Saudi Arabia

Human Rights and Saudi Arabia's Counterterrorism Response

Religious Counseling, Indefinite Detention, and Flawed Trials

HUMAN RIGHTS WATCH

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Overview

Saudi Arabia has responded to threats and acts of terrorism since 2003 by indefinitely detaining thousands of suspects, all the while providing many of them with an opportunity to participate in a program of religious counseling aimed at "rehabilitating" them. At least 1,500 detainees who participated in this program have been released. Foreign governments have praised the Saudi government for the ostensible success of the rehabilitation program in thwarting terrorist activity, largely overlooking the fact that the participants were not convicted criminals but rather men held in long-term detention without charge.

In October 2008—five years after the first series of detentions—Saudi authorities announced that a batch from the thousands of suspected militants remaining in detention, 991 of them, would go on trial. Since then, only scant information has come out about the judicial proceedings. On July 8, 2009, the Ministry of Justice announced that a court had convicted 330 of the men of a variety of offenses linked to acts of violence, issuing one death sentence.

This report assesses, first, the religious counseling program that Saudi authorities offer to suspected militants in prison; second, the systematic, indefinite detention of suspected militants by the domestic intelligence service, the General Directorate for Investigations (*mabahith*), in violation of the international prohibition of arbitrary detention and the requirement in Saudi law that authorities refer a detainee to court within six months of his arrest; and, third, the trials that began in 2009 for some of the suspects.

Saudi Arabia has made what appears to be a late, but necessary, decision to refer long-term detainees suspected of involvement in violent acts to court. However, the lack of official information and the absence of public observers at these trials cast significant doubt on their fairness, underlined by indications that defendants do not have legal assistance and adequate time and facilities to prepare a defense. This is despite promises that officials made to the media in 2008 that the proceedings would be open and fair. The verdicts should be appealed in open court. Saudi Arabia should act to ensure that the proceedings afford defendants all guarantees of a fair trial, including by ensuring that each detainee has qualified legal counsel of his choosing and adequate time and means to prepare a defense, and allowing the defense to present evidence and to challenge the prosecution's evidence. Saudi authorities should open hearings to the public, and allow observers to monitor the fairness of the trials.

Saudi Arabia should further ensure that all remaining *mabahith* detainees are either released or brought to trial on the basis of charges of cognizable criminal offenses and in proceedings that guarantee their due process rights. In any event, all detainees should immediately be brought before a court able to rule on the legality of their detention and to order their release, and the authorities should immediately comply with relevant rulings of the Board of Grievances (Saudi Arabia's administrative court) and the UN Working Group on Arbitrary Detention, both of which have reviewed some of the detentions and have found them arbitrary. Compensation should be provided to those who have been detained arbitrarily.

Foreign governments, such as the United States and the United Kingdom, that praised Saudi Arabia's religious counseling program for ostensibly thwarting terrorist activity, have a special duty to monitor the judicial proceedings for compliance with international fair trail standards.

Recommendations

To the Government of the Kingdom of Saudi Arabia

- Saudi Arabia should release *mabahith* detainees or charge them with cognizable criminal offenses and bring them to trial. All detainees should immediately be brought before a court that can rule on the legality of their detention and that can order their release. All *mabahith* detainees who successfully challenged their detention at the Board of Grievances should be immediately released.
- Saudi Arabia should act to ensure that court proceedings afford defendants all guarantees of a fair trial, including by
    - Ensuring each detainee has qualified legal counsel of his choosing;
    - Ensuring each detainee has adequate time and means to prepare a defense;
    - Allowing the defense to present evidence and to challenge the prosecution's evidence and witnesses in court;
    - Opening hearings to the public; and
    - Allowing observers to monitor the fairness of the trials.

To Saudi Arabia's Bilateral Partners

- Monitor the judicial proceedings against suspected militants detained by the *mabahith*, and publicly question any shortcomings in providing the defendants with fair trials.

Methodology

Saudi authorities have not granted Human Rights Watch the access to the country we requested in October 2008 to monitor the trials of suspected militants. During an official Human Rights Watch visit in November 2006 Saudi authorities reneged on their initial agreement to allow a delegation to visit prisons run by the *mabahith*. Due to the government-imposed barriers preventing Human Rights Watch from conducting in-country research, this report relies on telephone interviews with Saudi families of detainees, in-person interviews with families often living outside Saudi Arabia, and accounts provided by the Saudi and foreign media and Saudi human rights activists. It is also informed by the interviews Human Rights Watch conducted in 2006 with Ministry of Interior officials about Saudi counterterrorism policies. We have not disclosed the names of detainees, their family members, or human rights activists we interviewed for fear that they may face retaliation.

Background

Thousands of Saudis have had experience fighting abroad, mostly in Afghanistan, but also in Chechnya, Somalia, and Bosnia. Most of those in Afghanistan returned to Saudi Arabia following the overthrow of the Taliban government in October 2001. In the wake of the US-led invasion of Iraq in March 2003, veteran fighters and a new generation of young radicalized Saudis, mobilized in part by television coverage of the fighting in Iraq, began to make plans to fight in Iraq against those whom they considered infidels—Iraq's foreign invaders, but also Shi`a Iraqis.

By 2003 Saudi Arabia also faced a growing number of militants prepared to act violently against domestic targets. Militants kidnapped and killed foreigners living in Saudi Arabia, exploded bombs among foreign and Saudi civilians, and targeted Saudi government officials and institutions. In 2003 and 2004 Saudi Arabia witnessed a series of bombings that killed 74 security officers and injured 657, in addition to 90 civilians killed and 439 injured, according to an article by the news website *Alarabiya.net* of October 21, 2008, quoting a Saudi "security source."[1] In February 2006, militants failed in an attempt to bomb a large petroleum refinery. Saudi officials in June 2008 announced the arrest of over 700 persons in the preceding six months alone on suspicion of planning to assassinate religious leaders and government officials and attack pilgrimage sites, and of being involved in fighting in Iraq. Around 180 suspects were later released, the Ministry of Interior spokesperson Mansour al-Turki said in June 2008.[2]

Those whom authorities have now indicted are believed to include clerics who, in the run-up to the 2003 invasion of Iraq, reportedly either publicly questioned the religious legitimacy of the Saudi government or endorsed violent actions. . These include Nasir al-Fahd, Ali al-Khudair, Faris al-Zahrani, and Ahmad al-Khalidi. It remains unclear whether they have been charged with inciting violence or participating in it through recruitment, fundraising, or other logistical support. *Okaz* Saudi daily newspaper on October 28 reported that confessions of persons "belonging to cells active in propagating deviant thoughts," had been

[1] "The Saudi Interior Minister Announces the Referral of 991 Accused to the Shari'a Courts, Among them all the Prominent *Takfiri* Elements," *Alarabiya.Net*, October 21, 2008, http://www.alarabiya.net/articles/2008/10/21/58616.html (accessed April 22, 2009). The same figures were attributed to Minister of Interior Prince Nayef. See Muhammad Humaidan, "Al-Qaeda Militants Convicted," *Arab News*, July 9, 2009.

