



Precarious Justice

Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia

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PROLOGUE

In a Saudi city in mid-2006 a young man, Yasir,¹ received a phone call from a friend asking for help. His friend was with his girlfriend, whose parents were searching for her after her school had reported her absent. At his friend's behest Yasir offered to drive the girl home, but the girl was frightened about the consequences of her actions—which would be deemed a moral lapse—and wanted to go to the desert so she could commit suicide. Yasir told Human Rights Watch that he spent all day calming his friend's girlfriend and convincing her that her parents would be understanding.

Meanwhile, the criminal investigation police had arrested his friend. Shortly after Yasir had dropped off his friend's girlfriend at home, the police arrested him too. Yasir told Human Rights Watch,

The director [of the police station] met me and his behavior was very bad. He didn't let me speak. Two other officers said [I] did this and that, and they recorded it. I denied everything, even knowing the girl. Then they beat me with a very big stick, and I confessed. I spent 10 days there, all in solitary confinement and with daily beatings. They did not interrogate the girl. They only brought her at some point to identify us. She came with her father and watched from behind the glass.

He described the court proceedings:

In court, the judge asked me and I told him what happened. It was one session that lasted 20 minutes. Only the judge and I were there. There was no prosecutor and no clerk. I could not ask the girl to verify that I was engaging in a humanitarian task and that if anyone was guilty, it was she and my friend. I could not even ask to bring my friend to speak. The judge sentenced me to six months in prison and flogging of

¹ Pseudonym.

90 lashes. I was never imprisoned and fell under King Abdullah's amnesty later that year, [but] fifty of the lashes were carried out. Before the trial my family settled [a private claim by] the girl's family for a large sum of money.

SUMMARY

New laws [will] ensure justice and protect public rights.

— *Crown Prince Sultan bin Abd al-'Aziz, October 18, 2007*

Saudi government officials have made a number of declarations in recent years, asserting that the Saudi criminal justice system adheres to high standards, and have recently implemented a number of legal reforms. The practice of Saudi justice, however, does not measure up to these declarations, and the reforms have not appreciably strengthened the safeguards against arbitrary detention or ill-treatment, or enhanced the ability of defendants to obtain fair trials.

Human Rights Watch conducted research missions to Saudi Arabia in November and December 2006, and again in May 2007. We found pervasive injustices in the Saudi criminal justice system and systematic and multiple violations of defendants' rights. Individuals in Saudi Arabia may find themselves detained and arrested for behavior that is not inherently criminal, or for apparently (and unwittingly) offending vague legal prohibitions. They may then find themselves in solitary confinement and subject to forms of ill-treatment. The authorities often do not inform individuals of the crime of which they are accused, or the evidence supporting the accusation. An accused person typically does not have access to a lawyer, faces abuse when refusing to incriminate him or herself, and waits excessive periods of time before trial, where he or she is often unable to examine witnesses or evidence and present a legal defense, not least because of a presumption of guilt and shifting charges.

The violations of defendants' rights are so fundamental and systemic that it is hard to reconcile Saudi Arabia's criminal justice system, such as it is, with a system based on the basic principles of the rule of law and international human rights standards. The violations derive from deficiencies both in Saudi Arabia's law and practices. Saudi Arabia has not promulgated a penal (criminal) code. Accordingly, citizens, residents, and visitors have no means of knowing with any precision what acts constitute a criminal offense. Previous court rulings do not bind Saudi judges, and there is little evidence to suggest that judges seek to apply consistency in

sentencing for similar crimes. Saudi criminal justice imposes the death penalty after patently unfair trials in violation of international law, and imposes corporal punishment in the form of public flogging, which is inherently cruel and degrading. Saudi law and practice are also inherently discriminatory. One Saudi interpretation of Sharia law provides that a Muslim woman's testimony is not generally accepted in criminal cases and non-Muslim men may testify only in cases of "necessity." Women cannot represent themselves in court under the Saudi practice of male guardianship over "minors," a term that includes women of all ages.

In 2002 Saudi Arabia promulgated the country's first criminal procedure code. While this was a welcome step, the Law of Criminal Procedure (LCP) does not incorporate all international standards pertaining to the basic rights of defendants. For example, the LCP does not permit a detainee to challenge the lawfulness of his or her detention before a court, it fails to guarantee access to legal counsel in a timely manner, and contains no provision for free legal assistance to the indigent. The LCP grants the prosecutor the right to issue arrest warrants and prolong pretrial detention up to six months without any judicial review. While the LCP prohibits torture and undignified treatment, it does not make statements obtained under duress inadmissible in court. It does not set out the principle of presumption of innocence, or protect a defendant's right not to incriminate him or herself. Furthermore, it does not sanction officials who coerce defendants, and empowers prosecutors to detain suspects without having to meet a defined standard of evidence of a suspect's probable guilt. Judges routinely ignore, and are even ignorant of, the provisions of the Law of Criminal Procedure.

Many of the most systematic abuses occur at the hands of the Ministry of Interior's domestic intelligence service (*mabahith*), which runs its own detention facilities. These range from holding cells of local intelligence offices to sprawling prison complexes such as al-Ha'ir *mabahith* prison near Riyadh, which is close to al-Ha'ir Correctional Facility for ordinary criminal defendants. In at least one region, Najran, court documents show that the intelligence service used its own prosecutors.

Outside agencies do not scrutinize the policies and practices of the *mabahith*. None of the seven former detainees and 25 family members of current *mabahith* detainees

Human Rights Watch spoke with said he had ever seen an official from the Bureau of Investigation and Public Prosecutions visit *mabahith* prisons, although the law tasks the bureau with inspecting all prisons and freeing inmates wrongfully detained. Saudi Arabia's four-year-old government-approved National Society for Human Rights (NSHR) did not carry out inspections of *mabahith* prisons, but the two-year-old governmental Human Rights Commission toured some facilities in 2007. The NSHR, in its first report (May 2007), said it hoped to visit in the near future.² The Saudi government abruptly cancelled an agreed visit by Human Rights Watch to *mabahith* prisons in May 2007.³

The *mabahith* has arrested human rights activists, religious activists, academics, and advocates of political reform, and held some for over 10 years without charge. It currently holds around 1,500-2,000 dissidents and security detainees in its detention facilities, following the release of 1,500 detainees in November 2007.⁴ Anecdotal evidence suggests that the number had increased in recent years before the recent large-scale release, as the *mabahith* detained scores of Saudis returning from Afghanistan after 2001 and those suspected of heading to Iraq since 2003, as well as others suspected of involvement in a domestic bombing campaign that began in March 2003. When Sa'd al-Faqih, a Saudi dissident living in London, called for demonstrations against the government in 2004, and thousands of Saudis took to the streets of Riyadh and Jeddah in response, the *mabahith* arrested hundreds of the protesters, some of whom still remain in detention.

Detainees held by the *mabahith* have no effective access to legal counsel or the courts, and the *mabahith* carries out arrests without judicial oversight and without a legal basis. In the rare cases in which *mabahith* detainees have actually received a trial, it is in secret, as is the passing of the sentence, and families and former

² National Society for Human Rights, "First Report on the Situation of Human Rights in the Kingdom of Saudi Arabia," May 21, 2007, <http://www.nshrsa.org/articles.php?ID=48> (accessed July 25, 2007).

³ Human Rights Watch telephone and email communication with a diplomat in the Saudi Embassy, Washington, DC, approving the visit, April 30, 2007. The government cancelled the trip, due to start May 12, on May 10, Human Rights Watch telephone and email communication with a diplomat in the Saudi Embassy, Washington, DC, May 10 and 11, 2007.

⁴ Amnesty International, "Saudi Arabia: Fear of torture or ill-treatment/ incommunicado detention," Urgent Action, MDE 23/028/2007, July 19, 2007, <http://web.amnesty.org/library/Index/ENGMDE230282007?open&of=ENG-SAU> (accessed August 7, 2007), and "Saudi frees 1,500 extremists who changed course: report," Agence France-Presse, November 25, 2007. Since 2007, Saudi Arabia has around 500 new terrorism suspects.

prisoners reported that the *mabahith* keeps prisoners in detention well beyond the expiry of their sentence. For most detainees languishing in *mabahith* jails for years, the day they are to be tried in a court of law has not yet arrived.

Instead of charging many security detainees with crimes and bringing them to trial, Saudi Arabia claims that it tries to reeducate them. Over 700 *mabahith* detainees have been released following their “successful” reeducation since the start of the program in 2003, officials told Human Rights Watch in December 2006. The Ministry of Interior’s Consultation Committee, composed of religious experts and psychologists, invites detainees suspected of harboring “deviant” thoughts—a term Saudi officials use for violent and non-violent dissidents alike—to participate in a program of reeducation. It is an invitation that detainees can hardly refuse, since successful completion of the program is a necessary, though not sufficient, condition for release. Substituting such a program of involuntary “reeducation” for an impartial adjudication of criminal charges in a court of law denies defendants the chance to prove their innocence and clear their names. A senior Saudi official told Human Rights Watch that the reeducation approach largely replaces trials.⁵

Human rights violations also arise at the time of arrest and detention of detainees who are not national security suspects. While Saudi law provides some formal safeguards against arbitrary arrest, police officers frequently ignore them. In violation of Saudi law, officers carry out arrests without warrants, fail to inform suspects of the reasons for their arrest or of their rights to legal counsel, do not grant detainees the right to communicate with the outside world, and do not formally charge suspects with a crime. Human Rights Watch has only come across a handful of cases where a criminal defendant was able to have access to a lawyer before a case was referred to trial.

The Commission for the Promotion of Virtue and Prevention of Vice (CPVPV) is an authorized law enforcement agency in Saudi Arabia. In 2005 the CPVPV’s 5,000 religious police officers, together with 5,000 volunteers, carried out 400,000 arrests. Since 2006 these agents, who do not wear uniform, must wear identifying badges

⁵ Human Rights Watch interview with Assistant Minister of Interior for Security Affairs Prince Muhammad bin Nayef, Riyadh, December 4, 2006.

and may only make arrests when accompanied by a regular policeman. A 1980 law empowers these religious police, who answer only to the king, to arrest, detain and interrogate persons for undefined criminal offenses. On July 1, 2007, Interior Minister Prince Nayef reaffirmed a 1981 royal decree prohibiting the religious police from detaining and interrogating suspects at their centers. A year earlier, the Saudi government declared that religious police must not detain or interrogate suspects or “violate the sanctity of private homes.” However, the CPVPV does not observe the Law of Criminal Procedure when arresting, detaining, and interrogating suspects. The president of the CPVPV said that his agents can enter private homes if they learn of a serious crime in progress. In 2007, reportedly for the first time, CPVPV members faced criminal charges of murder and abuse of power in three separate incidents, but the courts acquitted the officials.

Such arrest practices by the police and the CPVPV result in defendants waiting anxiously in prison without knowing what it is they are alleged to have done; what, if any, evidence the prosecutor has against them; when the prosecutor will interrogate them; or if he will take them to court. Several defendants told Human Rights Watch that they learned of their first court date only the night before or on the same morning. Detainees spent between a few days and several months in a police station before being moved to a general prison; in prisons there was no separation between convicted prisoners and detainees on remand or who were still awaiting a court hearing.

More than a dozen defendants arrested by the police said that at police stations, and in particular at the branches of the Ministry of Interior’s Criminal Investigation Department, police officers, and sometimes prosecutors, beat them and threatened them in order to extract confessions. Once they confessed, officers usually drove them to court for a procedure called verification of statements in which defendants put a thumbprint on statements made during interrogation in order to authenticate them for use during trial.

Saudi criminal procedures, which permit judges to shift roles between adjudicator and prosecutor, indicate that in practice there is no presumption of innocence for defendants. Unless the crime is considered “major” under Saudi law, the trial judge

dons the mantles of both judge and prosecutor. In all criminal cases, the judge can change the charges against the defendant at any time and, in the absence of a written penal code, it appears that judges in some cases set out to prove that the defendant has engaged in a certain act, which they then classify as a crime, rather than proving that the defendant has committed the elements of a specific crime as set out in law. In other cases, defendants recounted how a judge refused to proceed with a trial unless the defendant disavowed and withdrew a claim that his confession was extracted under torture, effectively holding the defendant hostage until he reaffirmed a confession obtained under duress.

With exceedingly short notice before court hearings, defendants have little time to prepare their defense, and lack access to their files, including the prosecutor's case against them and the specific charges under Saudi law. Detainees did not have access to Saudi statutory laws or current interpretations of Sharia. Unless they had had specialized Sharia training, they had no means of knowing the elements of the crime pertaining to the criminal behavior they were accused of, the procedures necessary to establish guilt under Sharia rules, and the penalty they could expect to receive if found guilty. Defendants also told Human Rights Watch about their inability to bring witnesses to testify on their behalf, even with a lawyer present, or to challenge the witnesses for the prosecution. No defendants interviewed by Human Rights Watch recalled ever seeing physical evidence produced in court, or having access to exhibits of evidence available to the judge and prosecutor. Although waiting times before trial and between hearings can be weeks, months, or even years, judges typically concluded entire trials in one or two court sessions lasting one or two hours. With few exceptions, defendants did not receive a copy of their verdict, making an appeal extremely difficult.

The defendants' inability to access, much less to challenge, allegedly incriminating evidence, a frequent presumption of guilt, and vague and shifting charges all combine to create insurmountable obstacles for defendants trying to prove their innocence. Saudi judges in several cases admitted that a defendant's guilt was not proved. Instead of finding the defendants not guilty of the charges they faced and releasing them, though, the judges convicted them but issued more lenient sentences than they otherwise would have.

Saudi Arabia has taken recent steps to assemble some building blocks of the rule of law, such as the Law of Criminal Procedure. In October 2007 the government amended two laws, the Law of the Judiciary and the Law of the Board of Grievances, which improve judicial independence. The laws also set up new specialized courts for personal status, commercial, labor, and traffic disputes. Furthermore, a new supreme court will be able to hear a variety of appeals. The king announced \$1.8 billion in government funding to build and staff new courts and train old and new judges. However, progress toward this and other reforms has been slow and has had little effect on the rights of defendants in the criminal justice system. Saudi Arabia should tackle the fundamental shortcomings of its judicial system by reforming its laws and its criminal procedures, from arrest through imprisonment, to ensure that they comply with international human rights standards. At present, the shortcomings in Saudi Arabia's criminal justice system are so pervasive as to leave grave doubt that Saudi courts have established the guilt of sentenced prisoners in a fair trial and that law enforcement officers detain untried defendants on a sound legal basis.

Human Rights Watch recommends that Saudi Arabia initiate reforms in four areas of its criminal justice system to strengthen due process and fair trial rights in compliance with international human rights law and standards.

First, the Saudi cabinet should pass, amend, or rescind laws and decrees as necessary to bring Saudi Arabia into compliance with international human rights law, including by changing the Law of Criminal Procedure to allow detainees to challenge the lawfulness of their detention and by enacting a penal code that prohibits jailing persons solely for indebtedness. Second, the Ministry of Interior and the Bureau of Investigation and Public Prosecution should make changes in its practices when arresting and interrogating a person to ensure greater transparency and prevent ill-treatment of detainees. Third, the Ministry of Justice and the Supreme Judicial Council should strengthen the rights of defendants to ensure they can get a fair trial, including by providing defense lawyers free of charge to indigent defendants and allowing defendants to effectively challenge the evidence against them. Finally, the Saudi government should remove the prosecutorial offices from the control of the Ministry of Interior, and remove the power to arrest, detain, and release suspects from the prosecution.

METHODOLOGY

In November and December 2006 Human Rights Watch conducted its first fact-finding mission to Saudi Arabia and spoke to over 90 current and former defendants in the criminal justice system, and to more than 25 lawyers, current and former judges, Ministry of Interior officials, prosecutors, and prison officials. Human Rights Watch collected testimony from persons in Hofuf, Khobar, Dammam, Qatif, Tarut, Ra's Tannura, Jubail, Hafr al-Batin, Sakaka, Ha'il, Medina, Jeddah, Ta'if, Mekka, Baha, Abha, Najran, Kharj, Riyadh, Buraida, 'Unaiza, and Bikiriya.

With the exception of three group interviews with detainees in al-Ha'ir Correctional Facility and one interview with intellectuals in Riyadh, we conducted all interviews privately and individually. During the group interviews with prisoners in al-Ha'ir Correctional Facility, we asked about their individual criminal cases, cases of abuse and cases of death in custody known to them, and their individual experiences during interrogation and trial. We cross-checked allegations across these groups and with former detainees' accounts for consistency.

Where we conducted telephone interviews with defendants in other non-*mabahith* correctional facilities, we conducted more than one telephone interview to verify the facts presented.

Prior to Human Rights Watch's visit to Saudi Arabia, human rights activists in Saudi Arabia, whom Human Rights Watch contacted of its own accord, as well as opponents of the Saudi regime living abroad, whom we did not contact, published contact information for the delegation members, urging Saudis to contact us. We received hundreds of calls with complaints about a wide array of matters. We met with some of these callers in person after having established that there was a genuine human rights concern related to the administration of justice, and we also conducted telephone interviews with a small number of callers, especially where other longstanding contacts of Human Rights Watch could back up their claims.

Nine persons in the Human Rights Watch delegation conducted interviews in English and Arabic in al-Ha'ir Correctional Facility. One researcher collected all other accounts by speaking to victims and their families, lawyers, and officials, in Arabic. We did not prepare interviewees for the type of questions we asked, and we put similar questions framed within international human rights standards for a fair trial (point of arrest, charge, access to legal counsel, interrogation and detention conditions, access to evidence, trial procedures).

In addition to investigating known cases, a large number of individuals in Saudi Arabia complain directly to Human Rights Watch. The cases presented here include some of those cases, where we were able to conduct detailed follow up about fair trial violations. Due to space constraints, the cases presented in this report represent only an illustrative selection of the number of cases investigated.

Human Rights Watch cannot determine the guilt or innocence of the persons we spoke to. Our concern was to probe the degree to which Saudi law enforcement officers, prosecutors, and judges respect fair trial protections guaranteed under international and Saudi law. The detainees, with rare exceptions, had little if any knowledge of the kingdom's laws or human rights law, or the legal means to defend themselves. In addition to detainees' testimonies and accounts from their families, Human Rights Watch consulted court verdicts and official correspondence where available. To protect the persons featured in this report, some of whom are in detention, we have substituted pseudonyms for their real names.

To our regret, the Minister of Justice and other officials declined to meet with Human Rights Watch representatives. Judges in two courts refused Human Rights Watch access to trials. Ministry of Interior officials did not fulfill their promise to allow Human Rights Watch to conduct a return visit to the al-Ha'ir Correctional Facility, or other prisons and detention facilities to which we requested access.

In February 2008, Human Rights Watch sent the full report in English and Arabic to the Saudi Human Rights Commission and from March 7-15 conducted discussions with Saudi officials, including officials from the Ministry of Justice and the Ministry of Interior about its findings. A summary of the discussions is included in the Appendix.

PART 1: SAUDI LAW

I. Sharia and Statutory Law

Article 1 of the kingdom's Basic Law of Governance (1992) elevates the Quran and the Prophet's traditions (*Sunna*) to the status of an immutable constitution: Saudi Arabia's "constitution is Almighty God's Book, The Holy Quran, and the Sunna (Traditions) of the Prophet (PBUH)."⁶ Saudi Arabia applies the Sharia (Islamic law) as the law of the land. Sharia relies on an interpretation of the Quran and verifiable traditions and sayings of the Prophet Muhammad (d.632) to derive, directly or indirectly, normative rules governing the behavior of Muslims and, in certain instances, of non-Muslims.

Sharia is not readily available and accessible to laypeople, nor is it a codified set of rules. To understand Sharia precepts, their origins and applications, jurists and legal scholars study the Quran and the Sunna and the works of previous great scholars, often for years. Sharia scholars adopt certain methodologies (*usul al-fiqh*), such as linguistics and verification of true Prophetic traditions,⁷ and then study jurisprudence (*fiqh*), usually following a particular legal school. Sunnis generally follow one of four legal schools, named after their founding scholars, Shafi'i, Hanafi, Maliki, or Hanbali. Most Shia follow the Ja'fari or Zaidi schools of legal thought, but there are others.

Saudi Arabia's founding ruler gave refuge and then subscribed to the reformist ideas of Muhammad Abd al-Wahhab, an 18th-century itinerant scholar and preacher. Under Abd al-Wahhab's influence, much of today's Saudi Arabia came under the sway of a strict literal interpretation of the Quran and the Sunna. Although Abd al-Wahhab based his interpretations on his own understanding of original texts, his methodological approach is close to that of the Hanbali School of Jurisprudence.

⁶ Basic Law of Governance, *Umm al-Qura Newspaper*, issue 3397, Mekka, March 6, 1992, art. 1. PBUH stands for Peace Be Upon Him.

⁷ The method of verification (*isnad*) relies on attributing various degrees of authenticity by the number of persons passing on a saying from one generation to another. The more persons who independently relate the same saying or tradition without gaps from one generation to the other, the more authentic. Shia and Sunnis differ over which traditions they regard as authentic. Sunnis chiefly regard two large collections of traditions by the scholars Muslim and Bukhari as authentic.

Hanbalis shun using derivative sources of law or scholarly consensus (*ijma*) to adjudicate any given issue. Other schools of thought give *ijma* the force of legally binding opinion, which Hanbalis sometimes regard as an improper innovation attributing legislative powers to judges. The Hanbali School also does not encourage the use of precedents. Instead, Hanbali jurists prefer to employ their own original legal reasoning (*ijtihad*) to the Quran and Sunna to derive the appropriate ruling for the case under consideration.⁸ Saudi judges and official arbiters of public morality generally follow the Hanbali school of thought, and are frequently called “Wahhabi,” a term denoting their scholarly indebtedness to Abd al-Wahhab.

The division of respective areas of influence between the absolute rulers of the House of Sa’ud and the Wahhabi religious establishment has endured through subsequent centuries and periods of temporary demise of the Saudi state.⁹ The religious establishment in Saudi Arabia has broad influence over everyday life. Its scholars and officials write and vet textbooks used in schools. Officials in the Commission to Promote Virtue and Prevent Vice (CPVPV) lecture at social gatherings, teach the Quran in prisons and social institutions, and keep a watchful eye over the moral behavior of the general public.¹⁰ Religious officials preach in local mosques where prayer attendance is mandatory. The judiciary, too, is almost the exclusive province of the religious establishment.

