimony,³⁷ and instead cursed him and threatened to have him strung up and beaten. After the interrogation al-Naqshabandi spent the night "tied like an animal . . . on the edge of the swimming pool."³⁸ "And so, what could I do but give in and sign [the confession] in order to save myself? So I signed in hope that I would find in the police station someone who would listen to the truth."³⁹

Such hopes turned out to be misplaced. In the police station al-Naqshabandi "was surprised by even harsher treatment when I tried to explain some matters to the officer."⁴⁰ Al-Naqshabandi alleges that the police officer, acting at the Prince Salman's behest, was extremely abusive, beating him, placing his shoe in al-Naqshabandi's mouth, holding him in solitary confinement, and prohibiting visits. The officer also threatened to "work miracles on you" if al-Naqshabandi retracted his confession in court, and on the basis of that threat al-Naqshabandi verified the false confession.⁴¹

Al-Naqshabandi's treatment improved later, when he was transferred to al-Malaz prison in Riyadh, where he remained until his execution in December 1996. At al-Malaz a sympathetic prison official allowed al-Naqshabandi to receive visitors and even telephone calls from Syria.⁴² After more than two years in detention al-Naqshabandi wrote a letter to the prison warden asking how much longer he would be held; according to al-Naqshabandi's family the warden wrote back telling him not to worry, the case was a simple one and he would be released soon.⁴³

LEGAL PROCEEDINGS

³⁷ Article 27 of the CPVPV regulations require that the statement taken during an interrogation must include "the words of the accused in detail, as they issued forth from him in the very phrases that he repeated, as well as the documentation of all aspects of his defense, and the accused is able at all times to present his defense, and to contradict prosecution witnesses, and ask for defense witnesses to be heard in support of [of his testimony], or to take any action of the investigation procedures, and all his requests must be recorded in the investigation statement." Quoted in Hilaly `Abdullah Ahmad, *Huquq al-difa` fi marhala ma qabl al-mahakima bayn al-namat al-mithali wa al-namat al-waqa`i* (Rights of Defense in the Pretrial Stage: Between the Ideal Type and the Actual Type) (Cairo: Dar al-Nahda al-Arabiyya, 1995) p. 172.

³⁸ Submission 3, p. 5. The CPVPV sometimes hold suspects in irregular places of detention; this appears to have been the case here.

³⁹ Submission 3, p. 6.

⁴⁰ Ibid.

⁴¹ Submission 3, p. 6. Al-Naqshabandi writes that this treatment was especially distressing because it took place in the first few days of Ramadan, the Islamic month of dawn to dusk fasting, which is a time for spending one's time in prayer and in the company of one's family.

⁴² Human Rights Watch/Middle East telephone interview, a close relative, name withheld, Syria, June 25, 1997. This individual says that when he heard that al-Naqshabandi had been executed he immediately called this official to ask if the report was true. According to the relative, the official began to cry and then hung up without answering.

⁴³ Ibid.

Saudi Arabia has three types of courts, those handling minor offenses, major offenses, and appeals, respectively. The rulings of the first, the Court of Urgent Affairs (*mahkamat al-`umur al-musta`jala*), are final unless found to contravene the Shari`a. Major offenses are tried before a Greater Court (*al-mahkama al-kubra*), and in theory may be appealed before the Court of Appeal (*mahkamat al-tamiz*). Sentences of death or amputation must be reviewed by the Higher Judicial Council (*majlis al-qada`al-`ala*) and then must be ratified by the king. The king appoints and removes all judges, as well as the minister of justice.

In both the Court of Urgent Affairs and the Greater Court, hearings take place before a presiding judge who questions the defendant and any witnesses whom the judge may choose to call. Suspects have no right to legal counsel during pretrial interrogation or trial, although a defendant who is able to pay for a lawyer may sometimes be allowed to confer with him prior to a court session. Convictions can and often are based solely on confessions obtained during pretrial interrogations, a practice that encourages the use of lengthy pretrial detentions and physical and psychological abuse to obtain a confession. Confessions must be certified by an investigating judge, who is not the judge who will eventually preside over the trial. The investigating judge has no power to order the release of a suspect, and Human Rights Watch has received reports of detainees who attempted to withdraw coerced confessions, only to be told by the investigating judge that if the confession was not certified the detainee would be returned to custody for further interrogation. While some judges have thrown out confessions obtained through torture, these cases appear to be rare. The absence of laws limiting pretrial detention and requiring notification of the detainee's next of kin and embassy of his or her arrest further increase the potential for abuse.⁴⁴