[2] Samir al-Saadi, "Terrorist Groups Destabilizing Saudi Arabia," *Arab News*, June 26, 2007.

authenticated for use in trials.[3] On October 25 the newspaper reported that "it is believed that the three shaikhs of *takfir* [the practice of declaring others unbelievers] al-Khudair, al-Fahd, and al-Khalidi are among those referred to court."[4]

[3] 'Adnan Shabrawi, "Those Involved in Acts of Terrorism in Jeddah Legally Confess Shortly Before their Referral to the Riyadh Court," *Okaz*, October 28, 2008, http://www.okaz.com.sa/okaz/osf/20081029/Con20081029236909.htm (accessed July 17, 2009).

[4] Abdullah al-'Uraifij, "70% of Those Referred to Trial Are Saudis and 30% Yemenis and From North African Countries," *Okaz*, October 25, 2008, www.okaz.com.sa/okaz/osf/20081026/Con20081026236158.htm (accessed July 17, 2009). *Alarabiya.net* on October 21 quoted *Watan* newspaper as saying that all prominent religious shaikhs who had declared others unbelievers, including Nasir al-Fahd, Ali al-Khudair, Ahmad al-Khalidi, Faris Al Shawil, Nimr bin Suhaj, and Khalid bin Juwair had been named in charge sheets of terrorism suspects delivered to the court in Riyadh. "The Saudi Interior Minister Announces the Referral of 991 Accused to the Shari'a Courts, Among them All the Prominent *Takfiri* Elements," *Alarabiya.net*.

Religious Counseling

Religious and psychological counseling can be useful components in a program for rehabilitating convicted criminals. However, the persons who undergo the religious counseling program that Saudi authorities offer to suspected militants in *mabahith* detention have not only *not* been convicted, but also have never been charged with a crime. The problem with the program, from a human rights perspective, is that except as part of a sentence imposed after conviction for a crime, international human rights law does not permit the detention of persons to undergo a reeducation program. Such involuntary detentions are always arbitrary. Education programs, while they may form part of a post-conviction regime, cannot be forced upon persons whose guilt has not been established.[5]

Starting in 2003, the Saudi Ministry of Interior set up pilot schemes of what are now called Consultation Committees. The purpose of the work of the Consultation Committees is to facilitate the reintegration of persons who harbor thoughts of violence or who have committed such acts, their staff told Human Rights Watch in December 2006.[6] There are two different types of rehabilitation programs through counseling: one extended version at a special rehabilitation center, reserved for former detainees at the US detention center at Guantanamo Bay, Cuba, and around one hundred and fifty select other *mabahith* detainees, and the other, reduced version for thousands of other *mabahith* detainees inside *mabahith* prisons.

The committees working in the reduced program consist of religious shaikhs, or clerics (not necessarily government employees), and psychologists, who visit and initiate discussions with detainees. In 2006 there were two types of counseling in the reduced program: in one, the committee staff would hold two individual sessions with the detainee before assessing him. In the other, the detainee would participate in a six-week classroom program with other detainees before sitting for a written examination. Topics include the elements of basic psychology, proper understanding of *jihad*, protection of non-Muslims in Islam, and allegiance to the ruler. The committees' most important message, Human Rights Watch

[5] See Human Rights Watch, *Precarious Justice. Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia*, Volume 20, No. 3(E), March 24, 2008, http://www.hrw.org/en/reports/2008/03/24/precarious-justice-0, pp. 117-120.

[6] Human Rights Watch interview with Dr. Ahmad al-Salim, deputy minister of interior, Riyadh, November 29, 2006, and with Dr. Abd al-Rahman al-Hadlaq, head, Consultation Committees, Riyadh, December 2, 2006.

heard from committee members as well as former detainees, is the impermissibility of fighting in the name of *jihad* unless approved by a ruler and the potential *jihadi*'s parents.[7]

The committees' head, Abd al-Rahman al-Hadlaq, insisted to Human Rights Watch in December 2006 that participation is voluntary. He noted that graduation from the program and a positive recommendation does not invariably lead to release, but many ask to participate, he said, "because they know that they won't be released without completing the program."[8] The absence of any legal process for *mabahith* detainees until the selection of some for trial in 2008 after years of indefinite detention (see below) meant that, in practice, passing the Consultation Committees' assessment offered the only chance for release from prison, though it provided no guarantee. Many detainees who reportedly received commendations from their instructors remain imprisoned.[9]

By December 2006 the authorities had released more than 700 persons out of over 2,000 detainees who had undergone the program since its inception in mid-2004.[10] Saudi Interior Ministry officials said that by December 2007, 1,700 detainees remained in the program while 1,500 had been released, *Bloomberg.com* reported on December 12, 2007.[11]

Guantanamo detainees

In addition to the Consultation Committees' work in *mabahith* prisons around the country, the Saudi government around 2006 opened the Prince Muhammad bin Nayef Rehabilitation Center north of Riyadh, initially to host Saudis formerly detained at Guantanamo whom the United States had transferred into Saudi custody.

The US has sent home the vast majority of the nearly 140 Saudis who were originally held at Guantanamo. When former Guantanamo detainees are returned to Saudi Arabia, security officials typically debrief them before holding them at the rehabilitation center for a period of

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[7] Human Rights Watch interview with Dr. Abd al-Rahman al-Hadlaq, and with Dr. Turki al-'Utyan, chief psychologist, Consultation Committees, Riyadh, December 2, 2006, and with two former *mabahith* detainees, Riyadh, November and December 2006.

[8] Human Rights Watch interview with Dr. Abd al-Rahman al-Hadlaq.

[9] Human Rights Watch interviews with eight family members of detainees who had undergone the Consultation Committees' program and reportedly received positive commendations, December 2006 – July 2009.

[10] Human Rights Watch interview with Dr. Abd al-Rahman al-Hadlaq.

[11] Glen Carey, "Saudis Battle Bin Laden's Jihad With 150 Clerics, Art Classes," *Bloomberg*, December 12, 2007, http://www.bloomberg.com/apps/news?pid=20601085&sid=ag7s5nUhz8nc&refer=europe (accessed July 27, 2009).

several weeks or months, or, in more recent cases, even longer periods (see below).[12] Detainees at the rehabilitation center receive religious and psychological counseling (they can also engage in games and sports), and the government helps to find them work—and often a wife, too, by footing the dowry—and obtains security guarantees from the detainees' family and tribe. Upon releasing the detainees, the government bans them from foreign travel and keeps them under observation.