Although by no means a monolithic bloc, conservative views dominate the religious establishment, advocating against greater personal freedoms, such as in women’s choice of dress, and against modernizing steps, such as codifying Sharia or facilitating women’s access to the workplace. In March 2006 Muhsin al-‘Awaji, a prominent voice among conservatives, published on his website a scathing critique of the liberalizing efforts of Minister of Labor Ghazi al-Qusaibi. In the same month,

⁸ Natalie de Long Bas, *Wahhabi Islam: From Revival and Reform to Global Jihad* (Oxford University Press, 2004).

⁹ In 1818 Egyptian troops under Ibrahim Pasha belonging to the Ottoman Empire sacked the Saudi capital Dir’iyah, ending the first Saudi kingdom. Beginning in 1824, a ruler from the Sa’ud family regained Riyadh, and expanded his rule from there, recapturing territories from the Yemen—the Hijaz, Qasim, and Hasa—lost during the Egyptian invasion. Between 1887 and 1902 the Rashidi family from Ha’il, northwest of Riyadh, ruled the core Saudi areas, ending the second Saudi kingdom. In 1902 a ruler from the Sa’ud family returned from Kuwaiti exile to found the third Saudi kingdom. This ruler, later King Abd al-‘Aziz, conquered key areas of today’s Saudi Arabia up to 1925. Madawi al-Rasheed, *A History of Saudi Arabia*, (Cambridge University Press, 2002), pp. 14-49.

¹⁰ This Commission (al-Hisba) is an early institution of the Islamic state, where, in Egypt, for example, its powerful officials regulated weights, measures, and proper dealings in the market place.

conservatives, some associated with the CPVPV, disrupted the Riyadh International Book Fair and harassed authors, particularly female authors. In November 2006 mostly young conservatives stormed the production of a theater play by a group at al-Yamama College. In March 2007 a number of religious men signed a petition against the invitation of women to the literary club of al-Ta'if.

The Saudi government does not publish an official interpretation of Sharia. In the area of criminal law, the government has not published an interpretative text carrying the force of law of the precise definitions of acts that constitute offenses, such as “disobeying the ruler.” Unlike Qatar, which also follows the Hanbali School, Saudi Arabia has no written penal code.

The task of interpreting and applying Sharia largely falls to the judiciary, composed of courts and judges, a Supreme Judicial Council, a Council of Senior Scholars, a mufti, and a Ministry of Justice. Article 48 of the Basic Law specifies, “The Courts shall apply rules of the Islamic Sharia in cases that are brought before them, according to the Holy Quran and the Sunna.”¹¹ Sharia, however, is silent on many areas in which modern life requires the application of precise legal norms. To fill this void, Saudi Arabia’s prime minister (a post held currently by the king), may issue positive, or statutory, laws—called regulations to differentiate them from God-given laws of Sharia—as long as they do not conflict with Sharia precepts. Article 48 of the Basic Law, itself one such statutory law, also obliges the courts to apply Sharia rules “according to laws which are decreed by the ruler in agreement with the Holy Quran and the Sunna.” Saudi Arabia has published hundreds of such statutory laws to regulate areas where Sharia precedents or interpretations have little bearing, such as traffic and banking laws.

II. Legislative Developments and the Law of Criminal Procedure

Since the rule of King Abd al-‘Aziz Al Sa’ud (1902-1953), the Saudi government has been issuing regulations governing public life. Important regulations included the Public Security Law (1950), the Labor Law (1969, updated 2005), the Law of the

¹¹ Basic Law of Governance, art. 48.

Judiciary (1975, updated October 2007), and the Law of the Commission to Promote Virtue and Prevent Vice (1980, currently being updated).

Saudi Arabia took a further step toward establishing a more professional justice system by creating the Bureau for Investigation and Public Prosecutions by statutory law in 1989.

As new regulations (statutory laws) multiplied, Saudi critics argued that these laws were not rooted in any document, such as a constitution, which enumerated the rights and duties of citizens. In 1992 King Fahd issued three such documents, a trilogy of administrative laws. The Basic Law, Saudi Arabia's proto-constitution, declared the country to be an Islamic monarchy with certain enumerated powers for Saudi Arabia's two branches of government, the executive-cum-legislative, and the judiciary. At the same time, the king also decreed a Law of the Provinces that set forth the division of powers between the provinces and the central government and tasked provincial governors with protecting the rights of citizens and developing their respective regions. Currently, all 13 provincial governors, who are answerable to the minister of interior (Article 8), are royal princes. The third in this trilogy of basic administrative laws was the Law on the Advisory (Shura) Council. The king appoints its members (originally 60, now 150), who could "study" and "interpret," but not initiate, legislation (Article 15).

These laws did not adequately protect important human rights, especially in the criminal justice system. The rights and responsibilities of defendants, claimants, and prosecutors remained vaguely defined. While government officials and lawyers said that Sharia interpretations espouse concepts such as "no punishment without a crime" and "innocent until proved guilty," these are not codified into law, and Sharia itself provides little specific guidance on such issues as limits on pretrial detention, the right to legal counsel, or the right to be tried in person. The Basic Law also did not specify basic rights of due process and fair trial that defendants in the criminal justice system might invoke upon arrest and in court.

A new set of laws helped fill in some of the gaps left by the Basic Law. In 2000 the government issued a 266-article Civil Procedure Code. The following year King Fahd

agreed to the text of Saudi Arabia's first Law of Criminal Procedure, which entered into force in 2002. This law contains 225 articles laying out the process for the initiation of criminal action; rules of collecting and preserving evidence; conditions of arrest and pretrial detention, including bail; and the jurisdiction of courts and their proceedings. The government at the same time issued the Code of Law Practice regulation, stipulating procedures for the licensing and appointment of lawyers, and their rights and duties. These new laws gave Saudi citizens and residents a clearer definition of their rights in detention and at trial and laid out the procedures the investigators and courts must follow. For the first time, defendants had the right to legal counsel during investigation as well as at trial (Law of Criminal Procedure, Article 4).

Shaikh Muhammad Al Abdullah, the kingdom's chief prosecutor, told Human Rights Watch that "all of our work follows the criminal procedure code in all cases."¹² Most of those interviewed told Human Rights Watch that the Saudi government implemented the criminal laws unevenly, and sometimes not at all. Defendants described numerous and specific instances in which prosecutors, arresting officers, and judges did not act in conformity with the law's provisions. Jeddah-based lawyer Aiman told Human Rights Watch, "The criminal procedure code is still new for prison officials. A detainee has to insist on his rights and know them. Nobody will tell him his rights or facilitate his access to them."¹³ Hisham, a Dammam-based lawyer with trial experience, confirmed to Human Rights Watch that "Judges are not very conversant in the criminal procedure code."¹⁴

Saudi law divides punishments for criminal acts into three broad categories: (1) offenses against God carrying inalterable punishments prescribed by the Quran (*hadd*); (2) private rights to retribution connected with a criminal act (*qisas*); and (3) discretionary punishments (*ta'zi*) for all other criminal offenses.

¹² Human Rights Watch interview with Shaikh Muhammad Al Abdullah, chief prosecutor, Riyadh, November 29, 2006.

¹³ Human Rights Watch interview with Aiman, lawyer, Jeddah, December 11, 2006.

¹⁴ Human Rights Watch interview with Hisham, lawyer, Dammam, December 18, 2006.

III. Codification of Criminal Laws

Hadd crimes include adultery, false accusation of adultery, apostasy, drinking alcohol, theft, rebellion, and armed robbery. *Qisas* is most commonly applied to murder and manslaughter and instances of physical or material harm or harm to the reputation of another person. *Ta'zir* punishments cover all other actions that a judge may deem to be criminal and that warrant public action, for example, the failure to observe prayer, lewd behavior, or defrauding others.

Saudi Arabia does not have a written penal code, but relies on judges' interpretations of the Sharia for determination of which actions constitute crimes and what the attendant punishment should be. The definitions of crimes and nature and severity of punishments may vary from case to case. In 2005, as Saudi Arabia was negotiating its accession to the World Trade Organization, Saudi officials revived an idea first touted by King Abd al-'Aziz in the 1930s, to provide citizens, law enforcement officials, and judges with a clear, written formulation of what constitutes a crime. According to Shaikh Abd-al-Muhsin al-'Ubaikan, the Justice Ministry's judicial adviser and member of the Saudi Shura Council, the country's "highest leadership" approved a plan to compile Islamic jurisprudence (*fiqh*) in the form of articles of law "to be used by the courts but without being compulsory."¹⁵

Despite al-'Ubaikan's 2005 assertions concerning a plan to codify criminal jurisprudence, no such laws had been publicly discussed or enacted at this writing.

(Saudi Arabia has passed statutory laws for a limited number of offenses, such as embezzlement, official abuse of power, and drugs-related and explosives-related offenses. The Board of Grievances, under a law regulating its jurisdiction updated in October 2007, lost jurisdiction over embezzlement, abuse of power, and explosives cases, which newly created, but not yet established, criminal courts are due to adjudicate in the future.¹⁶ Sharia courts adjudicate weapons and drugs offenses.

¹⁵ 'Udwan al-Ahmari, "Al-Ubaykan Reveals Presence of Muslim Brotherhood in Saudi Arabia," *al-Watan*, Abha, May 18, 2005, republished in translation as "Saudi Adviser on Judicial Reform, Jihad in Iraq, Muslim Brotherhood's Presence," *Global News Wire – Asia Africa Intelligence Wire*, reproduced in BBC Monitoring/BBC, May 26, 2005.

¹⁶ Law of the Board of Grievances, 2007, art. 11.e., published in *al-Watan*, October 3, 2007.

Until two years ago, the Ministry of Interior set sentences for these crimes after a court issued a guilty verdict.)

The lack of a penal code remains a key deficiency in Saudi law and a primary obstacle to protecting Saudi citizens and residents from arbitrary arrest and detention, and unfair trials. When Human Rights Watch asked a member of the Shura Council's Islamic Affairs, Judiciary, and Human Rights Committee about the desirability of a penal code, he said that the opinions on disparate matters of jurisprudence by various scholars, often written hundreds of years ago, sufficed as guidance.¹⁷ Minister of Justice Abdullah Al al-Shaikh, in a March 10, 2007 wide-ranging interview on the new judicial law, said, "The royal palace has issued its preliminary approval ... and which we hope will see the light [of day] soon," but did not touch upon aspects of codifying Sharia jurisprudence into a penal law.¹⁸

International law stipulates that a government must clearly put those under its jurisdiction on notice as to what constitutes a crime. This principle is anchored in the Universal Declaration of Human Rights. Article 11 of the UDHR states, "No one shall be held guilty of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed."¹⁹ Article 15 of the International Covenant on Civil and Political Rights (ICCPR) repeats this provision almost verbatim. This principle of legality holds that, under international law, the state can only sanction or punish people for acts that are prohibited by law. The laws setting forth criminal acts must be accessible to the persons concerned and be formulated with sufficient precision to enable defendants to have been able to foresee, with legal advice if necessary, to a degree that is reasonable in the circumstances, the consequences that a given action might entail. Where the law does not specify a prohibited act in a manner that is accessible and reasonably foreseeable, a person cannot be lawfully charged with having committed an offense.

¹⁷ Human Rights Watch interview with a member of the Islamic Affairs, Judiciary, and Human Rights Committee of the Shura Council, Riyadh, December 3, 2006.

¹⁸ Fahd al-Dhiyabi, "Dialogue of Responsibility, The Minister of Justice Reveals the Erection of Labor and Commercial Courts and Others Specialized in Traffic, 'One Million Real Estate Records and Electronic Archives for all Deeds and a Prohibition to Appropriate Coastal and Agricultural Lands,'" *Okaz* (Jeddah), March 10, 2007.

¹⁹ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), UDHR, art. 11.

The principle of legality lies at the heart of the rule of law. It provides an important safeguard against arbitrary criminalization of acts not otherwise prohibited. Vague, over-broad, and inaccessible laws violate this principle and thus undermine the rule of law.

A Riyadh-based lawyer and former judge told Human Rights Watch of his frustration with the limits of the Law of Criminal Procedure in the absence of a penal code: “I don’t take criminal cases because there is no law I can argue with.”²⁰ A Jeddah-based lawyer echoed this view: “Currently there’s a discussion about a penal code,” he said. “The reason is that the criminal procedure code exists, but a criminal procedure code without a penal code is like a plane with one wing. It can’t fly.”²¹

The need for a codified penal code is central to respect for human rights, as without clear, explicit direction to the contrary, exercise of basic human rights in Saudi Arabia could currently bring an individual into conflict with the law. The Saudi Basic Law contains no positive protection of the rights to assembly and association, for example, leaving it up to a judge to decide when a certain act may have crossed an unwritten line of “obedience to the ruler” and “public interest.” These concepts of obedience and public interest are part of an undefined area in which the ruler, through edicts, and the judge, by adjudicating individual acts, lay temporary and unpredictable boundaries as to what constitutes a criminal act.

Saudi rights activists formed the Committee for the Defense of Legitimate Rights in 1993. Saudi authorities did not approve its establishment and arrested most of its members. The group advocated greater protection of certain human rights and opposed the presence of United States troops in Saudi Arabia. Its formation, and the arrests of its members, came on the heels of the promulgation of the Basic Law of 1992, which stated that “The State shall protect human rights in accordance with Sharia.”²² In this instance what trumped the Basic Law’s exceedingly loosely-worded guarantees is its own Article 39, a provision that judges have used to sentence activist dissidents to jail terms for trying to form associations or speak against

²⁰ Human Rights Watch interview with Abd al-‘Aziz al-Qasim, lawyer, Riyadh, December 6, 2006.

²¹ Human Rights Watch interview with ‘Isam Basrawi, lawyer, Jeddah, December 11, 2006.

²² Basic Law of Governance, art. 26.

government policies and actions.²³ Article 39 provides, “It is prohibited to commit acts leading to disorder and division, affecting the security of the state and its public relations, or undermining human dignity and rights.” Sharia jurisprudence contains some guidance on what acts cause disorder and division (*fitna*—sedition) but, in the absence of a penal code, these are not predictable rules and do not give adequate notice as to what constitutes a crime.

On March 16, 2004, the government arrested 12 proponents of political and constitutional reform. Three of the 12, Ali al-Dumaini, Abdullah al-Hamid, and Matrook al-Faleh, refused to sign a pledge while in detention to desist from all future reform efforts, a condition of their being released. The Greater Riyadh Court on May 15, 2005, sentenced them to nine, seven, and six years in prison, respectively, for petitioning the king, circulating the petition to others, and publicizing it through domestic and foreign news outlets. The judges found the defendants guilty of discussing reform issues that “they did not consider as discretionary public interests [*maslaha mursala*]²⁴ which, accordingly, the ruler [alone has the right to] consider to decide what of [the reform issues] further his interests for the country.”²⁵ When then-Crown Prince Abdullah became king in August 2005, he immediately issued a pardon for the three reformers as well as their lawyer and supporters who had also been detained.

This case illustrates the wide latitude judges have, in the absence of a written and clear penal code, to determine what is legal and what is forbidden. This wide latitude enables judges to criminalize peaceful advocacy. In this case, this resulted in prison sentences for individuals who were simply exercising rights protected under international human rights standards—the rights to freedom of association and freedom of expression. In a meeting in Riyadh on November 28, 2006, Ali al-Dumaini, Abdullah al-Hamid, Matrook al-Faleh and others told Human Rights Watch that Saudi laws provide no protection for human rights activists engaged in peaceful advocacy,

²³ Human Rights Watch interviews with Islamic thinkers and activists, Riyadh, November 28, and Jeddah, December 10, 2006.

²⁴ “To reason based on *maslaha mursala* is to draw legal conclusions not based on existing divine rules, but rather out of juristic consideration of the best interests and welfare of society.” Asifa Quraishi, “Interpreting the Qur’an and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence,” *Cardozo Law Review*, Vol. 28:1, 2006, p. 104.

²⁵ Greater Riyadh Court, Session for the Pronouncement of the Verdict, May 15, 2005.

and human rights activists cannot challenge the authorities when they prohibit the exercise of certain rights. For example, officials did not respond to a petition signed in March 2003 by 50 persons from all over the country to form a human rights organization. A renewed effort to form a human rights organization in April 2006 also met with no response. Security forces dispersed a protest in solidarity with the Palestinian and Lebanese peoples in August 2006 and a similar protest three months earlier demanding employment for the unemployed.²⁶

The police in August 2006 arrested women's rights activist Wajeha al-Huwaider for standing on the bridge connecting Bahrain and Saudi Arabia with a sign reading "Give women their rights."²⁷ Al-Huwaider's intent to demonstrate publicly and peacefully is clear, but she had no way of knowing that her exercise of her right to free expression, while perhaps socially risky, constituted an arrestable offense. Six weeks later, the secret police (*mabahith*) arrested her, believing she was planning a women's protest for Saudi Arabia's National Day on September 20. They released her after her brother, acting as her guardian, signed a pledge that she would not protest publicly again.

Ahmad was not so lucky. He participated in a peaceful demonstration in Riyadh calling for reform in October 2003, which Sa'd al-Faqih, a leading Saudi dissident living in the UK,²⁸ had instigated via the media. After Ahmad's arrest on October 12, 2003, a judge sentenced him to one-and-a-half years in prison for participating in the demonstration. He obtained his release after 10 months, but on October 29, 2004, he was again arrested and spent two years in prison before Judge Ibrahim Abd al-Rahman al-'Atiq on October 5, 2006, sentenced him to three-and-a-half years in prison for "agitation of public opinion."²⁹

Codifying criminal acts into a law that is consistent with international human rights standards may not eliminate political suppression of peaceful demonstrators, but it

²⁶ Human Rights Watch interviews with Abdullah al-Hamid, Ali al-Dumaini, and Matrook al-Faleh, Riyadh, November 28, 2006.

²⁷ "Saudi Arabia: Lift Gag-Order on Rights Campaigner. Women's Rights Activist Forced to Sign Oath Not to Protest," Human Rights Watch news release, October 31, 2006, <http://hrw.org/english/docs/2006/10/31/saudia14483.htm>.

²⁸ The United Nations Suppression of Terrorism Regulations added Sa'd al-Faqih's name to its list on December 24, 2004.

²⁹ Human Rights Watch telephone interview with Ahmad, al-Ha'ir Correctional Facility, November 27, 2006.

will lessen the ability of Saudi law enforcement and judicial officials to claim a legal basis to persecute and prosecute individuals for exercising their rights.

The protections against arbitrary decisions that codifying criminal law provides go far beyond securing human rights of association and assembly. Proponents of codifying aspects of Sharia appear to be gaining ground. When, in 1990, the king issued a law codifying rules of procedure for Sharia courts, “fully vetted” by senior scholars, the law, “had to be abrogated within weeks as a result of widespread objections among ... especially the judges,” according to one commentator.³⁰ Ten years later, the king was able to issue the law, and, two years after that, the law on criminal procedure. As debate about codification of criminal offenses and their attendant punishments resurfaced, Saudi lawyer Khalid al-Newaisier in 2007 wrote that “The codification of the judicial rules will help in completing the deficiency in the legal rules,” and lead to important benefits, including “tackling the short[comings] which may occur in the legislations.”³¹

Even senior scholars are now in favor of codifying criminal offenses. A member of the Council of Senior Scholars, Shaikh Abdullah al-Mani’, told the pan-Arab daily newspaper *al-Sharq al-Awsat* in March 2006,

I have been calling for [codifying the laws] for over 25 years. I called for codification according to the four schools of thought, not only the Hanbali School. If an official party took on this responsibility it would undoubtedly reduce differences and would constitute a strong factor in hastening the verdict in judicial proceedings. It would also make rulings much clearer for litigants before going to court.³²

³⁰ Abdulaziz H. Al Fahad, “The Prince, The Shaykh – and The Lawyer,” *Case Western Reserve Journal of International Law*, vol. 34, issue 2, Supplemental (2000), p. 315.

³¹ Dr. Khalid Al-Newaisier, “The Importance Of Codifying Judiciary Judgments and Recording Fiqh (Jurisprudence) Scholars Diligences (Edicts),” *Al-Eqtisadiyah Business Daily*, March 3, 2007, issue 4894, translation from www.saudilaws.net (accessed March 12, 2007).

³² Huda al Saleh, “Interview with Saudi Council of Senior Ulama Member Sheikh Abdullah Al Manee,” *Asharq Alawsat* English Edition, March 23, 2006, <http://www.aawsat.com/english/news.asp?section=3&id=4254> (accessed March 19, 2007).

IV. Absence of Rules of Precedent

In addition to codifying elements of criminal law, Saudi intellectuals, religious scholars, and government officials have discussed the benefits of setting boundaries to judicial sentencing discretion. Currently, two types of crimes, crimes against God (*hadd*) and crimes giving the injured party the private right of retribution (*qisas*), have relatively well-defined punishments. The Quran lays down punishments for *hadd* crimes, although scholars differ on the circumstances of their applicability, and *qisas* crimes follow the rule of equal retribution: a murderer may be killed, and whatever injury a criminal causes, the injured party may ask the state to inflict that same injury on the criminal, but the injured party or his or her heirs may also accept compensation or grant a pardon. The vast majority of criminal cases, though, relate to discretionary (*ta'zir*) crimes, in which the judge has discretion over the definition of what constitutes a crime and over the sentence, without being bound by judicial precedent.

The widely differing sentences judges in two courts reached in two unrelated cases of kidnapping is one example of absence of sentencing guidelines for judges. In one case, three judges sentenced four of the seven men who had raped a young woman and a young man in Qatif in early 2006 to between one and five years in prison, and between 80 and 1,000 lashes, for kidnapping, apparently because they could not prove rape to the legal standard required.³³ (The case, which achieved international notoriety following a new ruling on appeal in November 2007, is discussed further in chapter VII, section “Summary Justice, Perverted Justice.”) Meanwhile, *al-Watan* newspaper reported in August 2005 that an appeals court upheld a judge’s sentence of 15 years in prison and 8,000 lashes for a childless woman who had kidnapped a two-year old child whom she had found wandering in the holy mosque in Mekka.³⁴

³³ The judges reportedly ignored evidence from a cell phone video that one of the attackers shot during the rape. The husband of the attacked woman told Human Rights Watch that the prosecution repeatedly ignored his request for a forensic medical examination. The judge also sentenced the young woman to 90 lashes for illicit mingling with members of the opposite sex. Human Rights Watch interview with the young woman and her husband, Qatif, December 8, 2006. See also, “Four Given Jail Terms for Gang-Raping Young Woman,” *Arab News* (Jeddah), November 3, 2006.