Al-Naqshabandi states that while in detention he made five complaints to the Court of Urgent Affairs asking for his release; the CPVPV attended the fourth hearing, and Prince Salman himself attended the fifth hearing. At that point the prince asked to have the case transferred to the Greater Court of Riyadh, where al-Naqshabandi appears to have had at least four sessions before Judge Sulayman al-Samhan. It is difficult to determine the precise number of sessions because the trials were not public and at no point was al-Naqshabandi allowed to consult with a lawyer. According to the family, the hearings stopped after al-Naqshabandi challenged Prince Salman in court, although al-Naqshabandi remained in prison for almost two more years before his execution.⁴⁵ It was during this period that al-Naqshabandi wrote the three letters to Judge Sulayman al-Samhan, asking him to review the facts of the case because al-Naqshabandi felt he had been unable to present them properly during the short trial sessions.

⁴⁴ See Amnesty International, *Saudi Arabia: Religious Intolerance*, pp. 24-28, for an English translation and critique of the Statute of Principles of Arrest, Temporary Confinement and Preventative Detention (issued November 11, 1983).

⁴⁵ Human Rights Watch/Middle East telephone interview, a close relative, name withheld, Syria, July 10, 1997.

In addition to the outline of events cited above, al-Naqshabandi's letters attempt to present logical contradictions in the CPVPV's charges, and offer evidence to support al-Naqshabandi's claim of collusion between the prince and the CPVPV. However, without access to a lawyer to advise him on the formal steps needed to petition for the admission of evidence, for calling witnesses, or even for filing a complaint alleging abuse, al-Naqshabandi had to depend on the willingness of the presiding judge to investigate these allegations. Of course, a judge whose tenure in office is determined by the king has little incentive to investigate allegations of abuse by the king's nephew.⁴⁶ Thus, even though the letters to Judge Sulayman al-Samhan provide the names of seventeen individuals — many of them current or former employees of Prince Salman's who could be called as witnesses to verify al-Naqshabandi's account of the prince's behavior — none of these witnesses were ever called to give testimony. Nor did the judge question any of the six other employees whom al-Naqshabandi alleges also suffered serious abuse by the prince, or call any other defense witnesses at all.⁴⁷

Al-Naqshabandi also alleges that Shaykh `Adil Muqbil, who testified against him on behalf of the CPVPV, was not in fact the shaykh who conducted the interrogation, but rather had been seated in the next room with Prince Salman, and that he spoke on behalf of the prince and not as an independent investigator.⁴⁸

In theory these alleged irregularities and abuses, as well as the abuses in sentencing and execution detailed below, should have been investigated by the Committee for General Investigations and Prosecutions (*hay'at al-tahqiq wa al-iddi'a' al-'amm*, CGIP), although it does not appear that any such investigation ever took place. Created by the Council of Ministers in 1993 after eight years of deliberations, the CGIP's responsibilities, according to its president, include

the investigation of crimes and bringing of cases or declining to prosecute in accordance with what is set out in the regulations, prosecution before judicial agencies, asking for the review of [lower court] cases, supervision of the execution of sentences, monitoring and searching prisons, detention centers, and places where sentences are carried out, hearing complaints from prisoners and detainees, investigation of the legality of their imprisonment or detention and the legality of their remaining in prison or detention centers after the end of their sentences, and taking the necessary measures for their release from illegal imprisonment or detention, and instituting measures required by law against those responsible.⁴⁹

⁴⁶ The U.S. Department of State points out that "[i]n general, members of the royal family, and other powerful families, are not subject to the same rule of law as ordinary citizens. For example, judges do not have the power to issue a warrant summoning any member of the royal family." The report also notes that "[p]rovincial governors have the authority to exercise leniency and reduce a judge's sentence. In some instances, governors have reportedly threatened and even detained judges over disagreements on their decisions." This last point is especially important, given that al-Naqshabandi's employer is nephew to the Governor of Riyadh, Prince Salman bin `Abd al-`Aziz al-Sa`ud, and his trial and execution took place in Riyadh. U.S. Department of State, *Country Reports on Human Rights Practices for 1996*, p. 1369.