In addition to counseling, some ex-Guantanamo detainees received what Saudi officials have called trials, involving a short appearance before a judge who released them after sentencing them for time already served following their transfer, typically for "leaving the country without permission," some of the former Guantanamo detainees told Human Rights Watch.[13]

In April 2009 Agence France Press reported based on Ministry of Interior sources that 270 detainees, 117 of whom were Guantanamo returnees, had undergone this extended version of the rehabilitation program.[14] Saudi officials have claimed a high success rate for their program of religious and psychological rehabilitation for ex-Guantanamo detainees. These claims received a setback when it emerged that two graduates of the program had gone to Yemen to unify the Yemen and Saudi branches of al Qaeda.[15] The Saudi government reported in January 2009 that 11 former Guantanamo detainees who went through the rehabilitation program had escaped Saudi monitoring, but at least five were quickly re-arrested.[16] Saudi authorities alleged that they were either trying to leave the country or were associating with persons they were barred from seeing as a condition of their release from the rehabilitation program, or because officials decided they posed a risk.[17] Since then, Muhammad al-'Awfi,

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[12] Guantanamo detainees the US transferred to Saudi custody before 2006 also spent longer times in detention. See "Saudi Arabia: Guantanamo Detainees Return to Legal Limbo," Human Rights Watch news release, May 15, 2006, http://www.hrw.org/en/news/2006/05/25/saudi-arabia-guantanamo-detainees-return-legal-limbo.

[13] Human Rights Watch interview with former Guantanamo detainee and a relative of a former detainee, Riyadh, May 19, 2007.

[14] "Saudis Use Soft Touch to 'Save' Former Militants," Agence France Press, April 26, 2009.

[15] Thomas Hegghammer, "Saudi and Yemeni Branches of al-Qaida Unite," post to "Jihadica" (blog), January 24, 2009, http://www.jihadica.com/saudi-and-yemeni-branches-of-al-qaida-unite/ (accessed July 27, 2009).

[16] Evan F. Kohlmann, "'The Eleven': Saudi Guantanamo Veterans Returning to the Fight," *The NEFA Foundation*, February 2009, http://www.nefafoundation.org/miscellaneous/FeaturedDocs/nefagitmoreturnees0209-1.pdf (accessed July 27, 2009), and Robert F. Worth, "9 Alumni of Saudi Program for Ex-Jihadists Are Arrested," *The New York Times*, January 27, 2009. In April, Saudi officials revealed that "Of the former Guantanamo inmates, only 11 have gone astray. Five were jailed, five are still missing and one, Mohammed al-Awfi, returned voluntarily after linking up with Al-Qaeda in Yemen." "Saudis Use Soft Touch to 'Save' Former Militants," Agence France Press.

[17] Human Rights Watch telephone interview with Christopher Boucek, associate, Middle East Program, Carnegie Endowment for International Peace, March 11, 2009.

one of the two who went to Yemen, surrendered and was returned to Saudi Arabia, but the other, Sa'id al-Shihri, remains at large. Saudi officials are now reassessing the program.

Approximately twelve Guantanamo detainees whom the US transferred into Saudi custody in December 2007 remain in detention at the rehabilitation center while that reassessment takes place, and have been joined there by three Guantanamo detainees transferred in June 2009.[18] The fact that some ex-Guantanamo detainees have therefore spent more than 18 months in this form of detention at this writing underscores the ability of Saudi authorities to indefinitely detain ex-Guantanamo detainees without judicial oversight.

The Obama administration is pursuing talks with the Saudi and Yemeni governments over the possible transfer of Yemeni Guantanamo detainees, the largest remaining national contingent there with nearly 100 detainees, into Saudi custody and its rehabilitation program over concerns about a resurgence of militant groups in Yemen and the government's uneven record in law enforcement and detention practices.[19]

Foreign officials and the international media have tended to gloss over two important aspects of the Saudi religious counseling program. First, the Saudi Ministry of Interior organized visits only to the rehabilitation center with the extended program, where 270 *mabahith* detainees and ex-Guantanamo detainees participated. They did not allow access to the thousands of other *mabahith* prisoners around the country undergoing the reduced program. Second, foreign officials and the media have often fallen into the trap of extolling the virtues of counseling while overlooking the lack of any legal process afforded detainees. For example, the UK Foreign Secretary David Miliband wrote in his blog on April 23, 2008, that he had visited a would-be Saudi suicide bomber returned from Iraq to "the Saudi Government's rehabilitation centre - a half way house for extremists charged with terrorist offences."[20] At a Saudi-US conference in April 2009 the incoming principal deputy assistant secretary of defense for international security affairs, Joseph McMillan, called the Saudi rehabilitation program "extraordinarily successful."[21]

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[18] Peter Finn, "Three Saudis Moved from Guantanamo," *Washington Post*, June 13, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/06/12/AR2009061203848.html (accessed June 13, 2009).

[19] Ahmed al-Haj, "In Yemen, CIA Holds Talks on Al Qaeda," Associated Press, May 29, 2009. For details on US-Yemeni differences concerning the repatriation of Yemeni Guantanamo detainees, see Human Rights Watch, *No Direction Home. Returns from Guantanamo to Yemen*, March 2009, http://www.hrw.org/en/reports/2009/03/28/no-direction-home.

[20] David Milliband, "Face to Face With a Suicide Bomber," post to "FCO Bloggers: Global Conversations" (blog), *UK Foreign and Commonweath Office*, April 23, 2008, http://blogs.fco.gov.uk/roller/miliband/date/20080423 (accessed July 17, 2009).

[21] "Panel III: Through Saudi Arabia's Window and Other Lenses: Middle East Dynamics and Stakeholder Challenges," Joseph McMillan, principal deputy assistant secretary for international security affairs, Department of Defense, at a New America Foundation event *U.S.-Saudi Relations in a World Without Equilibrium*, Corcoran Ballroom-Four Seasons Hotel, Washington, D.C, April 27, 2009, http://www.youtube.com/watch?v=dARbSIPbANA (accessed July 28, 2009). In October 2007 Scott

The rehabilitation program may deserve credit for its intentions, innovations, and apparently low rate of acts of violence pursued by those released. However, the men enrolled in this program are all individuals whom the *mabahith* is detaining without formal charges and without any recourse to challenge their detention. Human Rights Watch has been in touch with families of persons detained for five years and longer who speak of their anguish at the long and open-ended detention, often despite their relatives' having reportedly received a positive recommendation from the consultation program offered to detainees in *mabahith* prisons. Many families insist on their relatives' innocence.