³⁴ Muhammad Darraj, “15 Years Prison and 8 Thousand Lashes for Kidnapping the Child Dallal from the Holy Mosque in Mekka,” *al-Watan*, August 30, 2005, http://www.alwatan.com.sa/daily/2005-08-30/first_page/first_page12.htm (accessed August 30, 2005).

In a study of Saudi judicial rulings, Frank Vogel, a professor of Islamic legal studies, described the differences between the “Western concept of law [as] a system of formal, objective, publicly known, generally applicable, compulsory rules” and what he called the “microscopic” conception of Islamic law, in which the judge rules on “a particular, concrete event” “striving to draw as near as possible to God’s true evaluation for each particular event,” and in which “the legitimation of law arises solely from the individual conscience, as it contemplates the revelation.” Vogel added that from a Prophetic tradition it follows that “[t]ruth is the ultimate precedent, to which one must return once it is revealed ... There is no rule of precedent, stare decisis, in Islamic law.”³⁵

Saudi scholars, however, are moving away from this notion of the judge as a seeker after God’s will in each particular case and increasingly agree that there should be formal and observable limits to *ta’zir* punishments. Some of their arguments are simply for the sake of expediency: A rulebook classifying certain crimes and adherent punishments, they argue, would greatly facilitate and speed up the task of overworked judges and assist lawyers in arguing their cases.

Lawyer Khalid al-Newaisier wrote that such institutionalization of rules of precedent “will save the time, effort and expenditure when these rules are constant, and also will help the lawyers to submit the legal opinion to their clients in any suit they think to raise, and thereby to avoid the advance litigation procedures.” Newaisier added that such institutionalization would assist lawyers in “compiling the courts[’] judgments [and] following their evolution with the aim of [attaining] general attitudes [of the judiciary].”³⁶

In a study for the Naif Arab University for Security Sciences in Riyadh, Dr. Muhammad al-Madani Busaq lists four general objectives of punishment in Islamic legislation: general deterrence; specific deterrence; neutralization of crime impact; and

³⁵ Frank E. Vogel, *Islamic Law and Legal System. Studies of Saudi Arabia*, Studies in Islamic Law and Society, v. 8.(Leiden: Brill, 2000) pp. 15-16, 22, and 24. Stare decisis (“Let decisions stand”) is a Latin legal term used in common law systems to express the notion that prior court decisions must be recognized as precedents, according to case law.

³⁶ Al-Newaisier, “The Importance Of Codifying Judiciary Judgments,” *Al-Eqtisadiyah Business Daily*. Al-Newaisier’s argument in favor of judicial precedent goes against Vogel’s description of the ideal notion of a judge’s function in Islamic legal tradition, which may be more feasible in much smaller, less complex societies than the current Saudi society.

correction of the criminal.³⁷ He then lists possible discretionary punishments for crimes (other than *hadd*, *qisas*, and statutory crimes), such as non-observance of prayers or kidnapping, ranging from counseling and admonishment to curtailment of rights and benefits, restitution, exile, imprisonment, fines, flogging, and execution.³⁸ It seems a small step from presenting judges with this range of punishments to creating a comprehensive catalogue of crimes with attendant penalties.

In September 2004 Jawhara al-Anqari, of the National Society for Human Rights, advocated putting limits on discretionary punishments, according to a report in *al-Watan* newspaper.³⁹ The Ministry of Justice seems to have taken some small, initial steps in this direction. On December 9, 2006, the chief administrator at Jeddah Partial Court showed Human Rights Watch a booklet, which he described as a sentencing guide for judges. On the first page this booklet listed a table, with the first column containing a broad description of crimes, other columns showing special characteristics of the criminal acts, and a last column with a range for sentences.⁴⁰ On March 13, 2007, the Ministry of Justice announced that it was publishing certain rulings in an attempt at greater transparency and further development of Saudi jurisprudence, in accordance with Cabinet Decree 162 of August 26, 2002, but that these and future collected rulings would not be binding on judges.⁴¹

These small steps represent progress, but do not detract from the larger necessity to derive from Saudi jurisprudence, both in its theoretical and applied form, common parameters to ensure that punishment for similar crimes is not left entirely in the hands of judges, who have issued widely disparate judgments for the same acts.

³⁷ Muhammad al-Madani Busaq, *Perspectives on Modern Criminal Policy* (Naif Arab University for Security Sciences, 2005), pp. 150-153.

³⁸ *Ibid.*, pp. 169-174.

³⁹ Khalid al-Ghannami, "Positions on Imprisonment and Discretionary Punishment," *al-Watan*, September 27, 2004, <http://www.alwatan.com.sa/daily/2004-09-27/writers/writers02.htm> (accessed April 12, 2007).

⁴⁰ Human Rights Watch interview with chief administrator, Jeddah Partial Court, Jeddah, December 9, 2006.

⁴¹ Ministry of Justice, "His Excellency the Minister of Justice Inaugurates the First Edition of the Corpus of Judicial Rulings," March 14, 2006, <http://www.moj.gov.sa/layout/NewsDetails.asp?ArticleID=782> (accessed March 16, 2007).

V. Other Legal Gaps

There are significant gaps between the statutory laws that the government has passed and international human rights law. Saudi law contains a number of legal safeguards which should protect an individual if he or she is arrested and detained. An arrested person has the right to inform anyone of his or her choice of his or her arrest; an arrested person has the right to have a lawyer or personal representative present during any investigation; and the prosecutor must inform the arrested person of the charges. But there are deficiencies in the way some of these safeguards are formulated, and Saudi law also contains glaring omissions in human rights protections, including a lack of the rights to inform others of one's arrest, of access to a lawyer, of the right to be promptly charged and speedily tried, to have the means to prepare a defense, and to challenge the lawfulness of one's detention.

Right to Inform Others of One's Arrest

Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) provides that

An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.⁴²

Foreign detainees "shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong."⁴³

⁴² United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, rule 92.

⁴³ *Ibid.*, rule 38(1).

Rule 35 of the Standard Minimum Rules provides that

(1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution. (2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.⁴⁴

In 1988 the UN General Assembly adopted a Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), further strengthening international standards of detention. Principle 15 states that a detained person's "communication ... with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days."⁴⁵ The detainee has a right to notify, or have the authorities notify, "members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody."⁴⁶

Article 35 of the Law of Criminal Procedure provides that anyone arrested or detained "shall be entitled to communicate with any person of his choice to inform him of his arrest,"⁴⁷ but fails to set a timeframe, specifying only that such communication should occur promptly after arrest or after the transfer between holding facilities. Shaikh Muhammad Al Abdullah, the head of the Bureau of Investigation and Public Prosecutions, informed Human Rights Watch that "a detainee has the right to make a phone call to anyone."⁴⁸

⁴⁴ *Ibid.*, rule 35.

⁴⁵ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), principle 15.

⁴⁶ *Ibid.*, principle 16(1).

⁴⁷ Law of Criminal Procedure (LCP), *Umm al-Qura Newspaper*, issue 3867, November 3, 2001, art. 35.

⁴⁸ Human Rights Watch interview with Shaikh Muhammad Al Abdullah, November 29, 2006.

Saudi law is more restrictive than Al Abdullah’s statement suggests. Of particular concern is a provision that gives prosecutors the right to keep suspects in incommunicado detention for up to 60 days. Article 119 of the LCP states, “In all cases, the investigator shall be entitled to stop the accused from communicating with any other accused or detainee, and to stop any visit to such accused for a period not exceeding sixty days whenever that is deemed necessary, without prejudice to the right of the accused to communicate with his representative or attorney.”⁴⁹ Article 119 does not define “communicate,” and leaves open the possibility that prosecutors may restrict a detainee’s contact with his or her lawyer to written or telephone communication (see Appendix). Following his visit to Saudi Arabia in 2002, the UN special rapporteur on the independence of judges and lawyers touched upon incommunicado detention in his report. “Experience has shown in other countries that prolonged detention, particularly where it is incommunicado, provides the conditions for the violation of a detained individual’s rights,” he wrote. “Even with access to a lawyer, other individuals, particularly family or consular officials, are an important safeguard for the well-being and the rights of the accused.”⁵⁰

When the *mabahith* arrested 10 persons in Jeddah and Medina in February 2007 (see chapter VI, section “Arrests Without Warrants”), officials did not permit them to inform their relatives or lawyers of their whereabouts or the reasons for their arrest, with the exception of one detainee, Aiman, who had contact with his wife during a brief period when he was hospitalized.⁵¹ Five of those arrested had been meeting at Basrawi’s villa just north of Jeddah.

Basrawi’s family learned of the events only because the *mabahith* let the driver and two domestic servants working for Basrawi go after the arrest. Fadhil’s wife, Laila, told Human Rights Watch that she had expected her husband back around midnight. When he didn’t come, she called the traffic police and the hospitals, but they did not have a record of her husband. She then called the *mabahith*, who told her they had

⁴⁹ Law of Criminal Procedure, art. 119.

⁵⁰ UN Commission on Human Rights, report of the Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumaraswamy, E/CN.4/2003/65/Add.3, para. 99.

⁵¹ Human Rights Watch interview with a person close to the families of the detainees, Riyadh, May 22, 2007.

no record of arresting Fadhil, but would follow up.⁵² Over the following days, she was unable to locate her husband. Laila told Human Rights Watch that the *mabahith* told her, “We are not holding him.”⁵³ The relatives of others were able to confirm that the *mabahith* was holding them at the new Ruhaili / ‘Isfan facility northeast of Jeddah, by going to the prison.

On February 23, 2007, a Saudi security consultant confirmed to Human Rights Watch that Fadhil was being held there and that visits for the family were now allowed. On February 26, however, Rafiq, the son of one of those detained, Kamil, said that his family had not been able to visit Kamil at the facility and that none of the detainees, after three weeks in detention, had been able to communicate with the outside world.⁵⁴ In July 2007 a relative of one of the detained men told Human Rights Watch that family visits had started one month earlier.⁵⁵

Some detainees in al-Ha’ir Correctional Facility told Human Rights Watch that they have five or 10 minutes, once or twice a week, to make calls. However, none was able to contact friends or family at the time of their arrest.

Time is of the essence especially for foreign detainees, who need to call their embassies to intervene before they can be deported, a process that is supposed to take not more than three days.⁵⁶ Denying a detainee contact with the outside world and holding him or her incommunicado may also facilitate torture and ill-treatment. As Nigel Rodley, then-UN special rapporteur on torture, wrote in 1999:

Based upon information received over the course of the past seven years, the Special Rapporteur is of the view that incommunicado detention is the most important determining factor as to whether an individual is at risk of torture. As such, the Special Rapporteur reiterates

⁵² Human Rights Watch telephone interview with Laila, Jeddah, February 7, 2007.

⁵³ Ibid., and Human Rights Watch telephone interview with a friend of some of the detained men, Riyadh, March 3, 2007.

⁵⁴ Human Rights Watch telephone interview with Rafiq, Jeddah, February 26, 2007.

⁵⁵ Human Rights Watch telephone interview with Nawfal, Medina, July 20, 2007.

⁵⁶ Human Rights Watch interviews with detainees and prisoners at al-Ha’ir Correctional Facility, November 30, 2006.

the recommendation of his predecessor and urges all States to declare incommunicado detention illegal.⁵⁷

The consequences of not being able to contact the outside world can quickly bring on despair. Rami, a 38-year-old Palestinian who was born in Saudi Arabia and lived all his life there, despondently told Human Rights Watch that the passports department in Jeddah arrested him as he tried to routinely renew his residency permit in February 2007 because he had been working for an employer who was not at the same time his sponsor. Rami told Human Rights Watch that the passport official

arrested me, searched me, taking all possessions, including my mobile phone, and brought me to the deportation center. I have been here 23 days now. Everything is forbidden here. No visits, no telephone calls—there are no public telephones, you cannot get outsiders to bring you food or clothes. We share a smuggled mobile phone among four or five people here. There are frequent searches and it is forbidden. I managed to call my brother and three or four days ago my brother came to the deportation center and tried to bring me clothes, but he was not allowed to see me or give me clothes.⁵⁸

Contact with the outside world, a fundamental right of detainees, is also necessary to obtain legal counsel and prepare a defense. Four Sri Lankans arrested in March 2004 for armed robbery were unable to inform their embassy until after their trial had begun, almost one year later.⁵⁹ They were taken from their cells to be executed without notice and had no opportunity to inform their embassy. A spokesperson for the embassy said, “We are shocked, we never expected any of this,” and added, “We made an appeal asking for clemency.”⁶⁰

⁵⁷ UN General Assembly, Fifty-fourth session, Agenda item 116 (a), Human rights questions: implementation of human rights instruments, “Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Submitted by Sir Nigel Rodley, Special Rapporteur of the Commission on Human Rights, in Accordance with General Assembly Resolution 53/139,” October 1, 1999, para. 42.

⁵⁸ Human Rights Watch telephone interview with Rami, Jeddah, March 20, 2007.

⁵⁹ Human Rights Watch telephone interview with Ranjit de Silva, al-Ha’ir Correctional Facility, February 9, 2007.

⁶⁰ “Saudi displays Sri Lankan bodies to deter crime,” Reuters, February 20, 2007.

Right of Access to a Lawyer

Saudi Arabia has only recently begun to give serious consideration to the role of defense lawyers. The 2001 Code of Law Practice sets forth rights and duties of the legal profession. Despite a rising number of legal (including Sharia) consultants, Human Rights Watch does not know of a single professional full-time criminal defense lawyer in Saudi Arabia. Abd al-Rahman al-Lahim, one of the few lawyers to take up such work at all, has represented clients in a number of high-profile cases, including a couple subjected to a judicially sanctioned forced divorce,⁶¹ the rape victim who was sentenced to 90 lashes for “improper mingling with the other sex,” and a young journalist arrested for “harboring destructive thoughts.”

Articles 10 and 11 of the Universal Declaration of Human Rights set out the core concepts of the right to a fair trial and Article 14 of the International Covenant on Civil and Political Rights, to which Saudi Arabia has said it will soon accede,⁶² specifically provides for the right of a defendant

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.⁶³

The Arab Charter on Human Rights, which the Arab League re-drafted and approved in 2004 (Saudi Arabia acceded the same year), and which entered into force in 2007, closely mirrors the due process provisions of the ICCPR.⁶⁴

⁶¹ “Saudi Arabia: Officials Harass Forcibly Divorced Couple,” Human Rights Watch news release, July 17, 2007, <http://hrw.org/english/docs/2007/07/18/saudia16399.htm> .

⁶² Human Rights Watch interview with H.R.H. Prince Sau’d al-Faisal, Riyadh, December 2, 2006, who indicated the Foreign Affairs Committee of the Shura Council was studying the Covenant.

⁶³ 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. 14.3(d).

⁶⁴ “In the course of prosecution and trial, [the defendant] shall enjoy the following minimum guarantees:... To have the free legal assistance of a defence lawyer, if he cannot defend himself or if the interests of justice so require.” Arab Charter on Human Rights, adopted by the League of Arab Nations, agreed by the 16th Summit of the Arab League, Tunis, May 23, 2004, art. 16(d).

Principle 13 of the UN Body of Principles states that “at the moment of arrest ... or promptly thereafter,” the authorities must inform the detained person of “his rights and how to avail himself of such rights.” Rule 93 of the Standard Minimum Rules provides that “an untried prisoner shall be allowed to apply for free legal aid where such aid is available,” and to obtain “writing material” and to be able to communicate confidentially in writing and in person with a legal adviser.⁶⁵ Principle 17 of the Body of Principles underlines that detainees are “entitled to have the assistance of a legal counsel,” free of charge “if he does not have sufficient means to pay.” A detainee shall be “informed of his right ... and shall be provided with reasonable facilities for exercising it.”⁶⁶

Saudi law omits two important aspects of the right to legal counsel. First, it contains no provision for the right to be informed of the protections guaranteed under the law. Second, it does not protect the right to have legal counsel provided free of charge to those who cannot afford to hire one. Article 223 of the LCP foresees the publication of “implementing regulations” to the law, but nearly five year after its passage, none has been published.⁶⁷

A third shortcoming of Saudi law is its ambiguity over when a detainee may have access to legal counsel. Article 1 of the UN-agreed Basic Principles on the Role of Lawyers recommends that access to lawyers and legal services be available “in all stages of criminal proceedings.”⁶⁸

The LCP refers to the right to legal counsel in a number of articles. At the outset, article 4 states, “Any accused [or charged] person shall have the right to seek the assistance of a lawyer or a representative to defend him during the investigation and

⁶⁵ Standard Minimum Rules, rule 93.

⁶⁶ Body of Principles, principle 17.

⁶⁷ In January 2003 Deputy Minister of Justice Abdullah bin Muhammad al-Yahya told Human Rights Watch that the ministry had used some of the analysis in a memorandum Human Rights Watch had sent it in October 2002 for the drafting of the implementing regulations, including a provision for the state to provide defense counsel for indigent defendants. Human Rights Watch interview with Abdullah bin Muhammad al-Yahya, Riyadh, January 27, 2003.

⁶⁸ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), principle 11.

trial stages.”⁶⁹ Article 70 specifies that under no circumstances may the investigator remove legal counsel, once the defendant has hired one.⁷⁰

Articles 35 and 116 give the arrested person the right to communicate with any person of his or her choosing, but the LCP fails to provide for the right to legal counsel from the moment of arrest, while stipulating that a first interrogation may take place within 24 hours, possibly before the right to legal counsel can be invoked.⁷¹ Head of the Bureau for Investigation and Public Prosecutions Shaikh Al Abdullah told Human Rights Watch, “The law does not say that we have to wait for a lawyer to show up before we start an interrogation. We will not hold somebody forever.”⁷² While human rights law does not provide an absolute right that a lawyer be present during questioning, the right of access to a lawyer does mean that the detainee should have some opportunity to seek advice from a lawyer either before or during questioning. Otherwise potential breaches of other rights such as the right against self-incrimination may occur.

Finally, Article 70 raises questions as to what legal advice, if any, the lawyer may give a client during an ongoing interrogation, and seems to impinge on the right of confidentiality between lawyer and client:

The representative or attorney shall not intervene in the investigation except with the permission of the Investigator. In all cases, the representative or attorney may deliver to the Investigator a written memorandum of his comments and the Investigator shall attach that memorandum to the file of the case.⁷³

⁶⁹ Law of Criminal Procedure, art. 4. Article 64 of the LCP repeats the language of article 4 and does not provide further clarification: “During the investigation, the accused shall have the right to seek the assistance of a representative or an attorney.”

⁷⁰ *Ibid.*, art. 70.

⁷¹ *Ibid.*, art. 34.

⁷² Human Rights Watch interview with Shaikh Muhammad Al Abdullah, November 29, 2006.

⁷³ Law of Criminal Procedure, art. 70.

Knowing of the right to a lawyer

Saudi law does not oblige the authorities to inform a detainee of the right to legal counsel, rendering its exercise contingent upon the detainee already knowing of this right and requesting a lawyer. Most persons Human Rights Watch spoke to did not know they have a right to a lawyer, or that by law their lawyer could attend interrogation sessions. None of the over 60 inmates interviewed by Human Rights Watch said the authorities had informed him of the right to counsel. Ibrahim al-Juhaiman, the head of the prosecution service in charge of investigations and prosecutions, told Human Rights Watch that a suspect is “informed of [his or her] rights to appoint a lawyer or representative.” He explained further, “The law does not require the presence of a lawyer but the suspect has the choice to have one, and lawyers can attend interrogations.”⁷⁴ Shaikh Muhammad Al Abdullah, the head of the prosecution service, added that the suspect “is free to defend himself.”⁷⁵

A prisoner in al-Ha’ir prison contradicted these claims, telling Human Rights Watch,

I was arrested because I was in a fight and was stabbed and I also beat the [others], and when I went to complain [to the police] I was arrested. I didn’t ask for a lawyer. No one told me I had a right to a lawyer. I was held for three months and 20 days before I saw a judge.⁷⁶

In March 2004 the government arrested 12 prominent political reform advocates and later released nine. One of the three kept in detention and later tried and convicted, based on their public petitions for constitutional and political changes (see chapter III, above), told Human Rights Watch that a visitor gave them a copy of the Saudi Law of Criminal Procedure while they were detained in the *mabahith’s* ‘Ulaisha detention center in Riyadh. They learned of their right to a lawyer and to be tried within six months of their detention only upon reading the document, and promptly demanded these rights.⁷⁷ The detainees were able to appoint a legal defense team, but the

⁷⁴ Human Rights Watch interview with Ibrahim Juhaiman, head of the prosecution department within the Commission for Investigation and Public Prosecutions,” Riyadh, November 29, 2006.

⁷⁵ Human Rights Watch interview with Shaikh Muhammad Al Abdullah, November 29, 2006.

⁷⁶ Human Rights Watch interview with Anwar, Wing 18, Al-Ha’ir Correctional Facility, November 30, 2006.

⁷⁷ Human Rights Watch interview with Matrook al-Faleh and Abd al-Rahman al-Lahim, Riyadh, February 21, 2006.

government, in turn, arrested Abd al-Rahman al-Lahim, their chief defense lawyer, in November 2004, for having spoken to Al Jazeera television about his clients.

Most of the detainees Human Rights Watch spoke with in al-Ha'ir prison were under the age of 30, and several were foreigners who did not speak or read Arabic proficiently and had little if any knowledge of Sharia provisions of criminal law. Al-Ha'ir Correctional Facility Director Zhafir al-Haqbani told Human Rights Watch that there were no translators at the prison. He said that, unlike at interrogations or trials, they were not vital in the prison, and that fellow foreign prisoners with good Arabic translated when the need arose.⁷⁸

One of four arrested Sri Lankans later executed told Human Rights Watch that he did not know of his right to have a lawyer. His embassy, with which he was initially denied contact (see above), told him after his trial had begun that it was too late to hire a lawyer.⁷⁹ Eight non-Saudi inmates at al-Ha'ir's Exemplary Wing 18 holding detainees of good behavior told Human Rights Watch in November 2006 that officials had informed none of them of their right to inform their relatives of their whereabouts or to appoint a lawyer.⁸⁰ Two inmates said that they had asked for lawyers. In one case, officials refused his request; only one was able to obtain legal counsel in preparation for his trial.⁸¹

Obligation to Charge Promptly

International law obliges states to formally charge defendants with the offense that they are alleged to have committed. We have not listed accounts of persons whom Saudi law enforcement officers did not promptly charge with an offense, because this report cites numerous examples of the failure to charge defendants throughout. We have limited ourselves to a discussion of the shortcomings of Saudi law.