⁴⁷ The abuses al-Naqshabandi alleges the other employees suffered at the prince's hands are all quite severe, and, if true, support al-Naqshabandi's claim that "I am not his first victim, or his last." They include two successful and one unsuccessful attempt to have individuals imprisoned on spurious charges; three cases where he threatened individuals with guns, once in a police station; and one case where he extorted money from an individual and then had him flogged on spurious charges. Submission 2, pp. 7-8.

⁴⁸ Submission 3, p. 6.

⁴⁹ Committee President Mohammed bin Sulayman al-Mahrus, quoted in Hasin al-Baniyan, "Tahqiq ma` ra'is hay'at al-tahqiq wa al-iddi'a' al-'amm fi al-sa`udiyya: Lan nasamah bitawqif ay shakhs aw idkhalihi al-sijn dun adilla maqna`a" (Interview with the President of the Committee for Investigation and General Prosecution in Saudi Arabia: 'We Won't Allow Any Person to be Detained or Sent to Prison Without Sufficient Evidence,' *al-Sharq al-Awsat* (London), January 27, 1997.

The CGIP's ability to fulfill these responsibilities are necessarily undermined by its structural position: the committee reports directly to the Minister of Interior— Prince Naif bin `Abd al-`Aziz, who is also an uncle of Prince Salman. According to Article 27 of the Committee's governing regulations, the minister is responsible for "supervising the Committee and the taking of procedures and arrangements or the presentation to the specialized agencies his suggestions or projects."⁵⁰ Although the CGIP is supposed to report every six months on the conditions of prisoners and detainees, when the president of the committee was asked in January 1997 to explain the role of the CGIP with regard to frequently reported excesses like "insults and blows that prisoners are [said to be] subject to," he denied that any such abuse had or could take place:

⁵⁰ Ibid.

[i]f this kind of arbitrary practices were found then the Committee would apply the system of regulations and instructions that absolutely forbid these kinds of practices, but nothing like that happened and it won't happen, God willing, because all those specializing in dealing with prisoners believe in God and in the right of the person and his God given dignity . . . and based on what I know and have seen by way of reports there is nothing that proves the existence of what you refer to.⁵¹

SENTENCING AND EXECUTION

According to the Ministry of Interior, al-Naqshabandi's death sentence was reviewed by the Appeals Committee (*hay'at al-tamiz*) and the Higher Judicial Council, who on December 2, 1996 (21 Rajab 1417), ordered the sentence to be carried out. Al-Naqshabandi was executed Friday, December 13, 1996 (3 Sha'ban 1417), almost three years after his arrest. Contrary to usual practice, there appears to have been no court session for either the conviction or the sentencing, and apparently al-Naqshabandi did not even know that he had been sentenced to death.⁵² Family members and friends who visited al-Naqshabandi in prison on Monday and Tuesday, December 9 and 10, 1996, say that he was in good spirits and promised them that he would be released soon. Indeed, al-Naqshabandi's wife only learned that her husband had been executed when she was telephoned by his brother, who had read it in a newspaper.

In announcing the execution, the Ministry of Interior charged that al-Naqshabandi "undertook the practice of works of magic and spells and possession of a collection of polytheistic and superstitious books."⁵³ It then justified the execution by arguing that "in view of what magic and witchcraft produce in the way of serious damages to the individual and society with respect to religion, the soul, money and rationality, [and] in that what the defendant did has in it great harm worthy of the severe punishment that cuts short his evil and deters others, it was decided he be sentenced to the discretionary punishment of death."⁵⁴

⁵¹ Ibid.

⁵² Lawyers practicing in Saudi Arabia have told Human Rights Watch that with the exception of political prisoners, defendants receiving the death sentence and sometimes their families as well are usually present at the sentencing. "While the date for the execution is not usually given at the time of sentencing, the defendant is always present. I've never heard of a secret sentence in Islamic law or Saudi law." Human Rights Watch/Middle East telephone interview, a lawyer practicing in Saudi Arabia, name withheld by request, August 1997.

⁵³ "The Killing of a 'Sorcerer and Magician' ...," *Al-jazira*.

⁵⁴ Ibid.