McLeod in *Time Magazine*'s "Postcard: Saudi Arabia" called the program the "anti-Guantanamo," ignoring the fact that indefinite detention is the trademark feature of both Guantanamo and the Saudi detention practice. In November 2008 Katherine Zoepf in a *New York Times Magazine* article, "Deprogramming Jihadists," erroneously wrote that persons in the program had been "convicted of involvement in Islamic extremism." Saudi officials only allow journalists access to the separate Rehabilitation Center, not to any of the *mabahith* prisons or its thousands of detainees.

Indefinite Detention

Saudi Arabia's Ministry of Interior does not regularly make public how many persons are detained or imprisoned in the prisons belonging to the General Directorate for Investigations (*mabahith*). These prisons are separate from those run by the regular prison service. In July 2007, Agence France Press quoted Interior Minister Prince Nayef as saying that "9,000 people had been arrested during anti-terror operations over the past four years," and that "Most had been released but 3,106 remained in custody."[22] As noted above, in December 2007 the Ministry of Interior said it had released 1,500 detainees who had successfully completed their religious and psychological rehabilitation program, and was reported to be still holding some 1,700.[23] Since then, authorities have detained several hundred more persons.

Saudi Arabia has no penal code clearly setting out in law what is a criminal offense. In 2002, however, the government promulgated the country's first Law of Criminal Procedure. Article 116 of the Law of Criminal Procedure gives the arrested person the right to "be promptly notified of the reasons for his arrest or detention;" the investigator (in Saudi Arabia, this is also the prosecutor) must inform the detainee of the charges "when the accused appears for the first time for an investigation," which has to be within 48 hours from the time of his arrest (article 34). Article 114 provides that the detainee must be brought to trial or released within six months.

Human Rights Watch spoke to over two dozen families of *mabahith* detainees in 2006 and 2007, only two of whom reported that their relatives had received trials. According to the families, these two men had completed their sentences but remained in detention. One former detainee of the *mabahith* prison in the northern Juf province, arrested for his dissident views, said in November 2006, "There is a group of about 20 persons in Juf, arrested for acts of violence [related to national security], whose sentence has expired, but they have not been released."[24] For all of the above, it was not clear whether Ministry of Interior officials or judges had issued these sentences.[25] In mid-2009 Human Rights Watch

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[22] "Saudi Arabia Foils 180 'Terror' Attacks Since 2003," Agence France Press, July 2, 2007.

[23] Glen Carey, "Saudis Battle Bin Laden's Jihad With 150 Clerics, Art Classes," *Bloomberg*.

[24] Detention without a legal basis, such as detention beyond the expiry of a sentence, is one of three types of detention the United Nations Working Group on Arbitrary Detention classifies as arbitrary.

[25] Saudi Interior Ministry officials traditionally imposed sentences on persons convicted of drugs or firearms offenses without putting them on trial. This practice was supposed to stop with the introduction of the Law of Criminal Procedure in 2002, but

contacted six of the families again to learn whether their relatives had been scheduled for trial or had received sentences under the newly announced trials of 991 terrorism suspects. Two family members said their relatives had since been released; the five other families said their relatives remained in detention without charge or trial.

Relatives of the two released detainees had told Human Rights Watch in 2006 that the arrest of both persons was due to their having expressed opposition views rather than involvement in acts of violence. A relative of one of them said in December 2006 that he had been detained around December 2003 because he had telephoned the Islah satellite television station run by Saudi opposition figure Sa'd al-Faqih in London.[26] In June 2009 another family member told Human Rights Watch that this detainee had been released two years earlier, "after receiving a sentence of around two years."[27] The prisoner did not receive written documentation of the sentence, and by the time of his release he would have spent over three years in prison. The other person released had been detained for publicly calling for the release of a relative, another nonviolent dissident.[28]

For five other detainees whose families Human Rights Watch reestablished contact with, nothing had changed since 2006. Two brothers from Abha, arrested in May 2004 and January 2005, have remained in prison without charge or trial, a relative told Human Rights Watch in June 2009. The relative said he had sent telexes to Ibrahim al-Muhanna, who works with the assistant minister for security affairs in the Ministry of Interior, requesting to know the reasons for the arrests, but that he had received no reply. The brother of another detainee also said that he had no update on that detainee's status following his arrest in March 2006, allegedly for financing militants in Iraq. He could only confirm that the religious shaikhs of the Consultation Committees had visited his brother in Buraida *mabahith* prison recently. A relative of the fourth detainee told Human Rights Watch that authorities had still not charged or tried the detainee after holding him for one year at the *mabahith*'s 'Ulaisha prison in Riyadh and almost five years in al-Ha'ir *mabahith* prison south of Riyadh thereafter. She said the only reason for his arrest known to her is that he had telephoned a neighbor who two months later appeared on a Most Wanted list issued by the Ministry of Interior and was later killed, presumably in clashes with security forces. She said that the religious shaikhs of the Consultation Committees spoke to her relative in prison. The brother of the

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continues in isolated cases. Human Rights Watch interview with (name withheld), Dammam, December 18, 2006. The interviewee produced a court verdict convicting him of drugs possession. The verdict left sentencing to the "ruler."

[26] Al-Faqih reportedly urged public demonstrations against the Saudi regime through his satellite channel.

[27] Human Rights Watch telephone interview with (name withheld), June 9, 2009.

[28] Human Rights Watch telephone interview with (name withheld), November 29, 2006.

fifth detainee, arrested in March 2004, said in June 2009 that no trial had taken place despite promises a high-ranking Ministry of Interior official in November 2005 made to the family.

On June 1, 2009, the legal team for *mabahith* detainee Dr. Saud Mukhtar al-Hashimi published a list of complaints of their detained client, who had started a hunger strike that day to protest, among other things, the failure to charge him or bring him to trial.[29] Human Rights Watch in February 2007 had criticized the arrest of al-Hashimi and others known for their engagement in political and legal reform.[30] Also among those arrested then was lawyer and former judge Sulaiman al-Rashudi, who reportedly planned to sue the Ministry of Interior on behalf of his clients whom the *mabahith* had detained for years without charge or trial and whom he had been prevented from meeting and representing. Al-Rashudi himself now remains in *mabahith* detention without charge for more than two years.