⁷⁸ Human Rights Watch interview with Zhafir Sa'id al-Haqbani, director, Al-Ha'ir Correctional Facility, November 30, 2006.

⁷⁹ Human Rights Watch telephone interview with Ranjit de Silva, February 9, 2007.

⁸⁰ Human Rights Watch interview with detainees and prisoners in Wing 18, al-Ha'ir Correctional Facility, November 30, 2006.

⁸¹ Ibid.

Article 9.2 of the ICCPR and Principle 10 of the Body of Principles identically provide that “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”⁸² Charges must include, as the UN Human Rights Committee (the body of experts that reviews states’ compliance with the ICCPR) laid out in its interpretation of article 9 of the ICCPR, an “indication of the substance of the complaint.”⁸³

Saudi law echoes international law, at least on some procedural requirements. 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” and 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 (Article 34).⁸⁴

As noted above, Saudi Arabia has not codified its criminal offenses, nor is there any clarity in the case law, with the result that the criminal law in this respect is neither accessible nor reasonably foreseeable. This deficiency in Saudi criminal law hinders the ability of law enforcement officials to inform detainees of the substance of the complaint. The head of the prosecution department, Ibrahim Juhaiman, told Human Rights Watch, “You will never find out the exact crime until the end of the investigation. Then you can determine the crime. No charges are filed until after the

⁸² ICCPR, art. 9.2, and Body of Principles, principle 10.

⁸³ In a decision in 2003 against the Democratic Republic of Congo, the Human Rights Committee wrote, “With regard to the alleged violation of article 9, paragraph 2, the Committee takes note of the authors’ claim that they were not informed, at the time of arrest, of the reasons for their arrest. It observes that it was not sufficient simply to inform the authors that they were being arrested for breach of State security, without any indication of the substance of the complaint against them. In the absence of any pertinent information from the State party which would contradict the authors’ allegations, the Committee considers that the facts before it reveal a violation of article 9, paragraph 2, of the Covenant.” United Nations Human Rights Committee, International Covenant on Civil and Political Rights, “Communication No. 1177/2003: Democratic Republic of the Congo. 16/05/2006. CCPR/C/86/D/1177/2003. (Jurisprudence),” May 16, 2006, <http://www.unhcr.ch/tbs/doc.nsf/o/52e2604680ee8878c125719500499a76?Opendocument> (accessed March 20, 2007).

⁸⁴ Law of Criminal Procedure, art. 101. The LCP provides that the arresting officer shall “immediately” hear the accused and refer him or her “within 24 hours” (art. 34) to the investigator. Following the arrest, and, presumably after this first interview, “law enforcement officers” shall bring the accused “promptly” before the investigator (art. 104), who shall “within 24 hours” (art. 34), or “promptly” (art. 109), interrogate the accused, or keep him or her in detention, but not longer than 24 hours, after which the “chairman of the relevant department” shall “promptly” interrogate or release him or her (art. 109). When the suspect appears for the “first time” for an investigation, the investigator shall “inform [the suspect] of the offense of which he is charged” (art. 101). Following the interrogation, the investigator can issue a detention warrant for a maximum of “five days” (art. 113), after which the detention “shall end” (art. 114).

investigation.”⁸⁵ Nevertheless, international standards require the authorities to file substantive formal charges promptly, and to inform the defendant of them.

Saudi law does not specify whether the process of charging a suspect involves a formal, written procedure in which the elements of the crime are specified, and whether the accused should be informed of the evidentiary standard used to establish that the accused person has in fact committed the crime(s) in question (see Appendix).⁸⁶

The absence of a penal code or similar set of laws making clear what are and what are not criminal offenses renders arrests and prosecutions inherently arbitrary as the lack of legal specificity means that whether particular behavior constitutes an offense is essentially a subjective assessment. This vagueness leaves the door open for prosecutors to fit the crime to the act, as opposed to their obligation to prove the defendant has committed clearly defined elements of a specific crime.

Under Saudi law, the court can alter, or permit the prosecutor to alter, the charge. Article 159 of the Law of Criminal Procedure states, “The court shall not be bound by the description included in the memorandum of the charges. It shall give the act the proper description even though the description is not compatible with the memorandum of the charges, and shall advise the accused accordingly.”⁸⁷ Article 160 states, “The court may, at any time, permit the Prosecutor to amend the memorandum of the charges at any time. The accused shall be notified of such amendment and be granted sufficient opportunity to prepare his defense with respect to such amendment, according to law.”⁸⁸

Furthermore, the basis for charging a suspect with a crime in a formal legal procedure may well differ from the reasons law enforcement officials cited to justify arresting a suspect initially. The legal standard of proof required for carrying out an

⁸⁵ Human Rights Watch interview with Ibrahim Juhaiman, head of the prosecution department within the Commission for Investigation and Public Prosecutions, November 29, 2006.

⁸⁶ The Bureau of Investigation and Prosecutions did not respond to a letter from Human Rights Watch sent on April 10, 2007, inquiring about the process of issuing charges.

⁸⁷ Law of Criminal Procedure, art. 159.

⁸⁸ *Ibid.*, art. 160.

arrest is generally lower than that required for charging a person with a crime. In flagrante arrests rely on the judgments of law enforcement officers who most likely do not have advanced legal training.⁸⁹ The circumstances justifying arrest may vary from case to case, but must be reasonable and communicated to the detainee. Charging a suspect, or arresting a suspect pursuant to a prosecutor's arrest warrant, on the other hand, requires a legal analysis matching the available facts to the provisions of the law. This difference is the chief reason why the period the law in most countries grants law enforcement officers before having to produce a suspect for formal charges is short, commonly only 24 hours, and, in Saudi Arabia, between 24 and 48 hours.

Obligation to Bring to Trial without Undue Delay

Fair trial standards require that defendants receive a speedy trial.⁹⁰ The prosecution must not unduly delay bringing a case to trial, and the court must not unduly delay adjudicating a case on its merits.⁹¹ Excessive delays in adjudicating a detainee's case in court can render his or her continued detention unjustified and therefore arbitrary. Saudi law sets an absolute limit of six months on pretrial detention before a detainee's case must reach the courts, but does not provide legal guidance on what may constitute unreasonable delay either during those six months or once a trial has begun.⁹² Saudi law does not give detainees the right to challenge the lawfulness of their detention before a court and obliges prosecutors to meet only administrative, but not substantive or evidentiary, requirements for issuing orders for the continued detention of suspects for periods of up to six months. Rather than protect the right of suspects to seek relief from a judicial authority, Saudi Arabia effectively places their detention at the discretion of the prosecution service.

⁸⁹ In a ruling on one case, the European Court of Human Rights found that in order for an arrest to be reasonable, the evidence at hand would have to satisfy an objective observer that there are reasonable grounds to believe that the suspect has committed a crime. See European Court of Human Rights, *Case of Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, Series A, No. 182, p. 16, para. 32.

⁹⁰ ICCPR, art. 14 (C).

⁹¹ "This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered; all stages must take place 'without undue delay'. To make this right effective, a procedure must be available in order to ensure that the trial will proceed 'without undue delay', both in first instance and on appeal." UN Human Rights Committee, General Comment no. 13, *Equality before the courts and the right to a fair and public hearing by an independent court established by law*, HRI/GEN/1/Rev.1 (1984) art. 14.

⁹² Law of Criminal Procedure, art. 114.

Lawyer 'Azzam told Human Rights Watch, "If the accused asks for a postponement, the next [court] session must be within 45 days. This is not a matter of law, but a common practice."⁹³ Tawfiq, a Yemeni man in Buraiman prison, however, told Human Rights Watch that he had not been summoned for a second hearing in his case for over one year. The first hearing consisted only of reading out the charges and notarizing statements he made in police interrogations.⁹⁴ In another case, Nasir described to Human Rights Watch the trial of his younger brother 'Amr:

The first session of the trial, the hearing of and response to the charges [*sama*], took place eight months after 'Amr's arrest. We had been pressing the court for months to proceed with the case, but didn't know when it would finally happen.⁹⁵ After the first session, the judge refused to schedule the next session. He even expelled us, 'Amr's relatives, from the courtroom after we said that this was against the laws of the judiciary and demanded that he fix a time for the next hearing.⁹⁶

Prisoners who remain arbitrarily detained without trial beyond the six-month limit specified by law are unable to challenge their continued detention. The National Society for Human Rights began prison inspections in 2004. *Al-Riyadh* newspaper quoted the society as saying that detainees remained in prison "for long periods without being brought to trial" and that it considered this to be "an infraction of the law."⁹⁷ Fifteen months later, another Saudi daily, *Arab News*, wrote that the National Society for Human Rights had informed the Ministry of Interior about "complaints it received from some prisoners or their families about delays in hearings, being imprisoned longer than the terms of their sentences, being forced to register false confessions or being detained under tenuous suspicions." This report prompted the

⁹³ Human Rights Watch interview with 'Azzam, Jeddah, December 11, 2006.

⁹⁴ Human Rights Watch telephone interview with Tawfiq, Buraiman prison, April 2, 2007.

⁹⁵ Human Rights Watch telephone interview with Nasir, Kharj, March 27, 2007.

⁹⁶ Human Rights Watch telephone interview with Nasir, Kharj, December 5, 2006.

⁹⁷ "The National Society for Human Rights Treated 519 Cases of which Administrative Cases Form the Majority," *Al-Riyadh*, December 5, 2004, http://www.alriyadh.com/Contents/05-12-2004/Mainpage/COV_2677.php (accessed March 8, 2007).

head of the Saudi prison service, Maj. Gen. Ali al-Harithi, to promise that no prisoner would be held for more than six months without trial.⁹⁸

On February 22, 2006, *al-Riyadh*, which many Saudis regard as representing government views, published an article about excessive delays in bringing suspects to trial and bringing trials to conclusion. It cited detained Saudi citizen M.F.D. as saying that it took prosecutors two years to bring his case to trial. According to the article, Sudanese citizen N.M.A., detained in Jeddah's Buraiman prison, had been waiting for one year for a court to try his case; Yemeni citizen D.J.N., detained in Riyadh's Malaz prison, had spent seven months waiting for his trial.⁹⁹

One year later, we found this state of affairs continuing. Ebot, a Cameroonian, had remained in detention since January 2006 without trial when we spoke to him in February 2007.¹⁰⁰ Nasim told Human Rights Watch that he spent between one and two months in the police station for interrogation, and that his case did not go to trial until nine months after his arrest on April 25, 2005; he does not recall being formally charged.¹⁰¹ During Human Rights Watch's visit to al-Ha'ir Correctional Facility, other detainees told Human Rights Watch that they had spent more than six months behind bars before seeing a judge and commencing trial. One man said he saw a judge after eight months, another said he had waited a year and five months before seeing a judge, and a third said that he had been in prison a year-and-a-half without being sentenced.¹⁰²

A Jeddah lawyer told Human Rights Watch that an order by the Ministry of Justice specifies that a court has to set an initial hearing two weeks after the prosecutor sends a case to court.¹⁰³ The head of the Partial Court in Jeddah, Judge Abdullah Abd al-Rahman al-'Uthaim, refused Human Rights Watch access to his court, insisting

⁹⁸ "Prisoners Not to Stay in Jails for Over Six Months Without Trial," *Arab News*, Jeddah, March 24, 2006.

⁹⁹ Ahmad al-Jumai'a, "Detained Behind Bars Under the Care of 'the Judiciary' and the Department for Investigation and Prosecutions," *al-Riyadh*, February 22, 2006.

¹⁰⁰ Human Rights Watch telephone interview with Ebot, Jeddah, February 22, 2007.

¹⁰¹ Human Rights Watch interview with Nasim, al-Ha'ir Correctional Facility, November 30, 2006.

¹⁰² Human Rights Watch interview with prisoners and detainees in al-Ha'ir Correctional Facility, November 30, 2006.

¹⁰³ Human Rights Watch interview with 'Azzam, December 11, 2006. The Ministry of Justice did not reply to a letter from Human Rights Watch, sent April 10, 2007, asking to verify this information.

that “you cannot attend court sessions.”¹⁰⁴ Human Rights Watch could not determine whether responsibility for the failure to hear cases in a timely manner rests with the prosecution service, the courts, or both.

Samir, from Najran, told Human Rights Watch that he had been in prison for four years without a trial and has not been able to secure judicial review of his case.¹⁰⁵ Lawyer 'Azzam told Human Rights Watch that most prosecutors, while not Sharia scholars, are trained in statutory law. The head of the prosecution service, Shaikh Al Abdullah, also told Human Rights Watch that “the members of our prosecutions and investigations department are university graduates and many have doctorates. We place great emphasis on training and on professional quality of our members.”¹⁰⁶ The February 2006 article in *al-Riyadh*, however, indicates that delays in bringing suspects to trial are primarily due to “the investigation and prosecutions department and its incomplete staff and administrative organization.”¹⁰⁷

Right to Adequate Time and Facilities to Prepare One’s Defense

Among the criteria necessary to ensure a fair trial is the right to have adequate time and facilities to prepare one’s defense. Article 14.3.b of the ICCPR guarantees this right and article 16b of the Arab Charter for Human Rights endorses it as well.

Article 137 of the LCP provides a defendant broadly with “adequate time” before a scheduled hearing:

Litigants shall be summoned to appear before the competent court with adequate time prior to holding a hearing. An accused person who is arrested in “flagrante delecto” [sic] may be promptly brought before the court without prior scheduling. If the accused asks that the court to

¹⁰⁴ Human Rights Watch interview with Judge Abdullah Abd al-Rahman al-'Uthaim, head of the Partial Court in Jeddah, December 9, 2006. Turki al-Sudairy, the head of the governmental Human Rights Commission, on December 12 gave Human Rights Watch a copy of a letter from the Ministry of Justice granting access to one court, but time did not allow us to return to Jeddah.

¹⁰⁵ Human Rights Watch telephone interview with Samir, Najran General Prison, December 14, 2006.

¹⁰⁶ Human Rights Watch interview with Shaikh Muhammad Al Abdullah, November 29, 2006.

¹⁰⁷ Al-Jumai'a, “Detained Behind Bars,” *al-Riyadh*.

grant him a grace period in order to prepare his defense, the court must grant him sufficient time.¹⁰⁸

But the law does not address the circumstances or length of time under which a defendant may ask for a recess to examine new evidence during a hearing or ask for the postponement of a scheduled hearing. This deficiency is particularly troubling since, as already noted (see section “Obligation to Charge Promptly”), article 159 declares the court “not [to] be bound by the description in the memorandum of charges,” and under article 160, “The court may, at any time, permit the Prosecutor to amend the memorandum of the charges.” In both cases, the court must notify the accused, but only if the prosecutor amends charges under article 160 shall the defendant be “granted sufficient opportunity to prepare his defense with respect to such amendment.”¹⁰⁹ Article 194 of the LCP gives all parties to a lawsuit 30 days from the receipt of the verdict to appeal.¹¹⁰

Saudi law is silent on the provision of adequate facilities necessary to prepare a defense. Article 1 of the Basic Principles on the Role of Lawyers highlights a defendant’s right of “[a]ccess to lawyers and legal services.”¹¹¹ The LCP does not give the defendant the right to view his own file, including the minutes of interrogation, all evidence against him and the charge sheet. Without such information the defendant is left at a significant disadvantage.

Article 8 of the Basic Principles states, “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.”¹¹² As noted above, Saudi law provides for the right to legal counsel, though not for the right to be informed of the right to legal

¹⁰⁸ Law of Criminal Procedure, art. 137.

¹⁰⁹ *Ibid.*, art. 160.

¹¹⁰ *Ibid.*, art. 194.

¹¹¹ Basic Principles on the Role of Lawyers, principle 1.

¹¹² *Ibid.*, principle 8.

counsel or the right of indigent defendants to have legal counsel provided free of charge where the interests of justice so require.¹¹³

Article 70 of the LCP contains an important safeguard for defendants who have been able to retain legal counsel, in stating that “the Investigator shall not, during the investigation, separate the accused from his accompanying representative or attorney.”¹¹⁴ To prepare an effective defense, the relationship between the defendant and his lawyer must be confidential. But Saudi law only protects the confidentiality of written communication. Under Article 84 of the LCP, “The Investigator may not seize any piece of paper or document that has been delivered by the accused to his representative or attorney in connection with the performance of the service entrusted to him, nor the correspondence exchanged between them in the case.”¹¹⁵ Verbal communications are not protected. Article 116 grants the defendant the right to communicate with any person of his or her choice, provided it is “under the supervision of the criminal investigation officer.”¹¹⁶ Saudi law lacks provisions reflecting international human rights standards that allow for lawyer-client consultations to be “within sight, but not within the hearing, of law enforcement officials” (see Appendix).¹¹⁷

Although defendants often spend protracted time in detention beyond the periods permitted by law, in that time they do not have adequate means to prepare their defense.

Anwar told Human Rights Watch that his case took 14 court hearings before the judge issued his verdict. “I was told four days before the last [court] session, but I wasn’t given any warning before the previous sessions,” he said, adding, “I used the time to write a letter to the judge explaining my innocence,” after having sat through 13 sessions.¹¹⁸

¹¹³ ICCPR art. 14.3(d), and Arab Charter for Human Rights, art. 16(d).

¹¹⁴ Law of Criminal Procedure, art. 70.

¹¹⁵ *Ibid.*, art. 84.

¹¹⁶ *Ibid.*, art. 116.

¹¹⁷ Basic Principles on the Role of Lawyers, principle 8.

¹¹⁸ Human Rights Watch interview with Anwar, November 30, 2006.

The CPVPV arrested café owner Khalid in September 2006, but the police released him on bail the same night (for more on the arrest see chapter VI, section “Arrests Without Warrants”). Khalid went three times to the prosecutor’s office where, he said, the prosecutor only insulted him and told him the court would call him for a hearing, without giving him a case number or a copy of the charges against him.¹¹⁹ Three weeks later, a court officer called to give him a hearing date in a week’s time, but without indicating what he had been charged with.

Firas told Human Rights Watch about his ordeal of changing and multiplying charges. Firas said that after he surrendered to police and was arrested on June 10, 2003, the *mabahith* of Najran tortured him for one week, after which he signed a “confession” admitting to possessing an unlicensed weapon. Firas said it was his father’s 25mm pistol and that nobody had renewed the license in the five-years since his father had died and it expired. After he confessed

the interrogator continued to question me. Now the accusation was of smuggling 200 machine guns via a border demarcation company two years prior to my arrest. The whole interrogation and torture lasted two months. After one month of interrogation in solitary confinement, [my case] was put together with [that of] a friend, who had indeed smuggled 190 machine guns and 50 pistols. After that, they transferred me to the general prison. There was no prosecutor at the *mabahith*, but they suddenly took me to the prosecutor who accused me of two operations to smuggle two chunks of *qat* [a stimulating leaf, usually chewed] into Saudi Arabia, also two years ago. He had no witnesses, no evidence. Again without notice, they took me to court soon thereafter, where Najran Partial Court Judge Hamad al-Dusari sentenced me to 20 months in prison and 700 lashes on the drugs charges in a single session that lasted one hour. One month later, Najran Partial Court Judge al-‘Amiri sentenced me to one year and 10

¹¹⁹ Human Rights Watch interview with Firas, Jeddah, December 11, 2006.

months in prison for arms smuggling and concealment and 600 lashes. I could not call any witnesses or rebut the charges.¹²⁰

Ghalib told Human Rights Watch that he was participating in a demonstration in Jeddah in December 2004 and taking photos. He was arrested the same day, and spent two weeks in detention before being suddenly taken to court, where he learned that the judge charged him with going “beyond the limits of obedience to the ruler.”¹²¹ He told Human Rights Watch that he did not know how to respond to the charge, and simply stated, “I do not obey this ruler.” Ebot told Human Rights Watch that he first learned about his appearance at court when a prison official called out his name on the night before his trial began, one year after his arrest. After the judge had postponed the hearing because no interpreter attended and Ebot could not fully understand the prosecutor’s speech, Ebot asked the prison administration to be able to consult his file, but the official said “It’s too early. When you go to see the judge, you’ll see your file.”¹²² ’Imad told Human Rights Watch about his trial for arms dealing 10 years ago: “One night, I received a call saying tomorrow you have a court appointment.”¹²³

Right to Challenge Lawfulness of Arrest and Detention

Article 9 of the Universal Declaration of Human Rights provides that “No one shall be subjected to arbitrary arrest, detention or exile.” Article 11 guarantees that “Everyone charged with a criminal offense has the right to be presumed innocent until proved guilty according to law in a public trial.”¹²⁴ The ICCPR’s article 9 gives detainees the right “to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”¹²⁵

¹²⁰ Human Rights Watch telephone interviews with Firas, Najran, November 30 and December 7, 2006.

¹²¹ Human Rights Watch interview with Ghalib, Jeddah, December 8, 2006.

¹²² Human Rights Watch telephone interview with Ebot, Jeddah, April 2, 2007.

¹²³ Human Rights Watch interview with ’Imad, December 18, 2006.

¹²⁴ UDHR, art. 9.

¹²⁵ ICCPR, art. 9.4.

Principle 11.1 of the Body of Principles states, “A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.” With respect to those detained under criminal charges, principle 37 states, in pertinent part,

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority.¹²⁶

There may be circumstances warranting detention of an accused person before a judge pronounces on the guilt or innocence of the accused. However, an essential safeguard to ensure that the state does not arrest a person arbitrarily, and to protect the accused’s presumption of innocence, is the right to have access to a court in order to obtain a review of the grounds for arrest and decide whether the arrest and continued detention is lawful and necessary. Article 8 of the UDHR gives “Everyone [...] the right to an effective remedy” for rights violations, and article 9.4. of the ICCPR guarantees a detainee the right to challenge the lawfulness of his or her detention in a court.¹²⁷

Article 112 of the Saudi Law of Criminal Procedure tasks the minister of interior to specify which crimes are major crimes requiring detention.¹²⁸ The Ministry of Interior

¹²⁶ Memorandum from Human Rights Watch to the Saudi Arabian government, “The Code of Criminal Procedure of the Kingdom of Saudi Arabia: Human Rights Concerns,” September 19, 2002.

¹²⁷ UDHR, art. 8, and ICCPR, art. 9.4. .