The al-Naqshabandi family alleges that when the Syrian ambassador to Saudi Arabia approached the Governor of Riyadh — Prince Salman bin `Abd al-`Aziz, who is also an uncle of al-Naqshabandi's employer — the governor admitted that al-Naqshabandi had been wrongfully executed and offered the family compensation in the form of blood money (*diya*);⁵⁵ when the family demanded an apology as well the offer was withdrawn. The ambassador also submitted a formal written request to the governor of Riyadh asking that al-Naqshabandi's body be returned to his family for burial in Syria, a request that was not honored.⁵⁶ The family also wrote letters to King Fahd and the Governor of Riyadh asking for an investigation but never received answers.

In addition to the loss of a loved one, the al-Naqshabandi family also suffered serious financial losses and harassment because of the arrest and execution of `Abd al-Karim Mara`i al-Naqshabandi. In his letter to the judge, al-Naqshabandi details more than 224,870 Riyal (US \$59,816) in back pay, severance pay and un-reimbursed loans owed to him by Prince Salman, which the prince forced him to renounce in front of witnesses just prior to his arrest. With her husband in prison, al-Naqshabandi's wife was forced to sell their household furnishings to pay for food and shelter for herself and her children while they waited in Saudi Arabia for his release.⁵⁷

Al-Naqshabandi's brother Ahmad, who also worked in Saudi Arabia, was arrested shortly after the execution, while he was receiving visitors offering condolences over his brother's death. The family claims that five officers who identified themselves as members of the General Investigations police (*al-mubahith al-`amma*) searched the house and confiscated all the documents pertaining to al-Naqshabandi's case, and that Ahmad was accused of "more than twenty charges," including slandering the person of the king (*sabb that al-malikiya*) and damaging Saudi Arabia's reputation because he had spoken out about his brother's case.⁵⁸ He spent one and a half months at the General Investigations Center (*markaz al-mubahith al-`amma*) in Abha before his passport and residency permit were confiscated and he was transferred to house arrest (*iqama jabriya*). Lacking proof of his right to be in Saudi Arabia, he could not leave home without risking arrest, and he thus had to give up his job as a school teacher. Other conditions of his release included having to check in at the General Investigations office every week. In June he was finally notified by General Investigations that he could leave Saudi Arabia, and he returned to Syria on July 8, 1997.

INTERNATIONAL HUMAN RIGHTS STANDARDS

Despite its assertions to the contrary, Saudi Arabia, by virtue of its membership in the United Nations, is committed to uphold universal human rights standards, including those set forth in the Universal Declaration of Human Rights (UDHR), which are recognized as norms of customary international law. Other international instruments elaborate upon these rights, most notably the International Covenant on Civil and Political Rights (ICCPR), to which 138 states are party.⁵⁹ Although Saudi Arabia is one of the few nations that is not a party, the terms of the ICCPR provide guidance as to the content of the fundamental rights that Saudi Arabia is obligated to respect, based on Saudi Arabia's participation in the United Nations and the universally binding character of such rights.

⁵⁵ Islamic law provides that heirs of a homicide victim are entitled to compensation; in the case of intentional homicide this payment can be an alternative to retaliation against the murderer. See Lerrick and Mian, *Saudi Business and Labor Law*, pp. 330-44 for a discussion of diya as it is applied in Saudi Arabia.

⁵⁶ Letter from `Amr al-Sayyid, Syrian ambassador to Syria, to Prince Salman bin `Abd al-Aziz, Governor of the Riyadh Region, dated December 15, 1996 (5 Sha`ban 1417).

⁵⁷ Al-Naqshabandi also describes being visited in prison by his landlord to arrange the sale of the family's air conditioners and telephone to pay part of the back rent. Submission 3, p. 5.

⁵⁸ Human Rights Watch/Middle East telephone interview, a close relative, name withheld, Syria, July 10, 1997.

⁵⁹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of December 16, 1966.

Article 9 of the Universal Declaration states that “[n]o one shall be subjected to arbitrary arrest, detention, or exile.” To classify the legitimate exercise of basic rights as criminal behavior is by definition arbitrary. Criminalizing the possession of religious amulets and books violates the freedom of expression and belief, and so al-Naqshabandi’s arrest on those grounds is arbitrary.