On July 14, 2009, the human rights organization Front Line Defenders said in a media statement that Walid Abu al-Khair, a rights activist and lawyer for al-Hashimi and fellow detainee Dr. Abd al-Rahman al-Shumairi, had faced official harassment to drop his case challenging his clients' arbitrary detention (see below). Harassment included threats of imprisoning al-Khair unless he dropped the suit, made in a phone call to al-Khair's brother on June 25 by a person who said he was from the Ministry of Interior. A person who visited al-Khair's father issued similar threats around that time and other unknown persons stopped al-Khair's car on July 10 making unspecified threats.[31]

The Plight of Detained Foreigners

The situation of detained foreigners is often even more difficult than that of detained Saudis, because of a lack of family visits and because their consular officers have not, to Human Rights Watch's knowledge, visited their nationals in *mabahith* detention. At times, the *mabahith* has denied family visits, and at other times the Ministry of Foreign Affairs did not grant visas to family members who wished to visit their detained relatives. Also, foreigners generally lack the informal access to Saudi decision-makers that Saudi families sometimes

[29] Human Rights Watch email communication with one of the defense lawyers, June 6, 2009.

[30] See "Saudi Arabia: Free Detained Advocates of Reform: Secret Police Arrests 7 Prominent Reformers in Replay of Events in 2004," Human Rights Watch news release, February 7, 2007, http://www.hrw.org/en/news/2007/02/07/saudi-arabia-free-detained-advocates-reform.

[31] "Saudi Arabia – Increasing Threats and Harassment Against Human Rights Defender, Mr Waleed Sami Abu-Alkhair," *Front Line Defenders*, July 14, 2009, http://www.frontlinedefenders.org/node/2095 (accessed July 28, 2009).

enjoy. However, foreign detainees, just as Saudis, do participate in discussions with religious shaikhs of the Consultation Committees.

A relative of a non-Saudi detainee imprisoned since August 2004 in different *mabahith* prisons, including Ruwais in Jeddah and Dhahban north of Jeddah, and in Abha and Riyadh prisons, said that they had tried to piece together the reasons for his arrest. They told Human Rights Watch that their detained family member, a nurse, had treated a Saudi man and sometime thereafter telephoned him to take up the Saudi man's invitation to visit him, but that the *mabahith* had answered the phone call because this Saudi man had apparently been arrested for alleged involvement in "terrorist groups." The *mabahith* then proceeded to arrest the nurse as well, who had been about to leave on vacation for his home country to visit his ailing mother. She died in November 2008, during her son's fifth year in *mabahith* detention without charge or trial. The nurse was himself diagnosed with heart disease and hospitalized in January 2009, after losing around 20 kilograms within a few months, his relative said.[32]

We learned of another non-Saudi who has also been detained since June 2003 without charge or trial, and transferred between Dammam, Jubail, Ra's Tannura, Ahsa, al-Ha'ir, and Dhahban *mabahith* prisons. Religious shaikhs, presumably from the Consultation Committees, visited him in detention, his relatives said.[33] According to his family, this detainee said that in Dammam he had been suspended by handcuffs; in al-Ha'ir prison subjected to loud music and sleep deprivation, beatings by a man with a long beard who looked like a "shaikh" and faced threats to his family by interrogators; and in Dhahban and al-Ha'ir prisons put in incommunicado solitary confinement twice after starting hunger strikes in June 2008 and January 2009 to demand his trial or release. His family added that the detainee said he had heard promises from his jailers for many years about being sent to trial "soon." However, officials have not informed him of any charges against him and he has not had a court appearance.[34]

A third non-Saudi we learned about has been in Dammam *mabahith* prison since July 2007. He had moved to Saudi Arabia and worked as a barber until he met a religiously observant

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[32] Human Rights Watch interview with family members, June 2009. When names of relatives and other potentially identifying data (such as locations and exact dates of interviews) are withheld in this report it is at the persons' request and because they fear negative repercussions against their detained family member if their contact with human rights organizations became known.

[33] Human Rights Watch interview with the family of the detainee, January 2009.

[34] Human Rights Watch interview with the family of the detainee, January 2009.

Saudi who convinced him that the profession of barber was not suitable for pious Muslims.[35] At a dinner with this Saudi man, security forces arrested him and others present. His family, which was not with him in Saudi Arabia, learned from his Saudi sponsor that charges against him originally consisted of forgery of residence papers, since he had paid someone to transfer his employer sponsor after he stopped working as a barber. The family was not able to speak to him until eight months after his arrest, and not again for five months after that first communication, although they have been in regular communication every two weeks since November 2008. The detainee told them he is unaware of formal charges or an upcoming trial date.[36]

On April 28, 2009, the Yemeni HOOD human rights organization said that 74 Yemenis have been held in the Qasim province *mabahith* prison since 2005 without trial on suspicion of terrorism.[37] In July 2009, HOOD specified that an additional eight prisoners had received a trial, seven of whom were convicted and sentenced to periods between three months and four years in prison. All seven convicted prisoners remained in detention despite the expiry of their sentences, in addition to the eighth Yemeni, who remained detained despite a court having found him not guilty of the charges against him.[38]

Challenges to Indefinite Detention

Some families of detainees have submitted their relatives' cases to the United Nations Working Group on Arbitrary Detention, which can issue an opinion on an individual case (after asking governments for any relevant case information). The Working Group's annual reports covering 2004-2008 show that it took up 71 cases of suspected arbitrary detention in Saudi Arabia, of which at least 25 related to detainees in *mabahith* prisons (based on a comparison of Human Rights Watch's files with the names of detainees published by the Working Group, which does not, however, publish details of the cases). In those 25 cases, the Working Group ruled the detentions arbitrary. It is possible that the number of *mabahith* detainees in the Working Group's caseload is even higher.

In four other cases Human Rights Watch is aware of, relatives of detainees, their lawyer, or a released detainee sued the *mabahith* before the Board of Grievances, Saudi Arabia's administrative court. In the two cases brought by relatives the board has ruled in the

[35] Human Rights Watch interview with the family of the detainee, May 2009.

[36] Human Rights Watch interview with the family of the detainee, May 2009.

[37] Human Rights Watch telephone interview with HOOD official, San'a, April 2009.

[38] Human Rights Watch interview with HOOD official, San'a, July 10, 2009.

plaintiffs' favor. The board, however, lacks the power to enforce its decisions, so these attempts to bring some measure of legal process to the *mabahith*'s detention practices have not led to the release of the detainees in question, nor have they had any practical effect on curtailing arbitrary arrests by the *mabahith*.