¹²⁸ Major crimes are: “Murder and semi-intentional homicide; [causing] the suspension of the use of limbs; Sharia *hudud* crimes; attacking [trespassing] homes; theft; rape; assault on the honor; sodomy; manufacturing or smuggling or trafficking or presenting to others or consuming intoxicants; smuggling drugs and their likes, including their production, growing, possession, trafficking, presentation to others and consumption without license; smuggling weapons and ammunition and explosive materials, their production, trafficking in them, using them, possessing them without a license; quarrels involving firearms or weapons with steel blades; collective fights or those occurring between tribes; arson in homes, businesses or forests; killing the animals of others intentionally; counterfeiting coins and banknotes; forgery; bribery; impersonating officers of the foreign and domestic general intelligence services [*al-istikhbarat* and *al-mabahith*] or their likes; resisting officers of public authority; embezzlement of government funds; dealing in usury; all crimes whose referral before their disposition royal orders or instructions require.” The Regulation of the Sources of Detention and Temporary Confinement and

specified 14 crimes as major crimes in decree no.1245 of September 30, 2002.¹²⁹ These major crimes include: murder; rape; kidnapping; drug and intoxicant abuse or dealing; theft involving forced entry, using implements or weapons, or carried out by forming a gang; fighting; firing (weapons) resulting in the grievous injury of persons; impersonating security officers; forgery; bribery; and embezzlement. (Abd al-Rahman al-Jar Allah, a member of the Bureau of Investigation and Public Prosecutions, pointed out that article 10 of the Regulation of the Sources of Detention and Temporary Confinement and Preventive Detention cites a much longer list of crimes requiring mandatory pretrial detention.¹³⁰ This regulation, which has no preamble setting out its objectives or relation to other laws, does not define the three types of detention its title invokes. Its provisions suggest that it seeks to regulate arrest procedures. The official Collection of Saudi laws of 2002 (1423) does not contain this regulation. The Ministry of Justice did not reply to Human Rights Watch's inquiry regarding the status of this law.)

A prosecutor may order the detention of suspects for major crimes, presumably (although the law does not explicitly state this) to prevent the suspect from endangering the public. The prosecutor may also order the accused remanded in custody "if the interest of the investigation requires his detention to prevent his fleeing or affecting the proceedings of the investigation."¹³¹

Thus Saudi prosecutors, part of the executive branch and in an adversary position vis-à-vis criminal suspects, also serve the role of judicial officers, making decisions on continuing detention for suspects. This quasi-judicial role for prosecutors is a serious violation of international legal standards and due process. The Guidelines on the Role of Prosecutors concerning criminal proceedings specifies, "The office of

Preventive Detention, Promulgated by the Decision of His Royal Highness the Minister of Interior Number 233, October 23, 1983, art. 10.

¹²⁹ Muhammad bin Abd al-'Aziz al-Mahmud, "Preventive Detention is a Necessary Precautionary Measure," *al-Riyadh*, October 21, 2005, <http://www.alriyadh.com/2005/10/21/article102265.html> (accessed March 15, 2007).

¹³⁰ Decree on file with Human Rights Watch. See also Abd al-Rahman al-Jar Allah, Bureau of the Investigation and Public Prosecution, Research and Studies Section, "Principles of Criminal Justice in the Age of the Custodian of the Two Holy Mosques. Readings in the Basic Law and the Law on the Bureau of the Investigation and Public Prosecution," undated, p. 13, <http://www.ksu.edu.sa/kfs-website/source/73.htm> (accessed March 20, 2007).

¹³¹ Law of Criminal Procedure, art. 113.

prosecutors shall be strictly separated from judicial functions” (Guideline 10).¹³² The Saudi law governing the office of the prosecutor specifies that its members “shall enjoy full independence,” “subject [only] to the provisions of Islamic Sharia and the observed Laws,” and that “no one shall interfere with their work.”¹³³ Article 8 of the Saudi Public Security Law, which came into force before the creation of the prosecution department, calls into question the extent of prosecutorial independence, however. It specifies that the public security director has the right “To present to the Public Prosecution his suggestions and observations that lead to the betterment of Public Security Situation.”¹³⁴ The law also makes it a duty for the public security director “To inform the Public Prosecution by detailed reports of all he thinks influenced the operation of justice and what he thinks needed to be reviewed.”¹³⁵

Saudi law does not protect the right to challenge the lawfulness of one’s detention, but merely obligates the prosecutor to obtain a progressively higher level of authorization within the prosecution service to prolong detention beyond the initial five days, initially by installments of any length up to 40 days, and then by installments of up to 30 days for up to six months from the date of arrest. “Thereafter, the accused shall be directly transferred to the competent court, or be released.”¹³⁶ Accordingly, under Saudi law, suspects might have to wait six months before being able to challenge the lawfulness of their detention.

Access to files

A practical obstacle for a detainee looking to challenge the legality of his or her detention is that few prisoners—either directly or through a lawyer—have access to their judicial files. In theory, prisoners do have a right of access while in prison to their files, which should include relevant decisions in their cases including

¹³² Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990), guideline 10. The Saudi prosecution service, however, operates under the direction of the Ministry of Interior, unlike in most countries in the region, where the prosecution services come under the Ministry of Justice.

¹³³ Law of Interrogation Authority and Prosecution General, art. 5.

¹³⁴ The Public Security System Administration in the Kingdom of Saudi Arabia (Public Security Law), Issued by Royal Decree, No. 3594, January 19, 1950, art. 8(b).

¹³⁵ Public Security Law, art. 8(g).

¹³⁶ Law of Criminal Procedure, art. 114.

ultimately a verdict and sentence.¹³⁷ In practice it is a different matter. Hisham, a lawyer in Khobar, told Human Rights Watch that he defended one of the accused in a recent case involving charges of drug and alcohol production and consumption, which included material and forensic evidence. “I was given no files, only an oral briefing [by the prosecutor],” he said. “The prosecution prepared a charge sheet, which the defense can see, but I did not get a copy until it was read in the first session in court.”¹³⁸

Lack of access to files compounds the problem that prisoners may be unaware of, or unable to prove, what sentences they have been given, and so cannot challenge their continued detention. Yunis, a Somali man imprisoned in Jeddah’s Buraiman prison for nine years, told Human Rights Watch that as far as he was aware no one in his wing of the prison had a copy of their own verdicts.¹³⁹ Nizar in al-Ha’ir prison told Human Rights Watch, “I have been here since November 11, 2003, but have never seen my verdict.”¹⁴⁰ Two detainees told Human Rights Watch that they and fellow detainees learned of their sentences from their jailers, not from a judge.¹⁴¹

Lack of access to one’s files impacts on the right to appeal a sentence. Saudi Chief Judge Salih al-Luhaidan told Human Rights Watch that a defendant who intends to appeal the verdict does not have the right to receive a written verdict. “It is the right of the accused to appeal his ruling. If he does not approve of the verdict, then he is not provided with the written ruling. The reason for this is that Islam does not allow a ruling upon a person who does not accept such ruling.”¹⁴²

Walid told Human Rights Watch that he had been sentenced to two months in prison and 90 lashes for “possession of an unlicensed firearm and for shooting in the air.” He had already spent two months in Najran General Prison before being taken to

¹³⁷ Human Rights Watch interview with Subhi, Jeddah, December 10, 2006.

¹³⁸ Human Rights Watch interview with Hisham, December 18, 2006.

¹³⁹ Human Rights Watch telephone interview with Yunis, Jeddah, March 7, 2007.

¹⁴⁰ Human Rights Watch interview with Nizar, al-Ha’ir Correctional Facility, November 30, 2006.

¹⁴¹ Human Rights Watch interview with Zaid, Riyadh, November 30, 2006. Human Rights Watch telephone interview with Tariq, Jeddah, March 22, 2007.

¹⁴² Human Rights Watch interview with Salih al-Luhaidan, president of the Supreme Judicial Council, Riyadh, December 21, 2006.

court—something he was informed of only the day before it happened. Walid said that when he objected both to the verdict and the sentence, pointing out that he had already been detained for over two months, “[Judge al-Dusari told me,] ‘You can sign [and accept] your verdict or not sign and go to the Appeals Court and stay in prison for months until it comes back.’ So I agreed.”¹⁴³

Lack of access to files also means that if a decision has been taken about his or her release a detainee may not have access to that decision to have it enforced. Saif, an Egyptian citizen who had worked in Saudi Arabia since 1976, was imprisoned pending deportation while a case against his former employer was ongoing. Saif told Human Rights Watch that he was unable to gain access to a court document that could prove that the judge had ordered him released pending the outcome of the trial and had ordered a stop to his deportation.¹⁴⁴

Ramzi, an Egyptian biomedical engineer who worked in Saudi Arabia for 13 years, said that he was imprisoned in Buraiman jail in Jeddah after his sponsor and employer sued him for embezzlement. He remained in detention even after his conviction was overturned and his employer consequently withdrew his private claim. Forty-five days after all charges against him had been dropped, he had no means of accessing his file or proving his case to demand his release. He told us, “I went to court and saw the letter by my opponent saying he’d withdrawn all claims. I don’t know why I’m still here. You cannot present a complaint here in prison. The head of the [prison] wing will throw it into the trash.”¹⁴⁵

¹⁴³ Human Rights Watch interview with Walid, Najran, December 12, 2006.

¹⁴⁴ Human Rights Watch telephone interviews with Saif, Jeddah, March 16 and 19, 2007.

¹⁴⁵ Human Rights Watch telephone interview with Ramzi, Buraiman Prison, Jeddah, March 5, 2007.

PART 2: SYSTEMIC PROBLEMS IN SAUDI CRIMINAL JUSTICE

Three broad categories of human rights violations characterize the systemic problems in Saudi Arabia's criminal justice system. First is the arbitrary detention of suspects, which occurs in cases where no legal basis for the detention can be invoked, in cases of an arrest for exercising a human right, or because a defendant has been detained following gross violations of fair trial rights. The second category of violations comprises due process and fair trial violations: fundamental flaws in the Saudi criminal justice system make miscarriages of justice a common phenomenon, based on Human Rights Watch's investigation. These flaws include an absence of the presumption of the defendant's innocence, restrictions on access to defense counsel and on calling witnesses for the defense, and criminal conviction despite the judges' professed doubt about the defendant's guilt. The third category of systemic violations includes torture and ill-treatment to obtain confessions and the unquestioned use of such confessions as evidence in court.

The arbitrary detention of security detainees and political dissidents, although contrary to law (see Appendix), appears intended to fulfill a government purpose—the government considers them a security risk or an unwelcome influence on societal attitudes towards its policies (national security detainees are discussed in Part 3 of this report). This is not the case with other Saudis and foreign nationals detained for alleged ordinary criminal activity. Their experiences appear to be the consequence not of design on the part of authorities but of wide systemic deficiencies.

In the wake of a decision to allow Saudi Arabia to join the World Trade Organization in December 2005, the kingdom announced that "Saudi Arabia has committed to fully transparent legal regimes." "Demonstrat[ing] a fundamental shift within Saudi Arabia," reforms "will increase transparency and predictability," the announcement continued, emphasizing that "[t]he Kingdom has committed to establish and maintain the rule of law in Saudi Arabia. ...For example, new laws and regulations establish legal procedures that provide the right to appeal adverse administrative

and legal determinations.”¹⁴⁶ Sadly, the prisoners and detainees in al-Ha’ir prison and elsewhere are as yet unable to avail themselves of these new legal procedures.

VI. Arbitrary Arrest and Detention

The Universal Declaration of Human Rights states in Article 9, “No one shall be subjected to arbitrary arrest, detention or exile.” Article 9 of the ICCPR specifies, “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”¹⁴⁷ Article 14 of the amended Arab Charter on Human Rights, to which Saudi Arabia has acceded and which entered into force in 2007, states, “No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.”

According to the United Nations Working Group on Arbitrary Detention, “deprivation of liberty is arbitrary ... [w]hen it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.”¹⁴⁸ In order for an arrest not to be arbitrary it is not enough to follow the procedures of the law, such as issuing formal but unsubstantiated charges: as the UN Human Rights Committee explained, “arbitrariness” is not to be equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.”¹⁴⁹ The UN Working Group has pointed out that the practice of arresting persons without a warrant, not informing them of the reasons for their arrest, and not filing charges against them within a reasonable

¹⁴⁶ “Terms of Saudi Accession,” *Middle East Policy Council*, Volume XII, Number 4 (Winter 2005). This material is a summary prepared by Loeffler Tuggey Pauerstein Rosenthal LLP on behalf of the Royal Embassy of Saudi Arabia.

¹⁴⁷ United Nations Human Rights Committee, International Covenant on Civil and Political Rights (ICCPR). Charges must include, as the UN Human Rights Committee laid out in its interpretation of article 9 of the ICCPR, an “indication of the substance of the complaint,” Communication No. 1177/2003 : Democratic Republic of the Congo. 16/05/2006. CCPR/C/86/D/1177/2003. (Jurisprudence),” May 16, 2006, <http://www.unhchr.ch/tbs/doc.nsf/o/52e2604680ee8878c125719500499a76?Opendocument> (accessed on March 20, 2007).

¹⁴⁸ UN Working Group on Arbitrary Detention, “Individual Complaints, Urgent Appeals, Deliberations,” <http://www.ohchr.org/english/issues/detention/complaints.htm> (accessed February 27, 2007). The complete definition of arbitrary detention includes detention for exercising human rights and detention following grossly unfair trials.

¹⁴⁹ Communication No 305/1988: Netherlands. CCPR/C/39/D/305/1988 (Jurisprudence), Views Of The Human Rights Committee Under Article 5, Paragraph 4, Of The Optional Protocol To The International Covenant On Civil And Political Rights - Thirty-ninth Session concerning Communication No. 305/1988, August 15, 1990.

period of time also renders their detention arbitrary, in contravention of articles 8, 9, 10, and 11 of the UDHR and articles 9 and 14 of the ICCPR.¹⁵⁰

In Saudi Arabia two practices that exemplify such arbitrary deprivation of liberty are detentions for activity that cannot be regarded as unlawful and detention beyond the expiry of a criminal sentence. In Saudi Arabia individuals are also liable for detention in the event that they have not paid private debts, a ground generally prohibited under international human rights standards as it is considered akin to debt bondage or slavery. More specifically, article 11 of the ICCPR states, “No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation,” which extends to prohibiting the deprivation of personal liberty either by a creditor or by the state for failure to pay a debt.¹⁵¹

Criminalizing Lawful Activity

Under Saudi law there is much that is prohibited. As results often, the prosecution faces little challenge in substantiating the factual basis of the alleged criminal offense with which a defendant is charged. However, the imprecise criminal nature of the charges themselves casts doubt on whether a crime has occurred. The absence of codified criminal provisions leads prosecutors and judges to belabor theories of sovereignty, obedience to the ruler, and other poorly defined concepts in Saudi legal practice, so that those legal practitioners seem to share this inverted legal concept: whatever is not permitted by law is forbidden.¹⁵²

Examples of how legitimate exercise of basic freedoms can be categorized by the legal system as criminal acts are several. Samih was arrested in late 1999. He was initially detained in Malaz prison, because Riyadh’s governor, Prince Salman, had accused him of stealing money. On December 25, 1999, the *mabahith* transferred him out of that prison and accused him of belonging to a non-religious party, and of

¹⁵⁰ UN Working Group on Arbitrary Detention, Decision No. 4/1993 (Philippines), E/CN.4/1994/27, December 17, 1993.

¹⁵¹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary, 2nd Edition* (N.P. Engel, 2005), pp. 255-258. This provision does not apply to criminal offenses related to debts such as fraud and failure to pay maintenance.

¹⁵² Islamic scholars might add categories of acts of moral opprobrium that generally do not require legal sanction. Of the five types of actions, only omission of acts in the first and commission of acts in the last category require legal sanction. The categories are: Compulsory (*Wajib*), Order without obligation (*Mustahab*), Legal and allowed (*Hala*), Disliked but not forbidden (*Makruh*), Forbidden (*Muharram*).

being the secretary-general of the Communist Party. Salih explained that under torture during interrogation

At first I refused to answer their questions: “Do you have relations with foreign parties?” “Where are the party files?” “Where and who are the party members?” “You are a spy for a foreign country!”—which they did not specify. ...[After they tortured me] I confessed.... After one year, they released me, but I had to sign a pledge that “I will not mingle with others.” The officer told me that I am guilty, but that my release is beneficence from the king.¹⁵³

A prosecutor charged Badi with an alleged criminal offense of contacting Al Jazeera television, which the judge accepted. Badi had contacted Al Jazeera from his home in the Eastern Province and gave an interview regarding an incident in Najran in April 2000. One-and-a-half years after the interview, the *mabahith* of Dammam arrested Badi. Badi told Human Rights Watch that after he spent two months in an underground cell alone, officers brought him to a judge and the prosecutor presented four charges:

He charged me with contacting Al Jazeera, going beyond [the limits of] obedience to the ruler [*khuruj min ta’at wali al-amr*], distorting the reputation of the kingdom abroad [*tashwih sum’at al mamlaka fil kharij*], and writing a poem, although I don’t know what the specific crime was. The second time I saw the judge, perhaps eight months later, he sentenced me to seven years in prison.¹⁵⁴

Ghalib’s experience is similar. Ghalib told Human Rights Watch that he criticized the government on Al Jazeera in 1998, but was not arrested until October 2004, after he took part in a demonstration in Jeddah called by the UK-based Saudi dissident Sa’d al-Faqih. After 15 days in detention, a judge summarily sentenced him and six others

¹⁵³ Human Rights Watch interview with Samih, Riyadh, December 7, 2006.

¹⁵⁴ Human Rights Watch interview with Badi, Najran, December 14, 2006.

to six weeks in prison because he “went beyond the limits of obedience to the ruler.”¹⁵⁵

In the case of Ali al-Dumaini, Abdullah al-Hamid, and Matrook al-Faleh, mentioned above in chapters III and V, five months after their arrest on March 16, 2004, the prosecution presented its charge sheet in the first court hearing. The undated charge sheet lists the three defendants and then accuses them of

doubting the approach of the ruler and the present entity of the state based on the application of the book [the Quran] and the Sunna [the Prophetic traditions] and of causing strife and justifying violence and terrorism, and of doubting the independence of the judiciary, and of deceiving the people.

The criminal charges, insofar as these can be discerned, appear to be

for resorting from time to time to issuing declarations and petitions and for trying through one way or another to obtain the greatest number of signatures from citizens and encouraging the adoption [of these publications] and their demands so that this orientation may start to resemble an arena in which these [people] compete as advisers to the citizens, but they are only a small group and these petitions have come to constitute a phenomenon offensive to the [Muslim] community, the people and the state ... and they also gathered in the Fahd Kerouan Hotel in Riyadh on February 26, 2004, where they decided to have a following meeting on May 28, 2004.¹⁵⁶

One of the three defendants in the 2005 trial for writing and publicizing these reform petitions, Dr. Abdullah al-Hamid, and his brother ‘Isa al-Hamid, again faced charges in a Buraida court in September 2007, for carrying out their duties as lawyers toward their clients. Saudi intelligence forces had arrested Abdullah and ‘Isa al-Hamid on

¹⁵⁵ Human Rights Watch interview with Ghalib, December 8, 2006.

¹⁵⁶ Kingdom of Saudi Arabia, Bureau of Investigation and Public Prosecution, Public Charge Sheet [against Abdullah al-Hamid, Ali al-Dumaini, and Matrook al-Faleh], undated.

July 19, together with a group of five women who had been peacefully demonstrating on July 16 in front of the intelligence prison for the speedy trial of their relatives. The *mabahith* arrested the Hamid brothers at the home of one of the demonstrators, Rima al-Juraish, in Buraida, capital of Qasim province, in the course of attempting to arrest al-Juraish. When Abdullah al-Hamid, who is the lawyer for Juraish's detained husband, Muhammad al-Hamili, demanded to see an arrest and a search warrant, the *mabahith* also arrested him and his brother 'Isa, before breaking down the door to al-Juraish's home and arresting her. The *mabahith* arrested four other women who had demonstrated with al-Juraish: Manal al-'Umairini, Badriya al-'Umairini, Afrah al-Fuhaid, and Ashwaq al-Fuhaid. They and the al-Hamid brothers were released after a few days.¹⁵⁷ One month later, other family members held a similar demonstration, and the *mabahith* arrested them and Muhammad al-Bajadi, a human rights activist.

At trial on September 8, Abdullah and 'Isa al-Hamid faced charges of trying to enter a police cordon around al-Juraish's house and of encouraging the women to demonstrate. Observers at the trial reported that the judge at the Buraida Summary Court, Ibrahim Abdullah al-Hasani, declared the first session to be closed to the public.¹⁵⁸ The court found the al-Hamid brothers guilty on November 7, 2007, and sentenced Abdullah to six, and 'Isa to four months in prison.¹⁵⁹

Detention without charge

A *mabahith* officer arrested Salah on February 21, 2007, and took him to the counter-drugs department on Salah al-Din Street in the Malaz quarter of Riyadh, where he remained in a holding facility together with persons accused of narcotics offenses. There were no interrogations or any accusations of Salah's involvement in narcotics. According to Salah, the arresting officer told him that "there was a secret order from the Interior [Ministry] saying I needed to be arrested and transferred to the drugs prison ... [because] I was responsible for gathering signatures in Riyadh for the February 2 petition."¹⁶⁰ Salah was referring to a petition asking King Abdullah to

¹⁵⁷ Human Rights Watch communications with Matrook al-Faleh, July 19, 20 and 24, 2007.

¹⁵⁸ Letter from Khalid Omair, one of the observers, to Human Rights Watch, September 8, 2007.

¹⁵⁹ Andrew England, "Saudis Sentence Political Activist to Prison," *Financial Times*, November 9 2007, <http://www.ft.com/cms/s/0/9a1e072c-8e52-11dc-8591-0000779fd2ac.html> (accessed December 11, 2007).

¹⁶⁰ Human Rights Watch telephone interview with Salah, Riyadh, May 18, 2007.

institute constitutional and political change. The petition was opened for signature and made public on February 2. Salah said he had received 15 phone calls from persons authorizing him to submit their signature. Since his arrest he twice went on hunger strike, leading to his hospitalization, demanding to be charged and presented to a judge or released.¹⁶¹

In another case, Jamil maintained that security forces arrested him without a warrant in October 2003, did not inform him of the reasons for his arrest, and did not charge him with a criminal act.¹⁶² After his release, Jamil sued the *mabahith* for wrongful arrest. In his filing to the Board of Grievances, he noted that a representative of the *mabahith* had presented a memorandum to the Board in which he justified the arrest by stating that Jamil had

engaged in acts violating the security of the country which points to his support for persons opposed to the government, such as when he participated in the demonstration that Sa'd al-Faqih [the UK-based dissident] called for ... and he wrote the word "reform" on the market fair in the Manfuha quarter, and papers and publications were found in his possession that support the demonstration which shows that he has retained his previous thinking.¹⁶³

Jamil told Human Rights Watch that since he initiated his lawsuit against the *mabahith*, the agency stalled the case by failing to appear in court.¹⁶⁴

¹⁶¹ Ibid., and email and telephone communication from an associate of Salah's in Riyadh, April 1, 2007.