Article 10 of the Universal Declaration states that “[e]veryone 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.” This language is echoed very closely in Article 14(1) of the ICCPR. Al-Naqshabandi’s trial fails to meet the minimum standards for independence and impartiality because the Saudi judiciary is structured to significantly bias outcomes in favor of members of the royal family and their associates. Not only are the Saudi courts unable to subpoena members of the royal family, but the king has the power to appoint and dismiss judges at any time he chooses and to create special courts at will. In a judicial system of this nature, any claim to independence and impartiality is further undermined when the case involves a high ranking member of the royal family who seems to have been the prime mover behind the prosecution.

The trial also fails to meet the publicity requirement of the Universal Declaration, particularly in light of the more detailed explication of public trial given in Article 14(1) of the ICCPR. That article explicitly states that “any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.” Al-Naqshabandi’s trial was inaccessible to both the public and his immediate family, and the evidence gathered by Human Rights Watch indicates that defendant himself did not attend the sessions where he was allegedly convicted and sentenced.

Article 11(1) of the Universal Declaration states that “[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense.” Article 14(3) of the ICCPR, an authoritative guide in interpreting the broad language of this provision, further specifies the content of these minimum guarantees. Articles 14(3)(b) states that at a minimum everyone is guaranteed “adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing,” while 14(3)(d) specifies the right

[t]o be tried in his presence and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

Saudi Arabia’s failure to guarantee access to legal counsel during interrogation and trial is a particularly egregious shortcoming, given the highly complex, specialized, and ill-defined nature of the Saudi legal system. Individuals who cannot afford to pay expensive lawyer’s fees — as is often the case with foreigners engaged in disputes with employers over wages — are at an even greater disadvantage because Saudi Arabia does not guarantee the right to free legal assistance for those without sufficient means to pay for it. Without access to a lawyer it is virtually impossible for a defendant to prepare a proper defense, or even take the necessary procedural motions to petition to introduce evidence, call witnesses, or make formal complaints about abuse.

Article 14(3)(e) of the ICCPR specifies that the defendant has the right “to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.” In Saudi Arabia, however, only a judge has the power to call witnesses for either side, and that power falls short of compelling members of the royal family to give testimony. A defendant may petition for a witness to be called, but the actual decision remains within the judge’s discretion. In al-Naqshabandi’s case, the defendant clearly attempted to petition to call witnesses through his letters to the judge, but without legal counsel he was unable to make the necessary formal petition. The only witnesses who did testify appear to have been al-

Naqshabandi's employer and an official of the arresting agency, in violation of Article 14(3)(e)'s requirement that defense witnesses be allowed to give testimony. It is not clear whether al-Naqshabandi was ever allowed to question these two witnesses, but al-Naqshabandi's allegations that the CPVPV official gave false testimony, made in his letters to the judge written after the session, raise questions as to whether or not he was free to raise this challenge during the trial.

Article 14(3)(g) of the ICCPR requires that no one "be compelled to testify against himself or to confess guilt." The U.N. Human Rights Committee commentary on this provision makes special reference to Article 7 and Article 10 of the ICCPR, which require that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person," saying that "[t]he law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable."⁶⁰ The threats, beatings and ill-treatment al-Naqshabandi alleges he suffered while in police and CPVPV custody, and the court's apparent acceptance of two confessions obtained through coercion, would be inconsistent with the minimum standards set forth in Articles 7, 10, and 14(3)(g).

Article 11(2) of the Universal Declaration further guarantees that "[n]o one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed." In Saudi Arabia, great discretionary powers granted to judges facilitate the post-facto criminalization of activities that were not previously punishable offences, and the application of punishments incommensurate with the crimes committed.

The nature of the Saudi legal system appears to facilitate violations of Article 18 of the Universal Declaration, which guarantees that "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." Article 19 of the UDHR further guarantees "the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Al-Naqshabandi's conviction for "the practice of works of magic and spells and possession of a collection of polytheistic and superstitious books" is but one instance of Saudi Arabia's strict enforcement of religious orthodoxy, which includes criminalizing non-Muslim worship, practice, teaching, and observance, as well as those forms of Muslim worship, practice, teaching, and observance that it considers heterodox.

Article 14(5) of the ICCPR provides that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." To date the Saudi Government has failed to provide any evidence that a review of al-Naqshabandi's conviction did in fact take place. If a review did take place, it cannot have been thorough, as it did not take into account any additional testimony or briefs from the defendant, who according to his family was unaware of any conviction, sentencing, or appeal on the Tuesday prior to his Friday execution.