The Board of Grievances in August 2008 ruled in favor of Tamir Muhammad al-Matrudi, who sued the *mabahith* to release his son Imad, whom the *mabahith* had detained since his arrest on June 7, 2004. The court confirmed that the *mabahith* had held Imad al-Matrudi in their custody since that date without ever transferring him to trial. The court also noted in its verdict that the *mabahith* would remain free to continue its investigation and to collect evidence while Imad was not in their custody. The court dismissed pleas for more time from the lawyer for the *mabahith*, who argued that the agency had yet to provide him with any facts about the case. The verdict says that the court "ruled to annul the decision by the *mabahith* to refrain from implementing article 114 of the Law on Criminal Procedure," passed in 2002, which stipulates that a detained person must be presented to court for trial or released within a maximum of six months after the date of arrest. In May 2009 the family contacted Human Rights Watch to complain that despite the court's ruling 10 months earlier, the *mabahith* continued to detain Imad al-Matrudi.[39]

Similarly, in June 2009 Muhammad al-Husaini, the father of a *mabahith* detainee, pleaded with Human Rights Watch for help to release his son Majid, a Saudi citizen, after the Board of Grievances had ruled in April 2009 that he should be released. The *mabahith* had arrested Majid al-Husaini on August 1, 2002, at the age of 17. The father sued the *mabahith* on November 3, 2007, after getting no response to letters he sent to Assistant Minister of Interior for Security Affairs Prince Muhammad bin Nayef seeking his son's release. In its 2009 verdict the board affirmed the "obligation of the sued party [the *mabahith*] to release the son of the plaintiff."[40] The *mabahith* lawyer challenged the father's standing as a plaintiff, saying he had no power of attorney from his son. However, the court referred to article 13 b) of the Law of the Board of Grievances, giving it jurisdiction over "violations of laws and regulations ... and abuse of power." The court then proceeded to dismiss claims by the *mabahith*'s lawyer that

> [the king] had, based on the provisions of the Sharia and the Basic Law of Governance, ... allowed investigative agencies (the General Investigations [*mabahith*]) to arrest suspects and to jail them in order to preserve security

[39] Board of Grievances verdict number 105/Dal/Alif/7, dated August 20, 2008. Verdict on file with Human Rights Watch.

[40] Board of Grievances verdict number 7/Dal/Alif/2 dated April 18, 2009. Verdict on file with Human Rights Watch.

> and to conduct criminal investigations because they are agencies that represent society and [are] the repository of public prosecutions and because they are tasked with preserving the safety of the country and its reputation outside its borders, so that it is allowed for these agencies … to detain those shrouded in suspicion.

As in the case of Imad al-Matrudi, the *mabahith* disregarded the court's verdict ordering the release of Majid al-Husaini, who remains in detention as of this writing.[41]

In the latest case, the Board of Grievances in Riyadh on June 22, 2009 accepted to hear a lawsuit Walid Abu al-Khair filed on behalf of his client, Dr. Abd al-Rahman al-Shumairi, against the Ministry of Interior alleging that the *mabahith* were detaining al-Shumairi in excess of the six-month legal limit on pretrial detention and also had been holding him in solitary confinement for two and a half years while Saudi law allows only sixty days.[42] The Board scheduled the initial court session for October 20, 2009.[43]

In 2006 a released detainee had sued the *mabahith* for wrongful imprisonment in connection with a month-and-a-half's detention in early 2003 without charge in 'Ulaisha prison and another detention in October 2003, apparently intended to prevent him from participating in a demonstration supported by the London-based Saudi opposition figure Sa'd al-Faqih. The Board of Grievances then, too, accepted the case, but in 2006 and 2007 continued to grant the *mabahith* time for preparation of its defense, and the case was still in progress during 2008; Human Rights Watch has not since been able to determine whether the case has come to resolution.

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[41] Human Rights Watch telephone interview with Muhammad al-Husaini, June 2009.

[42] Walid Sami Muhammad Abu al-Khair, on behalf of Dr. Abd al-Rahman al-Shumairi, "Charge Sheet, File Number 2273/1/Qaf," *Board of Grievances*, Riyadh, June 22, 2009.

[43] Human Rights Watch email communication with member of Shumairi's defense team, July 26, 2009.

Flawed Trials

The government was initially reluctant to consider trials of suspected militants—as recently as December 2006 Prince Muhammad bin Nayef, the assistant minister of interior, told Human Rights Watch that he considered trials for terrorism suspects ill-suited to Saudi Arabia's tribal society,[44]—and for several years the government promised trials but made contradictory statements on whether a special court would be established, or whether ordinary Shari'a courts would handle the trials. Since 2007, Saudi human rights activists increasingly demanded trial or release for indefinitely detained *mabahith* detainees.

The government finally moved decisively toward trying suspected militants when in October 2008 officials announced the referral to Riyadh's General Court, a Shari'a court, of 70 persons accused of involvement in terrorism. Shortly thereafter, they revised that figure to 991 suspected militants.[45] Other Shari'a courts designated to try terrorism cases were to be located in Dammam and Jeddah, with a specially selected panel of judges.

Authorities have yet to fully clarify the nature and jurisdiction of the tribunals designated to try suspected militants. The information reaching the press from official sources has been partial and sometimes contradictory. However, at least one version of how the courts are organized suggests that they may violate international standards for a fair trial, which mandate that courts must be established "by law" and cannot be hastily convened tribunals: The Saudi *Watan* newspaper on May 23, 2009, reported that the Supreme Judicial Council (the highest judicial authority in charge of organizing the court system following a change in the law in late 2007) created within Riyadh's General Court an independent court to be called the "Special Criminal Court]." In October 21, 2008, *Alarabiya.net* news website reported Minister of Interior Prince Nayef as saying that those involved in terrorist attacks had been referred to the "Shari'a judiciary."[46] However, *Riyadh* newspaper on October 31, 2008 quoted a "high judicial source" as claiming that "the trial of the accused is taking place in the General Court of Riyadh," and denying that trials there were in "different courts,"

[44] Human Rights Watch interview with Prince Muhammad bin Nayef bin Abd al-'Aziz Al Sa'ud, assistant minister of interior for security affairs, Riyadh, December 3, 2006.

[45] "Saudi Arabia Tries 991 Accused in Cases Relating to 'Terrorism'" *Aljazeera.net*, October 21, 2008, http://www.aljazeera.net/NR/exeres/0486EBAE-C9B5-4946-A9C3-BCA409C4EC69.htm (accessed January 13, 2009).

[46] "The Saudi Interior Minister Announces the Referral of 991 Accused to the Shari'a Courts," *Alarabiya.net*.

casting doubt that a Special Criminal Court had been established at that time.[47] However, *Riyadh* on October 20, had reported that the Supreme Council of the Judiciary had selected 10 judges to form the panel of judges accepting terrorism cases, some of whom worked at the General Court, while three others came from Riyadh's Partial Court (a lower court slated to become a court specialized in criminal, as opposed to civil, matters), and the remainder from other places.