¹⁶² Jamil, Written Submission to the First Administrative Chamber [*da'ira*] of the Board of Grievance's Riyadh Branch, "Clarification of the Harm that Resulted from my Arrest and Detention Without Legal Ground," September 21, 2006, copy on file with Human Rights Watch.

¹⁶³ Ibid.

¹⁶⁴ The director of the *mabahith* did not respond to three faxes from the president of the Board of Grievances (on September 20, October 16, and November 16, 2006) requesting a representative of the *mabahith* appear in court. Letters from the President of Board of Grievances to the Director of the *Mabahith*, dated September 11, October 4, and October 30, 2006, copies on file with Human Rights Watch.

Commission for the Promotion of Virtue and Prevention of Vice

The Commission for the Promotion of Virtue and Prevention of Vice (CPVPV) is an authorized law enforcement agency in Saudi Arabia. In 2005 the CPVPV's 5,000 religious police officers, together with 5,000 volunteers, carried out 400,000 arrests.¹⁶⁵ Since 2006 these agents, who do not wear uniform, must wear identifying badges and may only make arrests when accompanied by a regular policeman.¹⁶⁶ A 1980 law empowers these religious police, who answer only to the prime minister (currently the king), to arrest, detain, and interrogate persons for undefined criminal offenses. A 1981 royal decree appears to curb some of these powers by prohibiting the religious police from holding and interrogating suspects at their centers, and in 2006 the Saudi government appeared to go further by declaring that religious police must not detain or interrogate suspects or violate the sanctity of private homes.¹⁶⁷ However, on July 1, 2007, Interior Minister Prince Nayef reaffirmed the 1981 decree, thereby apparently contradicting and rolling back the prohibition from the previous year on entering private homes. Moreover, the president of the CPVPV, Shaikh al-Ghaith, told Human Rights Watch in December 2006 that his agents can enter private homes if they learn of a serious crime in progress.¹⁶⁸

The 1980 law lists the CPVPV's vaguely defined tasks as "guiding and advising people to observe the religious duties prescribed by Islamic Sharia, and ... to preclude committing [acts] proscribed and prohibited [by Sharia], or adopting bad habits and traditions or taboo [sic] heresies."¹⁶⁹ The law does not contain a classification of which acts of commission or omission are criminal, meriting arrest and investigation, and which behavior falls into the "guiding and advising" duties of the force.

¹⁶⁵ Nahid Andijani, "The Commission for the Promotion of Virtue Arrests 400 Thousand Persons Within One Year," *Al-Sharq al-Awsat* (London), December 3, 2006, <http://www.asharqalawsat.com/details.asp?section=43&article=394901&issue=10232> (accessed August 7, 2007).

¹⁶⁶ US-Saudi agreement, "Confirmation of Policies," unpublished document, July 2006.

¹⁶⁷ US Department of State, "U.S.-Saudi Discussions on Religious Practice and Tolerance," July 2006.

¹⁶⁸ Human Rights Watch interview with Shaikh al-Ghaith, president of the Commission to Promote Virtue and Prevent Vice Riyadh, December 3, 2006.

¹⁶⁹ Law of the Commission for the Promotion of Virtue and the Prevention of Vice, *Umm al-Qura Newspaper*, issue 2853, January 22, 1981, art. 9.

The 1980 law's Executive Regulations, passed eight years later, are more explicit about what behavior the CPVPV monitors: Mixing of the two sexes and women adorning themselves excessively; transgendered behavior; men's advances toward women; saying obscenities; disrupting prayer by playing media near mosques; practicing or displaying non-Muslim faiths or disrespecting Islam; displaying or selling media contrary to Islam, including pornography, the Christian cross, the star of David, pictures of Buddha or the like; producing, distributing, or consuming alcohol; committing or facilitating lewdness, including adultery, homosexuality, and gambling; adhering to heresies by venerating places or celebrating events inconsistent with Islamic orthodoxy and orthopraxis; practicing magic for money; and shortchanging customers. The CPVPV also monitors halal slaughter houses; exhibitions; and women's tailors.¹⁷⁰ Only few of these acts could, in serious cases, conceivably legitimately amount to criminal offenses under human rights law. Such cases could include sexual harassment, public disturbance, or pornography.

A Riyadh-based lawyer told Human Rights Watch of a case of a woman he was representing whom the Commission for the Promotion of Virtue and Prevention of Vice had arrested in mid-2006 in a shopping mall and accused of "illegal mixing." Men and women routinely mix in shopping malls in Saudi Arabia. The CPVPV released her after detaining her for a few hours, but six months later her mother received a summons for her daughter to the local Institution for Girls, where a judge swiftly charged the daughter with illegal mixing and sentenced her to a short prison term and lashes. CPVPV head Shaikh al-Ghaith told Human Rights Watch that, in his view, Islam prohibits the public mixing of men and women only if they do so "with the intention to corrupt [*bi gharadh al-fasad*]."¹⁷¹ In this case, however, the judge did not inquire about or prove possible intentions of the woman, but merely relied on the CPVPV report attesting to mixing.

Besides lacking a sound legal basis for its interventions that does not violate the exercise of human rights, the CPVPV does not observe the Law of Criminal Procedure when arresting, detaining, and interrogating suspects. As already noted, Shaikh al-

¹⁷⁰ Executive Regulations, The Law of the Commission for the Promotion of Virtue and the Prevention of Vice, *Umm al-Qura Newspaper*, issue 3203, March 18, 1988, art. 14.

¹⁷¹ Human Rights Watch interview with Shaikh al-Ghaith, December 3, 2006.

Ghaith told Human Rights Watch that CPVPV agents can enter private homes if they learn of a serious crime in progress.¹⁷² In May 2007 CPVPV agents stormed a Riyadh home without a warrant in search of illegal alcohol, and beat one person, Salman al-Huraisi to death. CPVPV members are facing criminal charges of murder and abuse of power in this and two other, separate incidents, reportedly for the first time in their history.¹⁷³ On November 28, 2007, the General Court of Riyadh found two CPVPV members not guilty of killing al-Huraisi.¹⁷⁴ (For developments in one of the other cases, the death of Ahmad al-Buluwi following beatings during interrogation, see chapter VII, section “Appointing a Lawyer.”)

The CPVPV previously meted out summary punishments (15 lashes or three days’ imprisonment) for a wide range of infractions, under article 4b) of the 1980 law, but it appears to have generally desisted in this.¹⁷⁵

Detention Beyond Completion of Sentence

Saudi law tasks the Bureau of Investigation and Public Prosecutions with inspecting prisons and reviewing the files of prisoners. Prosecutors have the power and duty to release prisoners for whose detention there are no legal grounds.

Article 3(f) the Bureau’s law lists its duties as

Controlling and inspecting prisons, detention houses and any places wherein are executed punitive verdicts, listening to the complaints of prisoners and detainees, and verifying the legitimacy of their imprisonment or detention, the legitimacy [legality] of their remaining therein pursuant to the termination of their sentences, and taking the necessary actions to release whomsoever imprisoned or detained without a legitimate reason.”¹⁷⁶

¹⁷² Ibid.

¹⁷³ “Saudi Arabia: Hold Religious Police Accountable for Killing. Man Beaten to Death in Custody,” Human Rights Watch news release, July 25, 2007, <http://hrw.org/english/docs/2007/07/25/saudia16476.htm>.

¹⁷⁴ General Court of Riyadh, Verdict (Request for Retaliation or Other [Sentence]) No. 5/300/6, Riyadh, November 28, 2007.

¹⁷⁵ Law of the Commission for the Promotion of Virtue and the Prevention of Vice, art. 4b.

¹⁷⁶ Law of Interrogation Authority and Prosecution General, 1989, art. 3(f). Official translation.

Prosecutors also have a duty to inform the minister of interior of any official wrongdoing and to issue a biannual report on the situation of prisons.¹⁷⁷ Officials accused of wrongdoing can face disciplinary proceedings by their own department, but in practice the Bureau of Investigation and Public Prosecutions and the Bureau of Supervision and Investigations within the Board of Grievances rarely initiate criminal proceedings against officials (see Part 4, chapters XI and XII).

Prison oversight and review of detention

Saudi law obliges the prison authorities to complete the procedures necessary for the release of a prisoner whose sentence finishes. Article 21 of the Imprisonment and Detention Law of May 16, 1978, states, “The [prison’s] administrative procedures shall not delay the release of the prisoner or detainee on the fixed date.”¹⁷⁸ Ahmad al-Salim, the secretary-general (*waki*) of the Ministry of Interior, told Human Rights Watch that “there is no tribunal in the Ministry of Interior and the administrative governor has no right to prolong a sentence or order an arrest.” He further explained,

We put checks in place for prisoners and ... we have internal inspection mechanisms, for example, the head of the Prosecution and Investigation Department investigates these cases. They go to the prisons, they make sure that no one goes or has to stay in prison after they’re supposed to be out. So no one stays in prison for no reason.¹⁷⁹

The Office for Prison Supervision and Execution of Sentences in the public prosecutor’s office is responsible for “insuring the legality of [prisoners’] imprisonment or detention and the legality of their remaining in prison or the detention centers after the expiry of the period, taking necessary steps to release those imprisoned or detained without a legitimate cause.”¹⁸⁰ Prison officials have questioned the effectiveness of the Prison Supervision Office. The warden of al-Ha’ir Correctional Facility, Zhafir Sa’id al-Haqbani, told Human Rights Watch that a visit to

¹⁷⁷ *Ibid.*, art. 3(f).

¹⁷⁸ Imprisonment and Detention Law, Council of Ministers Resolution, No 4410n, May 16, 1978, art. 21.

¹⁷⁹ Human Rights Watch interview with Ahmad al-Salim, secretary-general (*waki*) of the Ministry of Interior, Riyadh, November 29, 2006.

¹⁸⁰ Law of the Bureau of Investigation and Public Prosecutions, art. 3(f).

the prison by the National Society for Human Rights in 2004 was helpful in discovering arbitrary detentions. “We had two visits by the national human rights commission. Twenty doctors [educated persons] came and they found cases of people held beyond the end of their sentences.”¹⁸¹

The prison administration apparently does not ask the Prison Supervision Office to issue orders for the release of prisoners whose sentences finish. Ali al-Harithi, the director of Saudi Arabia’s prison service, told Human Rights Watch that his service is responsible for releasing a prisoner after he or she has finished the sentence: “If a prisoner has reached the end of his sentence, we release him. We have the verdict.”¹⁸² This appears equally ineffective: Two prisoners told Human Rights Watch that the files of an inmate in al-Ha’ir prison had been used to prop open a window of the prison administration and could therefore not be found for three years.¹⁸³ Another prisoner told Human Rights Watch that “If the guard goes on vacation for a month, your file is with him and no one will touch it so nothing happens,” and you cannot be released.¹⁸⁴

During Human Rights Watch’s visit to al-Ha’ir Correctional Facility in November 2006, the prison authorities showed Human Rights Watch the Exemplary Wing 18, for prisoners of good behavior. In private, unsupervised interviews, a group of prisoners and detainees told Human Rights Watch that none of them could verify the length of their sentences.¹⁸⁵ Nizar, a 22-year-old inmate, told Human Rights Watch that he has been in prison since November 11, 2003, on a three-year sentence, which, according to the hijri calendar,¹⁸⁶ should then have expired on September 28, 2006. Article 24 of the Imprisonment and Detention Law states that “The prisoner or detainee shall be released before the noon of the day following the day of termination of

¹⁸¹ Human Rights Watch interview with Zhafir Sa’id al-Haqbani, warden of al-Ha’ir Correctional Facility, al-Ha’ir Correctional Facility, November 30, 2006.

¹⁸² Human Rights Watch interview with Ahmad al-Salim, November 29, 2006.

¹⁸³ Human Rights Watch email correspondence with a person with first-hand knowledge of the case, January 25, 2007, and Human Rights Watch telephone interview with a former cellmate, May 29, 2007.

¹⁸⁴ Human Rights Watch interview with a detainee in al-Ha’ir Correctional Facility, November 30, 2006.

¹⁸⁵ Human Rights Watch interview with a group of detainees in al-Ha’ir Correctional Facility, November 30, 2006.

¹⁸⁶ The Islamic calendar is 11 days shorter per year than the Gregorian calendar used in this report.

punishment or detention period.” Nizar said he could not challenge his continued detention because he had no proof of the length of his sentence.¹⁸⁷

Wing 18 inmate 'Umar told Human Rights Watch that, by his calculations, his four-year sentence for car theft and kidnapping should have been completed in March 2006. He said he never received a written verdict.¹⁸⁸ Twenty-four-year-old Rashid said a judge sentenced him to six months and 150 lashes for being in a fight with others, sentence started January 21, 2006, but 10 months later he remained in detention.¹⁸⁹

In a separate interview, Yahya, a man from Buraida told us that he personally knew of the cases of two prisoners, one of them his relative, whom the authorities had not yet set free despite having served their sentences. He said that as of December 2006, Fawzi had been in Buraida's *mabahith* prison for four years and ten months, despite having received a sentence of only one-and-a-half years, and Lutfi had been in al-Ha'ir's *mabahith* prison around five years, despite having received a sentence of only one-and-a-half years.¹⁹⁰

The period of pretrial detention is included in the sentence.¹⁹¹ Sentences may be shortened by memorizing the Quran: Prison Director al-Harithi explained to Human Rights Watch the formula whereby a prisoner's sentence is reduced by up to one-half for memorizing the whole Quran, by one-quarter for memorizing half the Quran, down to a minimum reduction of one-sixth of the sentence for memorizing one-third (10 chapters) of the Quran.¹⁹² There is also the possibility for parole: under Saudi law the minister of interior can approve parole after the prisoner has served three-quarters of the sentence, but a minimum of nine months, and if he or she has displayed good behavior, provided that a release will not jeopardize public safety. However, it is not permitted to grant “release under probation [parole]” unless the

¹⁸⁷ Human Rights Watch interview with Nizar, November 30, 2006.

¹⁸⁸ Human Rights Watch interview with 'Umar, al-Ha'ir Correctional Facility, November 30, 2006.

¹⁸⁹ Human Rights Watch interview with Rashid, al-Ha'ir Prison Wing 18, November 30, 2006, and by telephone, January 21, 2007.

¹⁹⁰ Human Rights Watch interview with Yahya, Riyadh, December 2, 2006.

¹⁹¹ Law of Criminal Procedure (LCP), art. 217.

¹⁹² Human Rights Watch interview with Ali al-Harithi, general director of prisons, Riyadh, December 2, 2006.

convicted person has fulfilled all his or her financial obligations resulting from the crime he or she was found guilty of.¹⁹³ Al-Harithi told Human Rights Watch that the prison service forms a committee to decide a prisoner's parole status one month before three-quarters of the sentence are up.¹⁹⁴

'Asim said he received a six-year sentence in 2002 for stealing cigarettes worth US\$27,000. He believed his sentence had been reduced by a total of three years—18 months for good behavior and another 18 months because the injured party had dropped all claims. He also told Human Rights Watch that he had memorized 15 chapters of the Quran, for which 'Asim should have received a reduction of one-quarter of his sentence, or two years. If 'Asim received any combination of the three reductions he claimed to be eligible for, his sentence was complete at the time of Human Rights Watch's visit in November 2006. 'Asim called Human Rights Watch in January 2007 to say he had just been released.¹⁹⁵

Other reasons for arbitrary detention beyond the completion of a sentence include a lack of response by the embassies of foreign nationals. 'Adil, age 23, said that police arrested him on March 15, 2006, and that, after waiting for three months, "The judge sentenced me to three months and 30 lashes. I have had the lashes. They tell me I need to be deported but when I spoke to the Yemeni embassy they refused, because I cannot prove my nationality."¹⁹⁶ 'Adil, who lived all his life in Saudi Arabia and whose Yemeni father died when he was young, said he has no documents to prove his Yemeni nationality. Hussein al-Sharif, the head of the Mekka branch of the National Society for Human Rights, which includes Jeddah, told Human Rights Watch, "The problem often is that detainees have no papers, and the embassies are not cooperating. The solution may be to start fingerprinting arrivals, or require a bank deposit. In recent months, 16,000 [foreigners] have been arrested and 12,000 deported."¹⁹⁷

¹⁹³ Imprisonment and Detention Law.

¹⁹⁴ Human Rights Watch interview with Ali al-Harithi, December 2, 2006.

¹⁹⁵ Human Rights Watch interview with 'Asim, al-Ha'ir Correctional Facility, November 30, 2006.

¹⁹⁶ Human Rights Watch interview with 'Adil, al-Ha'ir Correctional Facility, November 30, 2006.

¹⁹⁷ Human Rights Watch interview with Hussein al-Sharif, Jeddah branch manager, National Society for Human Rights, Jeddah, December 9, 2006.

Nuri, another prisoner, told Human Rights Watch that “a lot of Yemenis are stuck here past the end of their sentences because they don’t have tickets” to go to Yemen. “The Yemeni embassy only comes every four or five months and then they talk to a lot of people and say they are studying the situation.”¹⁹⁸

International law does not prohibit administrative detention, such as for foreign detainees awaiting deportation, but requires the state to demonstrate that such detention is necessary and justified in the circumstances. According to the United Nations Human Rights Committee, “detention should not continue beyond the period for which the State can provide appropriate justification [...], such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal.”¹⁹⁹

Mansur, a Yemeni detainee in al-Ha’ir prison told Human Rights Watch that he had been in prison “for 11 months... The judge sentenced me to nine months in jail for fighting, but I’m still here. I don’t know when they will let me out. They want to deport me. The [prison authorities] tell me I have to receive 50 extra lashes because I’m from Yemen.”²⁰⁰ This man had been in pretrial detention for eight months before he saw a judge.

Lashes are usually administered in sessions of up to 50 lashes and not more than once a week. A group of prisoners in al-Ha’ir complained of being detained arbitrarily because the flogging stipulated in the verdict had not yet been administered. One prisoner said “I have finished my sentence but not the floggings so I have not been released. I don’t know why I haven’t been flogged yet.”²⁰¹ Anwar, age 20, told Human Rights Watch he was “afraid ... not [to] be released when my sentence ends in 20 days because the lashing will take so long and they still haven’t started.”²⁰² He said

¹⁹⁸ Human Rights Watch interview with Nuri, a prisoner in al-Ha’ir Correctional Facility, November 30, 2006.

¹⁹⁹ UN Human Rights Committee, Communication No. 560/1993, A. v. Australia (Views adopted on 3 April 1997), in UN doc. GAOR, A/52/40 (vol. II), p. 143, paras. 9.3 and 9.4.

²⁰⁰ Human Rights Watch interview with Mansur, a prisoner in al-Ha’ir Correctional Facility, November 30, 2006.

²⁰¹ Human Rights Watch interview with Hamdi, a detainee in al-Ha’ir Correctional Facility, November 30, 2006.

²⁰² Human Rights Watch interview with Anwar, November 30, 2006.

he had received a sentence of six months in prison and 250 lashes for assault. (Human Rights Watch opposes all forms of lashing and corporal punishment as cruel and degrading.)

Arrests Without Warrants

Saudi law contains several provisions specifying the authority ordering the arrest, the person(s) to be arrested and the reasons for the arrest. Article 35 of Saudi Arabia’s Law of Criminal Procedure states, “In cases other than flagrante delicto, no person shall be arrested or detained except on the basis of an order from the competent authority.” Article 103 of the LCP gives the investigator (prosecutor) powers of arrest, but fails to define the conditions necessary for issuing an arrest warrant, requiring only that “investigation circumstances warrant it”—such as when a person fails to appear voluntarily (Article 104) or where the prosecutor considers a wanted person to be a flight risk (Article 107), “even if the incident is of such kind for which the accused should not be detained.”²⁰³

Among the more than 60 detainees Human Rights Watch interviewed, we found only one case where law enforcement officers issued an arrest warrant. A former detainee gave Human Rights Watch a copy of this warrant, an Order to Arrest and Appear [*Amr qabd wa ihda*], which bears an official stamp notarizing it as a “photocopy according to the original.” Khalid bin Suwaid, of the Bureau for Investigation and Public Prosecutions, signed the warrant, which specifies personal details of the person to be arrested, briefly discusses the crime attributed to him and the legal basis for the warrant (unspecified “provisions of Islamic Sharia”), and reproduces several articles of the Regulation against Forgery and of the LCP. This warrant, however, is not dated. Saudi law specifies that warrants are valid for execution up to three months after the date of the prosecutor issuing them.²⁰⁴

On February 2, 2007, the *mabahith*, listed in Article 26 of the Code of Criminal Procedure among legally authorized law enforcement agencies, arrested 10 persons

²⁰³ Law of Criminal Procedure, arts. 103, 104, and 107. According to Article 112 of the LCP, the minister of interior determines which crimes require pretrial detention: “The Minister of Interior shall, upon a recommendation by the Director of the Bureau of Investigation and Prosecution, specify what may be treated as a major crime requiring detention.”

²⁰⁴ Law of Criminal Procedure, art. 117.

in Jeddah without an arrest warrant, searched the house of at least one of the detainees without a search warrant, did not disclose the whereabouts of one of the detainees, and denied visits of the families and lawyers of those detained.²⁰⁵ Following the arrest of the 10 men, Ministry of Interior Spokesman Lt. Gen. Mansur al-Turki gave only a brief statement on the cases, indicating that some had been arrested on suspicion of funding terrorism.²⁰⁶ Two months later, officials suggested that the media was misrepresenting the detainees as reform advocates, but did not further characterize the charges pursuant to which they had been arrested, reiterating only that the suspicion involved recruiting fighters to send to Iraq.²⁰⁷

In a case of sexual harassment that has become known as the Renaissance Tunnel [*Nafaq al-Nahda*] case, the Criminal Investigations Branch arrested at least two men in Riyadh without a warrant. One of the arrested men, Turki, told Human Rights Watch that investigators at the police station said to him, “You’ll find out why you’re here soon,” but that instead of informing him of the charges, they started beating him. Another defendant in the case said that officers arrested him without a warrant and, a few hours later, when a friend arrived to support his alibi, they arrested the friend too.²⁰⁸ (For the outcome of this case, see Chapter VII, section “Reasonable Doubt.”)