With regard to the death penalty itself, although the ICCPR does not categorically prohibit capital punishment it clearly favors its abolition, stating in Article 6(2) that "[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes." Moreover, the U.N. Commission on Human Rights, in its recently concluded 1997 session, "[c]alls upon all States that have not yet abolished the death penalty progressively to restrict the number of offences for which the death penalty may be imposed," and notes that capital punishment is excluded from the penalties which the international criminal tribunals for the former Yugoslavia and for Rwanda are authorized to impose.⁶¹ Saudi Arabia's frequent resort to capital punishment, with its inherent cruelty and

⁶⁰ U.N. Human Rights Committee General Comment 13(21) on Article 14, paragraph 14.

⁶¹ Question of the Death Penalty, Commission on Human Rights resolution 1997/12.

irreversibility, is even more troubling in light of the Saudi legal system's gross failure to provide the most basic guarantees of due process.

RECOMMENDATIONS

To the Government of Saudi Arabia

1. Conduct an independent investigation into the arrest, detention, trial and execution of al-Naqshabandi, and make the investigation's findings public. The investigation should determine whether any of the due process rights listed above were not respected, and whether al-Naqshabandi was subjected to physical abuse while under interrogation. If it is found that al-Naqshabandi's rights were violated those responsible should be prosecuted and compensation should be granted to his survivors.
2. Return al-Naqshabandi's body to his family for burial in Syria, as the family has requested.
3. Make public the law under which al-Naqshabandi was arrested and convicted, including the precise definition of terms such as "witchcraft" and "polytheistic and superstitious books," and the nature of any legally specified punishments.
4. End the criminalization of "witchcraft," and other such vaguely worded charges. No one should be prosecuted for the exercise of the freedom of expression or belief.
5. Take immediate steps toward the elimination of the death penalty from Saudi law, including immediately halting all executions, and undertaking a full review of the use of the death penalty with a view to its total abolition. Until full abolition is effected, take particular care to scrupulously observe all fair trial standards.
6. Ensure that all laws exist in clear written form, and are freely available to the public and to all parties engaged in legal actions. At a minimum, all crimes punishable by imprisonment, corporal or capital punishment should be codified in written form, in such a way as to make clear each element of the crime that must be proven beyond a reasonable doubt.

To the Government of Syria

In light of the grave abuses suffered by Syrian national al-Naqshabandi in Saudi Arabia, and in light of the pattern of abuse of foreign nationals that has been documented, we urge the Syrian authorities to work to defend the internationally recognized rights of its nationals in Saudi Arabia. In particular, we call upon the Syrian Government to:

1. Request an independent investigation by Saudi authorities of the arrest, detention, trial and execution of `Abd al-Karim al-Naqshabandi, with the findings to be made public. If it is found that al-Naqshabandi's rights were violated, ask that those responsible be prosecuted and compensation granted to al-Naqshabandi's survivors.
2. Continue to press for the return of al-Naqshabandi's body to his family in Syria.
3. Monitor closely the treatment of Syrian nationals in Saudi Arabia, and undertake vigorous efforts to protect them from human rights abuse by Saudi authorities.
4. Ensure that Syrian diplomatic staff in Saudi Arabia visit regularly all Syrian detainees and prisoners in Saudi Arabia, and further ensure that these individuals have access to legal counsel of their choice, as required under international law.

Human Rights Watch/Middle East

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Susan Osnos, associate director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Patrick Mingos, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair.

Its Middle East division was established in 1989 to monitor and promote the observance of internationally recognized human rights in the Middle East and North Africa. Hanny Megally is the executive director; Eric Goldstein is the research director, Joe Stork is the advocacy director; Virginia N. Sherry is associate director; Clarisa Bencomo, Elahé Sharifpour-Hicks, and Nejla Sammakia are research associates; Gamal Abouali is the Orville Schell fellow; Georgina Coptly and Awali Samara are associates. Gary Sick is the chair of the advisory committee and Lisa Anderson and Bruce Rabb are vice chairs.

Web Site Address: <http://www.hrw.org>

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

HUMAN RIGHTS WATCH
485 5th Avenue
New York, New York 10017
Telephone: (212)972-8400
Facsimile: (212)972-0905

Website: <http://www.hrw.org>



BRUSSELS HONG KONG LONDON LOS ANGELES MOSCOW NEW YORK RIO DE JANEIRO WASHINGTON