Secret Trials

Human Rights Watch in October 2008 requested to monitor the trials, but received no answer. Foreign Minister Prince Saud al-Faisal said in response to media questions about Human Rights Watch's attendance at the trials that "there is a local human rights organization that will 100 percent attend" them, *Watan* reported on October 22. However, to date, requests to attend trials by the only two legal Saudi human rights organizations—the private National Society for Human Rights, and the Human Rights Commission, a government body—have not been approved, members told Human Rights Watch. However, *Maktoob Business* website on June 29, 2009 reported comments by the chairman of the governmental Human Rights Commission, Dr. Bandar al-'Iban, to Agence France Press that the commission had monitored the terrorism trials and that defendants "can choose a lawyer ... or the Ministry of Justice will provide one."[48] Al-'Iban did not respond to an enquiry Human Rights Watch sent him on July 10 seeking details of the commission's monitoring of court sessions, defense lawyers, and an assessment of the fairness of proceedings.[49]

On October 28, 2008, then-Minister of Justice Dr. Abdullah Al al-Shaikh told the Saudi *Okaz* newspaper that the proceedings would be public unless the judges closed them. Article 151 of Saudi Arabia's Law of Criminal Procedure makes clear that trials are open to the public unless the judge decides to close the proceedings. The law does not specify the criteria he must use to justify such a move, which cannot be appealed. Nevertheless, the trials to date have been entirely held in secret to Human Rights Watch's knowledge. A human rights

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[47] "Amidst Strict Security Measures in the Vicinity of the Court and the Arrival of a Flow of Journalists Covering the Event, the Judges of the General Court Start Trying those Involved in Terrorism in a 'Lengthy' Meeting," *Riyadh*, October 21, 2008, http://www.alriyadh.com/2008/10/21/article382290.html (accessed April 22, 2009).

[48] " Militants in Saudi Secret Trials Get Lawyers," *Maktoob Business*, June 29, 2009, http://business2.maktoob.com/2009000006421/Militants_in_Saudi_secret_trials_get_lawyers/Article.htm (accessed July 28, 2009).

[49] Human Rights Watch email communication with Dr. Bandar al-'Iban, chairman, Human Rights Commission, July 10, 2009. In October 2008 Foreign Minister Prince Sa'ud al-Faisal said that "The Human Rights Watch organization is welcome to contact the governmental human rights committee regarding attending the trial." "Saudi Arabia Tries 991 Accused in Cases Relating to 'Terrorism'" *Aljazeera.net*.

activist told Human Rights Watch that authorities have not publicly disclosed the names of the defendants, the precise charges against them, or the dates of their trials.[50]

When courts close trials to the public it becomes difficult to assess the fairness of the proceedings, and thus difficult for the court to dispense justice that is seen to be fair. International law requires that trials be open and allows them to be held *in camera* only in narrow circumstances, such as to prevent the identity of minors or of victims of sexual abuse from becoming public or, in a limited number of national security cases, to prevent publication of information such as intelligence procedures vital to protect national security.[51]

Concern over the closed nature of these trials spread slowly in Saudi Arabia and internationally. The US State Department's Annual Report on Terrorism 2008, issued on April 30, 2009, acknowledged that, "The court sessions will be restricted to the judges, lawyers, and the accused, which has led to criticism over the lack of transparency."[52] On May 13, a group of Saudi human rights activists issued a petition to the king, entitled, "Establishing Secret Tribunals is an Attempt to Obscure Oppression and Thwart Any Possible Political Reform in Saudi Arabia," condemning the closed nature of these trials.[53]

Only a handful of articles concerning the trials of suspected militants appeared in the Saudi press following a flurry of articles between October 20 and 31, 2008 that contained highly inconsistent information regarding the number of persons referred to court, as well as what procedures the courts were following. The Saudi government in late 2008 claimed it was authenticating confessions of the accused for use as evidence in trials, but no information was available concerning the voluntary nature of these confessions.[54] Saudi governmental television in May 2007 broadcast confessions of a handful of detainees.[55] Since the trials

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[50] Human Rights Watch telephone interview with a Saudi human rights activist, June 2009.

[51] Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 10. See also International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 14.1, and United Nations Human Rights Committee, General Comment No. 13: Article 14 (Administration of Justice), Equality Before the Courts and the Right to A Fair Trial and Public Hearing by an Independent Court Established by Law, April 13, 1984. Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994). Saudi Arabia has not ratified the ICCPR.

[52] "Country Reports on Terrorism 2008. Saudi Arabia," *Office of the Coordinator for Counterterrorism, US State Department*, April 30, 2009.

[53] "Establishing Secret Tribunals is an Attempt to Obscure Oppression and Thwart Any Possible Political Reform in Saudi Arabia," petition signed by 77 Saudis and sent to King Abdullah, May 13, 2009.

[54] "The Riyadh Court Approves the Confessions of a New Batch of Terrorists," *Alarabiya.net*, October 24 2008, http://www.alarabiya.net/articles/2008/10/24/58815.html (accessed April 22 2009).

[55] Turki al-Suhail, "Confessions by Logisitical Support Cell to Planners of Attack on Abqaiq," *Al-Sharaq al-Awsat*, May 15, 2007, http://www.aawsat.com/details.asp?section=4&article=419280&issueno=10395 (accessed July 28, 2009).

began the Saudi media do not appear keen on monitoring them closely and do not dispute their being closed.[56]

International standards provide a host of fair trial guarantees in addition to the presumption of innocence at a public hearing by a competent, independent and impartial tribunal established by law. Those guarantees include the right of a defendant to be promptly informed of any charges against him, to be charged with a cognizable offence, to be tried without undue delay, to engage a lawyer of his choosing or have legal assistance assigned to him without charge, to have adequate time and facilities to prepare a defense, to examine witnesses against him and to present witnesses in his defense, not to incriminate himself, and to appeal any judgment to a higher court.[57] Saudi officials have already violated the right of detainees to be promptly informed of any charges and to be tried without undue delay. They have also denied defendants' rights to public hearings and to legal assistance, according to information on some cases available to Human Rights Watch.

Family members of detainees in *mabahith* prisons were able to give brief accounts of the trials under way to Human Rights Watch. Their accounts underscore concerns that fair trial standards are not being met. In April 2009 the family of a detainee tried in Dammam said that he had no lawyer and that at least two trial sessions had already taken place without the detainee having received notice or time to prepare.[58] The family of another inmate detained in Dhahban said that detainees on trial there had no lawyer, learned of their trial dates only a few days in advance, and that defendants had no opportunity to challenge the evidence against them during the hearing. The family said their detained relative told them that trials were summary, with judgments rendered after one or two court sessions. The sentences ranged from 15 years' to 30 or even 40 years' imprisonment, and no appeal was possible, he told his family.[59]

Madina newspaper on February 9 quoted a judicial source as saying that "trials were fair, guaranteeing [the defendant] his rights and facilitating his right to defend himself" on his

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[56] A May 23, 2009 article in *Watan* quotes *Okaz* journalist Abd al-Aziz al-Qasim, a specialist in Islamic affairs, as saying that "independent and specialized courts" guarantee a fair trial, which in terrorism cases "must not allow the public to see it" because "some of these terrorists have arguments that could influence the minds of some youth." Wa'il Mahdi, "Saudi Lawyers Defend Those Accused of Terrorism," *Watan*, May 18, 2009, http://www.alwatan.com.sa/news/newsdetail.asp?issueno=3153&id=102541&groupID=0 (accessed July 28, 2009).