Another young defendant told Human Rights Watch that on September 3, 2006, police in al-Malaz, a district in Riyadh, summoned and detained him about an incident involving alleged homosexual relations two years earlier. “The prosecutor came and always said tomorrow, tomorrow, you will be released... and ‘repent before God,’ but instead I was sent to al-Ha’ir [prison].”²⁰⁹

Husain, a Yemeni detainee in al-Ha’ir prison told Human Rights Watch that a few weeks after coming to Saudi Arabia he got into a fight. After police arrested him, they

²⁰⁵ Human Rights Watch telephone interviews with Bassim Alim, lawyer, Jeddah, February 7, 2007; Muhammad Sa’id Tayib, Jeddah, February 6, 2007; Sulaiman al-Khuraiji, February 26, 2007; and Nawaf Obaid, Riyadh, February 23, 2007.

²⁰⁶ Samir Al-Saadi, “10 Held for Funding Terrorism,” *Arab News*, February 4, 2007, <http://www.arabnews.com/?page=1§ion=0&article=91749&d=4&m=2&y=2007> (accessed July 26, 2007).

²⁰⁷ “Detained Saudis were mulling a political party,” Reuters, April 3, 2007.

²⁰⁸ Human Rights Watch interviews with three prisoners Hasan, Najib, Talib, November 30, 2006.

²⁰⁹ Human Rights Watch interview with a detainee (name withheld), al-Ha’ir Correctional Facility, November 30, 2006.

kept him at the police station. He told Human Rights Watch that he confessed to having been in the fight but, out of the blue, “they accused me of sodomy.”²¹⁰

Article 11 of the Law of the Commission for the Promotion of Virtue and Prevention of Vice obliges CPVPV agents to “seize the perpetrators of proscribed acts, or those accused of them, or those negligent of the Islamic Sharia duties, and [to] interrogate them.”²¹¹ Article 9 of the Executive Regulations of that law obliges CPVPV officials to “conduct seizure and arrest pursuant to the laws, orders, decisions and instructions pertaining to criminal procedures.”²¹² CPVPV members also detain suspects without warrants in cases other than in flagrante delicto.²¹³ On December 19, 2006, CPVPV members arrested Najla ‘Umar, a Sudanese woman, from a private residence in the Salam district in Jeddah and took her to the Shimaliya CPVPV station for eight hours, until 3 a.m. She was not able to inform her husband of her whereabouts until the CPVPV later took her to a police station. After three days at the police station, with no visits allowed, prosecutor Salih al-Saidalani interviewed her, but did not issue formal charges. During the interrogation it emerged that CPVPV members had apparently arrested ‘Umar because she had been leading a Sudanese women’s self-help microcredit operation, regularly receiving money from 11 contributors who would later be eligible to receive small loans.

In another case, more than 50 CPVPV members and a large contingent of police arrested without warrants a group of families comprising 53 Indians, Pakistanis, and a Syrian at a privately-rented rest house in Jeddah, after Friday prayers on December 29, 2006. Saudi authorities eventually deported all of those arrested, although most were legal residents. CPVPV members verbally informed the group’s members that they had arrested them because they were Ahmadi Muslims, but the group’s members never saw arrest warrants, faced a formal charge, or saw a judge before their deportation.²¹⁴ Article 10 of the Executive Regulations of the CPVPV law requires

²¹⁰ Human Rights Watch interview with Husain, al-Ha’ir Correctional Facility, November 30, 2006.

²¹¹ Law of the Commission for the Promotion of Virtue and the Prevention of Vice, art. 11.

²¹² Executive Regulations, Law of the Commission for the Promotion of Virtue and the Prevention of Vice, art. 9.

²¹³ Article 26 of the LCP also endows the CPVPV with law enforcement powers.

²¹⁴ Ahmadis in Saudi Arabia are a small community of foreign workers primarily from India and Pakistan, who consider themselves Muslims and follow the teachings of Mirza Ghulam Ahmad, a 19th-century Muslim reformer. They also face official persecution in Pakistan and Bangladesh.

its officials to record the reasons for arrest in a register kept at the CPVPV centers,²¹⁵ but the only reason given was that “the arrests of the 56 individuals ... took place in a public facility and exceeded the government’s definition of private worship.”²¹⁶

In September 2006 CPVPV members arrested Khalid after he challenged Commission agents who entered his café to inspect the mobile phones and identification papers of male and female customers sitting in the secluded upstairs family section. Khalid told Human Rights Watch that he asked them, “Who are you? Is there someone who is wanted? I can help!” He explained that this was the first time he had intervened in what had been repeated “raids” on his café. He said they were bad for business and he had tired of them. Khalid’s questions evidently did not sit well with Commission agents, who told him, “We’ll take you, too,” and dragged him to their car. At the police station, an officer told him that the Commission members had accused him of insulting public officials. After waiting for 12 hours, the officer asked him a few questions before letting him go.²¹⁷ A judge sentenced Khalid on November 21, 2006, to flogging (see below).

Also in November 2006, Commission agents arrested a university student and her friend in the apartment of a man to whom she had brought her guitar to fix. The Commission members accused her of leading a prostitution ring, although they had no evidence to back up their accusation. The head of the police station to which the Commission members eventually transferred her informed her influential father of her arrest eight hours later. Her father then managed to have her released through the intervention of Riyadh’s governor, Prince Salman bin Abd al-‘Aziz Al Sa’ud.²¹⁸

Private Claims and Arbitrary Detention

Private claims are law suits that one individual brings against another. The state acts as an adjudicator, but is not formally a party. Saudi prosecutors decide on the

²¹⁵ Executive Regulations, Law of the Commission for the Promotion of Virtue and the Prevention of Vice, art. 10.

²¹⁶ Letter from James Oberwetter, US Ambassador to Saudi Arabia, to Christopher J. Dodd, US Senator, March 14, 2007, quoting Saudi official statements made on February 28, 2007.

²¹⁷ Human Rights Watch interview with Khalid, December 11, 2006.

²¹⁸ Human Rights Watch interview with the father of the girl, Riyadh, December 21, 2006.

admissibility of private claims, and judges hear claims and decide on their merits. In Saudi Arabia, private claims can result in prison for criminal actions or for debt. In practice in Saudi Arabia, persons are not equal under the law in private claims. Wealthy or socially influential persons can skew court proceedings in their favor, giving private citizens significant powers to detain those they bear a grudge against. The chief problem lies in the court's decisions to detain defendants before and during trial, which can drag on for years before reaching a final verdict on the mere basis of a person's claim. These detainees thus endure what amounts to criminal sanction for as yet unproven acts. Isolation in detention and a lack of financial means also impinge on their ability to defend themselves by seeking legal advice or preparing evidence for their own defense.

Private claims

The codification of aspects of Sharia in the Law of Criminal Procedure allows private claims by individuals to be handled as a matter of criminal procedure. Private citizens can sue other private citizens for injuries arising from criminal acts, with resultant criminal sanction being imposed. Private claims may call for criminal proceedings, such as in locations without a public prosecutor, where citizens can ask a judge to criminally prosecute defendants for material damages they sustained (Article 17). Prosecutors may even start criminal action in cases involving a private right of action without a private complaint if doing so “will serve the public interest.”²¹⁹ A prosecutor has three days to determine the admissibility of a private claim by “whoever suffers harm in consequence of a crime,”²²⁰ but the law does not specify criteria for admissibility or define harm.

The right to file private claims only lapses in two instances: upon a court's final verdict, or if the claimant grants a pardon (Article 23). In all other circumstances the private right can be invoked at any time and is hereditary, so that the children or other heirs of the damaged party may initiate or continue a suit at any time.

²¹⁹ Law of Criminal Procedure, art. 18.

²²⁰ *Ibid.*, art. 68.

In accordance with Sharia rules, the holder of the private right, not the state, can insist on the execution of court-ordered punishment, accept monetary compensation, or issue a pardon. It remains unclear whether a plaintiff, acting as a private “prosecutor,” can ask the judge to impose a prison sentence or corporal punishment. In practice, defendants convicted in a private criminal case remain in prison until the plaintiff issues a pardon or until he or she fulfills the conditions of a court-ordered punishment, such as the payment of damages (see Appendix).

Saudi legal practice only provides minimal protections against frivolous law suits with drastic consequences for the sued party. Suitors must fill out a complaint sheet describing the harm suffered and listing the claims they are making on the other party. In more than 10 cases Human Rights Watch investigated, judges accepted claims in the suits at face value without probing actual harm suffered, leading to the preventive detention of those sued. Foreign workers face particular risk of a suit, and are often imprisoned allegedly as a “preventive” measure as a result of a suit that is lodged with a court but not speedily adjudicated.

In a drawn out family dispute over which of four brothers was to become the legal guardian over the affairs and wealth of their incapacitated father and their mother (who under Saudi legal practice cannot discharge of her own affairs without a male legal guardian), Ali challenged his brother Muhammad’s claim to guardianship and sued for his right to continue living in the family home. Ali told Human Rights Watch what happened in court in 2005:

In court, the judge said, “I’ll imprison you for one year and sentence you to lashes and order you out of the house if you don’t drop the claim.” I said, “I won’t,” and went to prison on August 28, 2005, and got out September 9, 2005, on [my brother] Salih’s [personal] guarantee.²²¹

²²¹ Human Rights Watch interview with Ali, Riyadh, December 19, 2006.

Ali said he believed his brother Muhammad was able to have the judge charge him with breaking into his own home and imprisoned because the brother and the judge were on good terms.

In another case, 57-year-old Sulaiman, a Palestinian Syrian who had worked in Saudi Arabia for 22 years, returned from a vacation in Syria after learning that his sponsor had filed a complaint against him. Upon his return, police from al-'Ulaya quarter in Riyadh immediately arrested him, keeping him for 30 days in their police station before transferring him to al-Ha'ir Correctional Facility in November 2005. Sulaiman told Human Rights Watch that only 10 days after his arrest did he learn that his sponsor and employer accused him of stealing cigarettes. Sulaiman continued to describe what happened during the trial, which started in March 2006:

The judge did not establish the amount of money allegedly embezzled [from stealing cigarettes], and the witnesses for the plaintiff contradicted themselves, saying sometimes 300,000, sometimes 400,000 or 500,000 [Riyals]. The witnesses did not appear in court. Even the plaintiff changed his mind and raised the amount he wanted back from me from 500,000 to 1,500,000 [Riyals].²²²

After going on hunger strike in May 2007, Sulaiman was able to prompt a response from the authorities. A new judge took over and promptly dismissed the case. But Sulaiman will be free to leave prison only when he finds a new sponsor. When we met him he had already been detained for almost two years.

Imprisonment for debt

Saba Habachy wrote in a 1962 article about the status of property and contracts in Islamic law,

For several centuries, private property in Islam was so well protected that a debtor's person rather than his assets answered for his debts. A Muslim judge could order seizure and imprisonment of a recalcitrant

²²² Human Rights Watch telephone interview with Sulaiman, al-Ha'ir Correctional Facility, May 29, 2007.

debtor to force him to pay his debts, but he could not order foreclosure of his proprietary or other rights of monetary value to satisfy his unpaid creditors.²²³

Consequently, a common experience of detention following a private claim is imprisonment for debt.²²⁴ Saudi law specifically allows for the imprisonment of a debtor. The law on claiming personal rights provides that if a debtor fails to fulfill his or her obligations “he shall be imprisoned, unless the creditor accepts to [grant him] respite, or [to] release him.”²²⁵ Article 230 of the Law on Procedure before Sharia Courts (2000) affirms the possibility of detention for debt: “If the convicted [party] refuses to execute the judgment issued against him for a reason other than insolvency, and if it has proved impossible to execute [it] on his properties, then the party in whose favor the judgment [was issued] may request the detention of the convicted [party] by force of a petition which he raises to the competent administrative ruler.” The ruler can order such detention up to “10 days,” after which the case reverts to the courts to decide “whether to continue his detention.”²²⁶

The law makes an exception for proven insolvency, in which case “it shall be obligatory to release [the debtor] and abstain from his prosecution,” unless the incurred debt is the result of “crimes he has intentionally committed.”²²⁷ The civil procedure code reaffirms that where a sentenced party refused to execute a judgment “by reason of insolvency, [he] shall be referred to the court that had issued the judgment for the determination of whether or not he is insolvent.”²²⁸ A contributor to a website discussing Saudi and other Arab laws clarified that for a judge to recognize insolvency, one of the concerned parties has to submit a motion

²²³ Saba Habachy, “Property, Right, and Contract in Muslim Law,” *Columbia Law Review*, vol. 62, No. 3 (March 1962), pp. 450-473.

²²⁴ The UK government writes in its advisory to visitors to Saudi Arabia that “Under sharia law, non-payment of debt is considered a crime, and sufficient reason for imprisonment; imprisonment does not discharge the debt ... Experience shows that debt cases are often the most difficult to resolve.” United Kingdom Foreign and Commonwealth Office, “Living in Saudi Arabia,” www.fco.gov.uk/Files/kfile/LIVING%20IN%20SAUDI%20ARABIA,o.doc (accessed April 12, 2007).

²²⁵ Organizational Regulation of Procedures For Claiming Personal Rights, *Umm al-Qura Newspaper*, issue 3082, September 17, 1985, art. 8(a).

²²⁶ Law on Procedure Before Sharia Courts, art. 231.

²²⁷ Organizational Regulation of Procedures for Claiming Personal Rights, art. 18.

²²⁸ Law of Procedure Before Sharia Courts, art. 231.

to court, which will then determine whether conditions for insolvency are met. Debts may be reinstated, and recognition of insolvency lifted, at any future time (see Appendix).²²⁹

These articles make clear that there is no provision for indefinite detention of a debtor who is unable to pay his debts. Yet detention can become open-ended after the adjudication of the claim if the debtor is unable to settle the claim. Hamad Jarba, the deputy chief prosecutor of Saudi Arabia responsible for prison supervision, told Human Rights Watch that sometimes prisoners remain in prison after serving their sentences because they have not yet paid their private debt, which was the source of the sentence in the first place.²³⁰ Such imprisonment amounts to arbitrary detention, is akin to debt bondage, and is not permitted under international law.

In one case we discovered, a prisoner had received a sentence for causing a traffic accident, but remained imprisoned beyond the expiration of the sentence due to his inability to pay the damages the court awarded the injured party. At the time Human Rights Watch spoke to him, this person had spent four months beyond the end of his six-month prison term.²³¹ Imprisonment for debt also applies to debt incurred as result of court-awarded fines. Ibrahim told Human Rights Watch that, after being jailed following a private claim against him, he remained imprisoned after the court decided to fine him \$135,000 for “working for a person who is not his sponsor.”²³² He has remained in prison for 11 years because he is unable to pay that amount.²³³

²²⁹ Center for Arab Laws, “Insolvency, Recognition of Insolvency,”

<http://www.arblaws.com/board/showthread.php?r=1266&highlight=%E3%DA%D3%D1> (accessed March 8, 2007). A creditor with an enforceable verdict against his debtor may put a claim toward whatever present or future assets the debtor holds with any third party. A creditor may also ask the court to place his debtor’s moveable assets under protective custody if the debtor has no fixed residence. Law of Procedure Before Sharia Courts, art. 208.

²³⁰ Human Rights Watch interview with Hamad al-Jarba, prosecutor, Riyadh, November 29, 2006.

²³¹ Human Rights Watch interview with Muzaffar, a Pakistani detainee, al-Ha’ir Correctional Facility, November 30, 2006.

²³² Human Rights Watch telephone interview with Ibrahim, Jeddah, August 8, 2007.

²³³ Human Rights Watch received no reply to inquiries about the provisions and practices in Saudi law regarding imprisonment for debt incurred in connection with court-awarded damages resulting from a criminal act or with court-imposed fines, and which the debtor is unable to pay. We made inquiries about conditions for imprisoning a debtor to a professor of law at the Imam Muhammad Islamic University’s High Judicial Institute, which trains judges (March 2), to the National Society for Human Rights (March 14), and to the Ministry of Justice (April 10, 2007).

Journalist Ahmad al-Jumai'a reported the case of a person who in February 2006 had remained imprisoned for five months for owing US\$32,400, despite having obtained a certificate of insolvency. The newspaper reported that this person remained in detention even after his creditor had received the amount of money they privately agreed on.²³⁴

Human Rights Watch has received several complaints since December 2006 from persons—all foreign nationals—who said that Saudi authorities had imprisoned them on the basis of claims by their employers that they had misappropriated company monies. Human Rights Watch's report in 2004, "Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia," documented how employers use threats of imprisonment to withhold wages.²³⁵ One prisoner told Human Rights Watch in March 2007 that he had been in jail for nine years because he was unable to pay the equivalent of US\$350,000 the court stipulated as his share of \$1.08 million worth of construction materials his Saudi employer alleged that he and three others had stolen from him.²³⁶

Until his deportation on February 21, 2007, Ravi, an Indian national, had spent six years in prison in Jeddah. His sponsor and employer had him arrested in August 2001 for allegedly embezzling money from the hydrolic heavy equipment spare parts store where he worked as supervisor, after Ravi refused to sign fraudulent accounts. The appeals court appointed a different judge after the first verdict in favor of the sponsor, and Ravi counter-sued his employer for back wages from the time of his arrest. The second court appointed accountants who calculated that, in fact, the sponsor owed Ravi \$60,600, but the judge reduced the amount to \$14,270. Ravi appealed the verdict, insisting on the larger amount, but remained in detention throughout due to his employer's initial suit for embezzling money. The authorities summarily deported Ravi before the final hearing, due to take place on March 12, 2007.²³⁷

²³⁴ Al-Jumai'a, "Detained Behind Bars," *al-Riyadh*.

²³⁵ Human Rights Watch, *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, vol. 16, no. 5(E), July 2004, <http://hrw.org/reports/2004/saudio704>, p. 40.

²³⁶ Human Rights Watch telephone interview with Yunis, March 14, 2007. Yunis denied that he had stolen any materials.

²³⁷ Human Rights Watch telephone interviews with Ravi, Jeddah, January 25, and email communication on February 24, 2006.

Ameer, another Indian national, when we met him had been in prison since his arrest on October 18, 1999. Judge Abd al-Latif al-Abd al-Latif found him guilty of embezzling \$105,300 from his sponsor Mahmud, at whose 'Uthman Company for Travel and Tourism he worked, and sentenced him to one year in prison. After serving almost eight years in prison on a one-year sentence, Ameer remained in jail. He had no resources to pay and did not know what means he could employ to obtain his release.²³⁸ An Indian consular official told Human Rights Watch that the consulate had forwarded letters to the court on behalf of Ameer with official affidavits following an investigation in India that confirmed that he was insolvent. The Indian official said the consulate had not received any reply.²³⁹

VII. Due Process and Fair Trial Violations

The violations of due process rights described below significantly impinge on the ability of a defendant to mount an effective defense in court. At trial the defendant, typically for the first time, is given the opportunity to present his or her case to a member of the judiciary, who should be independent from the prosecution service, and to whom he or she can assert their innocence, dispute factual aspects of the prosecutor's charge, or confess guilt and show remorse in the hope of a lenient sentence. It is therefore imperative that procedures at trial do not further undermine criminal defendants' rights to a fair trial. However, with but a couple of exceptions, defendants interviewed by Human Rights Watch did not know how Saudi law in fact regulated trials or what human rights safeguards they should have been able to avail themselves of at trial.

The principle of "equality of arms" guarantees the defendant's ability to present evidence on terms equal to those of the prosecution.²⁴⁰ Unlike individuals facing criminal charges, the state has a superior array of financial and human resources, expertise, and technology to help it investigate the crimes its prosecutors refer to

²³⁸ Human Rights Watch telephone interviews with Ameer, Riyadh, May 29 and July 6, 2007.

²³⁹ Human Rights Watch telephone interview with Indian consular official, Riyadh, July 9, 2007.

²⁴⁰ Equality of arms refers to the principle that every party to a case must be afforded a reasonable opportunity to present his or her case under conditions that do not place the party at a substantial disadvantage vis-à-vis the opponent. It is considered the most important criterion of a fair trial. See Nowak, *CCPR Commentary*, p.321, para. 29.

trial. The defendant, on the other hand, is often left hoping that the judge will probe the veracity of the accusations instead of being able to present countervailing facts in his or her defense. This would be the job of legal counsel for the defense, who, all too often, is absent from Saudi criminal trials.

Indigent defendants Human Rights Watch encountered, often foreigners, are at a particular disadvantage in Saudi courts, because they had no means to secure legal counsel and were themselves ignorant of the substance of charges against them and lacked knowledge about the arguments and procedures taking place inside the courtroom. Many felt the judge was their adversary.

When defendants did not know what charges they faced, or the sentences the charges carried, they did not know which aspects of the prosecutor's arguments were most important to challenge. Because the authorities had not informed them of their right to legal counsel, or they did not have the resources to hire a lawyer in the absence of a public defender program, they had no legal assistance. Because prison authorities often informed defendants less than 24 hours before their first court appointment, and because official documents, such as the charge sheet, the transcripts of the interrogations, and all evidence against them, are inaccessible to defendants, they did not have the time or means to prepare their defense. Because they often perceived the judge as being harsh with them, allowing them to speak only in response to questions, they felt unable to present their version of events, call witnesses in their defense, or question the prosecution's witnesses or other evidence.

In order for justice to be done, it has to be both fair and seen to be fair. The experience of current or former defendants detailed here suggest that those working in the Saudi justice system face urgent tasks of improving its transparency and putting in place mechanisms that fully afford parties to a suit their rights.²⁴¹

²⁴¹ Human Rights Watch regrets that Saudi judges and court authorities prevented us from attending court hearings in Jeddah and Najran in December 2006. Article 155 of Saudi Arabia's Law of Criminal Procedure declares concisely that "Court hearings shall be public." In early March 2007 the Saudi embassy in Washington informed Human Rights Watch that the organization would be allowed to go back to the kingdom in April to attend trials and visit prisons. Despite repeated follow-up inquiries, the authorities did not fulfill their promise of a return visit.

Based on its investigation Human Rights Watch believes that fundamental flaws in the Saudi criminal justice system make miscarriages of justice a common phenomenon. These flaws include an absence of the presumption of the defendant's innocence, meting out summary justice, sentencing defendants despite the judges' professed doubt about their guilt, and penalizing acts that are not recognized criminal offenses.