[57] See generally, ICCPR art. 14.

[58] Human Rights Watch interview with family member of the detainee, May 2009.

[59] Human Rights Watch interview with family member of Dhahban detainee, April 2009.

own, but not, apparently, of seeking the assistance of professional legal counsel.[60] The petition mentioned above also criticized the absence of lawyers for the defense, and one of the petitioners told Human Rights Watch that some lawyers have faced government pressure to refrain from trying to represent the accused. In an interview with *Watan* published on May 23, the deputy head of the National Lawyers' Association, Sultan bin Zahim, declared that "it is a national duty and a professional objective to excuse oneself from defending those accused of terrorism," adding that the reason was the fact that the "investigation and trial methods are very precise in terrorism cases."[61] Bin Zahim further considered the existence of a specialized court and judges as the sole guarantee necessary for a fair trial. One lawyer approached by families of the detainees told Human Rights Watch that he declined to represent the detainees, not only because the authorities were unlikely to allow him to attend the hearings and consult with his client, but because these trials were unlikely to follow fair trial standards. In this lawyer's view, the trials were not about applying the law, but about a political dispute between the government and a group of violent extremists.[62] The two detainees mentioned above told their families that none of the defendants tried so far had any legal assistance.

Saudi Arabia has no written penal code specifying crimes of terrorism or defining incitement to violence as a crime. *Okaz* reported on July 8, 2008, that those accused would face charges of "spreading corruption on earth."[63] On July 8, 2009, *Alarabiya.net* reported that charges on which the accused were convicted included "belonging to al Qaeda organization; communicating, coordinating, and working with foreign agencies plotting against national security by creating chaos and breaching security, in addition to support and financing terrorism; and participation in fighting in neighboring countries."[64] None of these crimes exist in clearly defined codified form, making the availability of specialized Shari'a legal assistance and the ability to question evidence even more important. Murder charges fall generally under Shari'a provisions for *qisas*, the law of retribution; and *hiraba*, organized crime and spreading corruption on earth, is often regarded as part of *hudud*, or crimes against God, for which certain criteria of proof exist under Shari'a. However, the largest

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[60] Hamid al-Rifa'i, "'Justice': Punishments Will Reach Those Hidden From View in Trials of Persons Accused of 'Terrorism'," *Madina*, February 9, 2009, http://al-madina.com/node/103282 (accessed April 22, 2009).

[61] Wa'il Mahdi, "Saudi Lawyers Defend Those Accused of Terrorism," *Watan*.

[62] Human Rights Watch interview with Saudi lawyer, June 2009.

[63] Abdullah al-'Uraifij, "Head of the Supreme Council of the Judiciary to 'Okaz': The Trial of Detainees of Explosions," *Okaz*, July 8, 2008 http://www.moj.gov.sa/downloadfile.aspx?id=771 (accessed July 28, 2009).

[64] Khalid al-Mutairi, "They Include *Hiraba* and Travel Ban and House Arrest. Initial Verdicts for 330 Persons Among Those Accused of Belonging to al Qaeda in Saudi Arabia," *Alarabiya.net*, July 8, 2009, http://www.alarabiya.net/articles/2009/07/08/78204.html (accessed July 9, 2009).

category of "crimes," the *ta'zir* or discretionary rulings, remains entirely undefined, and this would include the charges cited in the *Alarabiya.net* article. Judges decide what is a crime and set attendant penalties at their own discretion, making a legal defense extremely difficult. Of those detainees referred to court, it is reasonable to assume that the majority are accused of actions involving planning, preparing, facilitating, and financing acts of violence.

Furthermore, the announced trial of some Islamic scholars on charges of incitement to terrorism would require a precise definition of that crime. International law protects freedom of expression, and particular care should be taken when a state criminalizes the use of speech. Although it is permitted to criminalize direct incitement to violence, such crimes need to be precisely defined and limited to cases of direct incitement rather than peaceful discussion of opinions.[65] As of April 2009, a relative of one of the detained scholars in question said he believed his trial had not yet begun.[66]

[65] See UDHR, art. 19, and also ICCPR arts. 19 and 20.

[66] Human Rights Watch conversation with Saudi relative of detained scholar, April 2009.

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Human Rights and Saudi Arabia's Counterterrorism Response

Religious Counseling, Indefinite Detention, and Flawed Trials

Saudi Arabia has responded to threats and acts of terrorism since 2003 by indefinitely detaining over 9,000 persons it alleges are suspected of involvement in terrorism. At the same time the Saudi authorities have established a religious counseling program to "rehabilitate" the detainees. At least 1,500 participants in this program have been released, but thousands remain indefinitely detained in intelligence service (*mabahith*) prisons. In October 2008 Saudi authorities announced that 991 detainees would go on trial. On July 8, 2009, the Ministry of Justice announced that a court had convicted 330 of the men of a variety of offenses linked to acts of violence; sentences included one death sentence.

This report finds that the religious counseling program is inappropriate for *mabahith* detainees, including those transferred from Guantanamo Bay, as they have not been convicted and should be presumed innocent. The indefinite detention of thousands without effective judicial oversight, including of persons arrested for dissident political views, is arbitrary. The *mabahith* have ignored findings by the UN Working Group on Arbitrary Detention and rulings by the Saudi administrative court, the Board of Grievances, ordering the release of detainees held longer than the Saudi legal limit of six months without trial.

The decision to try 991 suspects should lead to the end of their arbitrary detention, if the trials are fair. However, the authorities broke their promises to allow human rights organizations to monitor the trials, which were held entirely in secret, and evidence suggests the defendants did not receive a fair trial.

Saudi Arabia should release or try all remaining *mabahith* detainees, regardless of participation in religious counseling. Trials should be open and guarantee defendants all rights to a fair trial. Foreign governments such as the US and UK that have praised Saudi counterterrorism measures have a special duty to speak out on fair trial violations.

Saudi Arabia's Ministry of Interior in Riyadh on December 30, 2004, one day after it was targeted in a bomb attack.

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