Presumption of Innocence

The right to presumption of innocence until and unless proved guilty is a fundamental underpinning of the right to a fair trial. Article 11 of the UDHR and article 14.2 of the ICCPR guarantee everyone charged with a criminal offense "the right to be presumed innocent until proved guilty according to law."²⁴²

Principle 36 of the Body of Principles provides, "A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law."²⁴³

As Principle 36 notes, not only judges but law enforcement and other officials also have the duty to treat a person charged with a criminal offense as innocent. As noted above, Saudi law allows law enforcement officers to arrest suspects only pursuant to a prosecutor's arrest warrant, unless the suspect is caught while committing a crime. Article 34 of the LCP gives law enforcement officers the power to determine whether to hold or release suspects during initial interrogation. But Article 34 also reverses the principle of presumed innocence, requiring the suspect in effect to dispel the law enforcement officer's suspicion that he or she has committed an offense by demonstrating his or her innocence. Only if that is achieved must the arresting

²⁴² UDHR, art. 11, and ICCPR, art.14.2.

²⁴³ Body of Principles, principle 36. Saudi interpretation of Sharia puts a heavy burden on the judge by threatening punishment in the hereafter if he fails to apply the verdict most in tune with God's commandments for humankind. A Prophetic tradition holds, "Judges are of three types, one of whom will go to paradise and two to hell. The one who will go to paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to hell; and a man who gives judgment for people when he is ignorant will go to hell." Tradition No. 3566, 24. The Office of the Judge (in Chapter: *Kitab al-Aqdiyya*), Sunan Abu Dawud. Another Prophetic tradition does not allow human fallibility to excuse a judge who does not exert himself to seek the truth to the best of his abilities: "When a judge gives a decision, having tried his best to decide correctly and is right, there are two rewards for him; and if he gave a judgment after having tried his best (to arrive at a correct decision) but erred, there is one reward for him." Tradition No. 4261, 18. The Book Pertaining to Judicial Decisions (in Chapter: *Kitab al-Aqdiyya*), Sahih Muslim.

officer release him or her. In a memorandum to the Saudi government commenting on the LCP, Human Rights Watch pointed out that this provision, in reversing the presumption of innocence, is incompatible with international human rights law.²⁴⁴

None of the current and former criminal defendants Human Rights Watch spoke with recalled having an opportunity to establish their innocence to the law enforcement agency responsible for their arrest in order to gain their release within 24 hours. Many could not distinguish between the arresting officer and the prosecutor who interrogated them, if indeed there was such a distinction.

Saudi law does not explicitly provide the defendant with an opportunity at trial to address the judge. Article 161 of the LCP states that, after the charges against the defendant have been read, “The court shall then ask the accused to respond.”²⁴⁵ Some defendants told Human Rights Watch that during their trials they had only three opportunities to speak: first, in response to the charges; second, in response to the judge’s detailed questions; and third, in response to the verdict. They did not consider any of these opportunities as sufficient to speak freely or draw attention to potentially exculpatory evidence. In their view, the judge only pursued questions pertinent to their guilt, not their possible innocence.

(Article 174 of the LCP appears to give a defendant some room to present a defense in criminal cases where a civilian plaintiff is pressing charges. The article provides, “The court shall first hear the prosecutor’s charges, then the response of the accused or his representative or attorney. Then, the court shall hear the claimant regarding the private right of action to be followed by the response of the accused or his legal representative or attorney. Each of the parties shall be entitled to comment on the

²⁴⁴ “Article 34 specifies that within the first 24 hours following arrest, it is the responsibility of the officer in charge of the criminal investigation to ‘promptly examine the accused.’ During this period, the suspect must ‘establish his innocence’ (wa itha lam ya’ti bima yubarrī’uḥu, in the official Arabic text). If he does not, presumably solely to the satisfaction of the responsible officer, the suspect may be held for further questioning for another 24-hour period. There appears to be no judicial or other official oversight within these first 48 hours, other than a requirement to notify the Public Investigation and Prosecution Department, a body that is empowered under the code to supervise officers in charge of criminal investigations (article 25), conduct its own criminal investigations (article 26.1), and ‘initiate and follow-up criminal proceedings before the competent courts’ (article 16).” Human Rights Watch, “The Code of Criminal Procedure of the Kingdom of Saudi Arabia: Human Rights Concerns.”

²⁴⁵ Law of Criminal Procedure, art. 161.

statement of the other party, and the accused shall be the last to address the court.”²⁴⁶)

Human Rights Watch heard a frequent refrain from those we interviewed: “The judge is my [legal] opponent [*al-qadi, huwa khasm*].” Usama recounted his brief courtroom trial more than one year after he allegedly shot a firearm during a large demonstration outside the governor of Najran’s residence in April 2000. The judge, he said, asked him,

“Do you deny everything [in your confession]?” I said “yes.” He said, “Sit down, tell us the truth.” I told the truth, including the torture. [Prosecutor] Arfiji then said, “There are witnesses against him.” I said, “If there are witnesses, then their testimony is coerced.” The judge glowered at me, he looked like someone who was about to sentence me to death, so I signed my statement [of confession].²⁴⁷

(Usama’s case is described in more detail in chapter VIII, below.)

’Imad described his trial on a charge of assault. There appeared to be no prosecutor present, he said, only the judge, two scribes, and an assistant to the judge. The judge read out the charges, and ’Imad responded by asking to see the evidence of assault, since the victim was not present. According to ’Imad, the judge then said, “Whatever the interrogator says, is true,” and did not allow him to speak further, sentenced him to two years in prison, and sent the case to the governor to review and set the appropriate sentence.²⁴⁸ The whole trial took one session.²⁴⁹

In another case, café owner Khalid faced trial for allegedly insulting the CPVPV members who had arrested him (see above). Khalid told Human Rights Watch, “The judge raised his voice and then hollered at me ‘Why do you attack the Commission

²⁴⁶ Ibid., art. 174.

²⁴⁷ Human Rights Watch interview with Usama, Najran, December 14, 2006.

²⁴⁸ The Ministry of Interior until about two years ago, used to review and set some sentences, especially in drugs and firearms offenses.

²⁴⁹ Human Rights Watch interview with ’Imad, Dammam, December 18, 2006.

[for the Promotion of Virtue and Prevention of Vice]?’ I told him I hadn’t.”²⁵⁰ After Khalid had indicated to the judge that he would appeal his initial ruling of 200 lashes, the judge reduced his sentence to 100, and, after that, to 10 lashes, telling Khalid, “I have to sentence you.”²⁵¹ Khalid had brought a personal representative with him to the sentencing, who separately told Human Rights Watch that when he objected to the proceedings, the judge told him, “Don’t speak. You are an infidel [*kafir*].”²⁵²

Before Saudi Arabia executed him for armed robbery on February 19, 2006, Ranjit de Silva, of Sri Lanka, told Human Rights Watch from his prison cell about his trial. Asked if he had an opportunity to explain what he said was his limited role in the robberies, which he did not deny, de Silva told Human Rights Watch, “It is very dangerous to speak in court. We can’t speak in front of the judge.” De Silva said that after sentencing him to death, the judge pressured him to accept the verdict and not to appeal.²⁵³

One prisoner in al-Ha’ir prison told Human Rights Watch that he had twice previously been sentenced for theft. Nasim said that in those trials there were witnesses and plaintiffs [*khusum*], but that at his third trial there was no evidence. He said, “I put my fingerprint on a paper [during interrogation] without knowing what I was confessing to. I did not speak at this trial or in the previous two trials. They brought witnesses from the gold store [he was accused of stealing from] but they said that they didn’t recognize me and there was no other evidence presented.” Nasim told Human Rights Watch that the judge sentenced him nonetheless and simply told him to “take it up with the higher council.”²⁵⁴

During a group interview with prisoners in al-Ha’ir Correctional Facility, all eight prisoners told Human Rights Watch that they did not have the opportunity to speak

²⁵⁰ Human Rights Watch interview with Khalid, December 11, 2006.

²⁵¹ Ibid.

²⁵² Human Rights Watch interview with Faisal, Jeddah, December 11, 2006. The personal representative is a well known young entrepreneur who runs a liberal website that frequently details cases of CPVPV abuse and harassment.

²⁵³ Human Rights Watch telephone interview with Ranjit de Silva, February 12, 2007.

²⁵⁴ Human Rights Watch interview with Nasim, al-Ha’ir Correctional Facility, November 30, 2006.

at trial unless they were prepared to confess. One prisoner said that the judge only accepted written comments.²⁵⁵ 'Azzam, a lawyer in Jeddah, also told Human Rights Watch that some judges prefer written submissions.²⁵⁶

Treatment as convicted prisoner

Respect for the presumption of innocence requires that defendants are not subjected to treatment which is normally appropriate and reserved for convicted persons. Pretrial detention of persons accused of a crime should only be used to ensure that the accused person does not interfere in the course of justice. Principle 8 of the Body of Principles provides that “[p]ersons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.”²⁵⁷ In Saudi prisons, no separation between convicted and unconvicted prisoners exists. The director of Saudi prisons, Ali al-Harithi, told Human Rights Watch that his department is planning construction of 35 new prisons. Under this plan, existing prisons would be converted to pretrial holding facilities.²⁵⁸

Inside the courtroom, prisoners should not be unnecessarily restrained or forced to wear prison uniforms. Article 158 of the Saudi LCP provides that “No physical restraints shall be placed on the accused during court hearings.”²⁵⁹ Human Rights Watch observed one prisoner in shackles entering a courtroom in Najran and one prisoner in foot- and hand-cuffs being led in the corridor in Jeddah’s Partial Court. This court has a jail for detainees waiting to be called to the trial chamber. This room on the bottom floor of the court house is barren, with no facilities to sit, no facilities for lawyers, and no facilities to write. Detainees spend their time there shackled and guarded, sitting on the floor.²⁶⁰

²⁵⁵ Human Rights Watch interview with eight prisoners, al-Ha’ir Correctional Facility, November 30, 2006.

²⁵⁶ Human Rights Watch interview with 'Azzam, December 11, 2006.

²⁵⁷ Body of Principles, principle 8.

²⁵⁸ Human Rights Watch interview with Ali al-Harithi, Riyadh, December 2, 2006.

²⁵⁹ Law of Criminal Procedure, art. 158.

²⁶⁰ Human Rights Watch visit to Jeddah’s Partial Court, December 9, 2006. Human Rights Watch interview with Subhi, December 8, 2006, and telephone interview with Ebot, April 2, 2007.

Media reporting on individuals may alter public views and, in some cases, influence the judge's perception of a defendant's innocence. To ensure privacy where strictly necessary in the interests of justice, a judge should therefore have the authority to restrict access to the proceedings. Article 155 of the LCP provides that "[t]he court may exceptionally consider the action or any part thereof in closed hearings, or may prohibit certain classes of people from attending those hearings for security reasons, or maintenance of public morality, if it is deemed necessary for determining the truth."²⁶¹ (Regarding the overly broad interpretation of a judge's right to close hearings and its practice, see "Public Trial," below).

Self-incrimination and presumption of innocence

Broadly interpreted, the right not to incriminate oneself has come to mean the right to remain silent without the silence being taken as a possible admission of guilt, or having any other adverse effect on the judicial proceedings for the defendant. Under a narrower interpretation, a judge might compel the defendant (or any other person) to answer questions except those in which he or she may admit guilt.

Article 14.3(g) of the ICCPR gives the defendant the right "Not to be compelled to testify against himself or to confess guilt."²⁶² Article 16(f) of the Arab Charter on Human Rights repeats this provision verbatim.²⁶³ Saudi law does not contain protections against self-incrimination. To the contrary, Article 163 of the LCP appears to foresee the possibility of defendants refusing to respond, in which case "the court shall proceed to hear the evidence and take whatever action it deems necessary with respect thereto. It shall interrogate the accused in detail regarding the evidence and the content of memorandum of the charges." The Law of Procedure before Sharia Courts, which may apply to situations in which a private plaintiff seeks the defendant's conviction on criminal charges, specifically allows a plaintiff to compel a defendant to testify under oath about specific circumstances (Article 107) without giving him or her the right to remain silent on issues in which he or she may acknowledge guilt. A person may contest "the permissibility or relevance" of taking

²⁶¹ Law of Criminal Procedure, art. 155.

²⁶² ICCPR, art. 14.3.(g).

²⁶³ Arab Charter on Human Rights, art. 16(f).

an oath (Article 109), and may refuse to take an oath (Articles 108), but such refusal may have an impact on the proceedings, although the law states that it “shall be of no consequence outside the hearing.”²⁶⁴

Lawyer 'Azzam told Human Rights Watch that confessions are only used as circumstantial evidence to verify forensic evidence and that judges sometimes discard admissions of guilt.²⁶⁵ This is not supported, however, by the LCP or by opinions of other lawyers. Article 162 of the LCP states, “If the accused at any time confesses to the offense of which he is charged, the court shall hear his statement in detail and examine him. If the court is satisfied that it is a true confession and sees no need for further evidence, it shall take no further action and decide the case.”²⁶⁶ Lawyer and former judge Isma'il observed, “The judge will get a 500-page dossier but he doesn't look at it. He will put it aside and only look at the confession. Then he will ask the defendant, ‘Is what you say in the confession true?’”²⁶⁷ Another lawyer and former judge, Muhsin, affirmed this view, saying, “A judge will put a file to one side, ask the defendant for a confession, and then ask the clerk to read the statement or a prior confession [before trial] to the defendant, and ask if he or she agrees. If he or she agrees, the judge immediately sentences him or her to X. If not, the sentence is Y.”²⁶⁸

Another defense lawyer, Subhi, told Human Rights Watch, “The judge thinks the accused is guilty. That's the mental state of every judge.” He also described the evidence a judge cites in a typical verdict as “based on the prosecution, the words of the defendants, and the testimony of the witnesses.”²⁶⁹ Saudi judges, the Saudi Human Rights Commission, and the Saudi Ministry of Justice did not grant Human Rights Watch permission to observe trials.

²⁶⁴ Law of Procedure before Sharia Courts, art. 108.

²⁶⁵ Human Rights Watch interview with 'Azzam, December 11, 2006.

²⁶⁶ Law of Criminal Procedure, art. 162.

²⁶⁷ Human Rights Watch interview with Isma'il, Riyadh, December 7, 2006.

²⁶⁸ Human Rights Watch interview with Muhsin, Riyadh, December 6, 2006.

²⁶⁹ Human Rights Watch interview with Subhi, December 11, 2006.

Appointing a Lawyer

Even when security detainees are aware of the right to counsel, they and their families encounter formidable obstacles in obtaining effective legal representation. It is difficult to retain legal representation in part because lawyers are reluctant to take on such cases. 'Adnan told Human Rights Watch that around April 2006 he tried to obtain a lawyer for his brother, Jawwad, whom the *mabahith* had arrested on December 22, 2002, in the northern city of Hafr al-Batin. The lawyers he contacted told him, "We don't take *mabahith* cases."²⁷⁰

Even where a family succeeds in retaining counsel, it appears to be impossible for the lawyer to contact his client in the *mabahith* prisons, to uncover specific charges against the client, or to petition a court effectively to move towards a hearing of evidence underlying any charges. Former judge and now lawyer Isma'il told Human Rights Watch that in September 2004 he attempted to represent Sa'id bin Zu'air, a religious academic who had been re-arrested in April 2004 for remarks he made on Al Jazeera television (see chapter XI). The judge rudely rejected him, he said, and officials "dragged me out of court."²⁷¹

The government can block attempts to retain counsel by not certifying a lawyer's power of attorney. A notary public must certify the power of attorney for lawyers to act on behalf of a detainee (a judge can do the same, but only at a hearing).²⁷² Human Rights Watch spoke to a relative of a detainee who, together with four other families, received a notary public's certification to appoint Isma'il as legal counsel for their sons and relatives in Buraida's *mabahith* prison.²⁷³ When 10 relatives of other detainees also tried to obtain a notary's certification to retain a lawyer, however, Fahd al-Ghammas, the head notary public of the Second Court of Buraida, informed them that he had received a telephone call instructing him to deny such certification. When these relatives subsequently attempted to obtain the certification

²⁷⁰ Human Rights Watch telephone interview with 'Adnan, Northern Region, December 7, 2006.

²⁷¹ Human Rights Watch interview with Isma'il, December 2, 2006; See also "Saudi scholar jailed over TV remarks," Aljazeera.net, September 19, 2004, <http://english.aljazeera.net/English/archive/archive?Archiveld=6563> (accessed March 19, 2007).

²⁷² Law of Criminal Procedure, art. 20. A lawyer may appear in court without such a power of attorney and be registered as a representative of the litigant at the hearing.

²⁷³ Human Rights Watch interview with Mubarak, the father of a detainee from Buraida, Riyadh, December 2, 2006.

from the court notary public in the neighboring town of Bikiriya, that notary public first made a phone call before informing them he was unable to issue certification. Isma'il told Human Rights Watch that "it is normal for a notary public to agree to a certification of power of attorney in another jurisdiction."²⁷⁴ Isma'il and Sa'ud are two of the few lawyers to have certified powers of attorney to act on behalf of *mabahith* detainees, and still have been denied access to their clients.

Salih al-Luhaidan, Saudi Arabia's chief judge, denied that defendants were unable to retain legal counsel, but he heavily qualified his view as to when the appointment of lawyers was necessary or justified. Al-Luhaidan told Human Rights Watch that "legal representation is allowed in case of [existing] evidence proving innocence. Take for example the case where a drunkard is accused of consuming alcohol. If he can prove that no alcohol was consumed and if he can provide witnesses and if he did not confess to the crime, then a lawyer can represent him in court."²⁷⁵ Al-Luhaidan later in the interview provided another example, saying "If the case involves harm done, a murder or a theft, then it does not require a lawyer, but it requires witnesses, evidence, and for the individual to defend himself."²⁷⁶ Al-Luhaidan basically said that only those who do not really need a lawyer—those with proof of their innocence—are entitled to retain one.

Sa'id, a detainee in al-Ha'ir prison told Human Rights Watch, "I was arrested with the others, but I'm the only one who had a lawyer. My father arranged for it, but they never let me talk to my lawyer. I'm trying to appeal my case because I was never allowed to see my lawyer."²⁷⁷

Human Rights Watch is unaware of any case where a suspect detained by CPVPV agents was able to promptly retain legal counsel. Faisal, a businessman who runs a liberal website and frequently intervenes on behalf of those in trouble with the Commission, told Human Rights Watch that in October 2006 the Commission arrested a person who then tried to secure Faisal as his personal representative. The

²⁷⁴ Human Rights Watch interview with Isma'il, December 2, 2006.

²⁷⁵ Human Rights Watch interview with Salih al-Luhaidan, December 21, 2006.

²⁷⁶ *Ibid.*

²⁷⁷ Human Rights Watch interview with Sa'di, al-Ha'ir Correctional Facility, November 30, 2006.

Commission pressured the detainee to cancel his appointment of Faisal in exchange for letting him go.²⁷⁸ Café owner Khalid, who was sentenced to flogging for challenging the CPVPV (see above), also dismissed Faisal in exchange for the lashes not being implemented. In the case of the death of Ahmad al-Buluwi in the CPVPV's offices following beatings during interrogation in May 2007, Buluwi's family was pressured into not appointing Faisal to represent them in legal proceedings.²⁷⁹

Asad, the brother of Ja'far, whom the police arrested six years after a court had sentenced him for insulting the Prophet's companions, but never implemented the sentence, spoke of having little confidence that a lawyer could clarify the legal situation following his brother's arrest on February 13, 2007.²⁸⁰ He told Human Rights Watch,

Ja'far was driving with his family to Kuwait. At the border, they arrested him. A police car drove Ja'far to Qatif where he was put in jail. We don't know the reasons for the arrest. He has been there for two days now. There is no prosecutor or arrest warrant. We don't try to get a lawyer. A lawyer is expensive, and in this country, lawyers have no power.²⁸¹

The mother of Nawwaf told Human Rights Watch that she had not tried to hire a lawyer, "I am a woman, we are in Juf, and we are poor. What do I do with a lawyer? I don't know where to find one and couldn't afford one either. And I don't know what a lawyer can do for me."²⁸²

²⁷⁸ Human Rights Watch interview with Faisal, Jeddah, December 10, 2006.

²⁷⁹ Human Rights Watch telephone interview with Faisal, Jeddah, July 16, 2007.

²⁸⁰ CPVPV officials had arrested Ja'far, from Tarut in the Eastern Province, on January 6, 2001, in Medina while he was visiting the Prophet's grave. A court later sentenced him to eight months in prison and 350 lashes for insulting the Prophet's companions, but never executed the sentence. Ja'far told Human Rights Watch that in October 2006 the government began harassing him through phone calls and suspended him from his position in the Ministry of Education. Human Rights Watch interview with Ja'far, Tarut, December 17, 2006.

²⁸¹ Human Rights Watch telephone interview with Ja'far, Tarut, February 15, 2007.

²⁸² Human Rights Watch telephone interview with the mother of Nawwaf, Juf, December 21, 2006.

Right to Bring and Cross-examine Witnesses

The right to a fair trial includes the defendant’s ability to bring witnesses to testify on his or her behalf as well as to challenge the testimony of prosecution witnesses under equal conditions. The UDHR sums up these aspects as the right to a “fair and public hearing.”²⁸³ Article 14.3(e) of the ICCPR provides specifically for the right “[t]o 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.” Article 16(e) of the Arab Charter on Human Rights repeats this ICCPR text verbatim.²⁸⁴

Saudi law protects the right to bring and cross-examine witnesses during trial. Article 164 of the LCP provides that “Each of the litigants may request to call any witnesses and review evidence they may present and request taking a specific action in connection with investigation proceedings. The court may reject such a request if it considers that it is intended for delay, malice, or deception, or that granting such a request is not probative.”²⁸⁵ Article 163 gives defendants the right to cross-examine witnesses: “Each of the parties may cross-examine the witnesses called by the other party and discuss its evidence.”²⁸⁶ Article 175 gives “The Prosecutor and all litigants [the right], at any stage of the proceedings, [to] contest any part of the evidence as being forged,”²⁸⁷ although they risk punishment for perjury as a result of false accusations of forgery.²⁸⁸

Witness testimony and confessions are often the primary evidence in Saudi criminal trials. Saudi law contains provisions aimed at ensuring that evidence based on witness testimony cannot be distorted and that court testimony alone is entered as evidence. Article 156 of the LCP provides that the court record of hearings include witness testimony, and Article 180 advises the court to “base its judgment on the

²⁸³ UDHR, art. 10.

²⁸⁴ Arab Charter on Human Rights, art. 16(e).

²⁸⁵ Law of Criminal Procedure, art. 164.

²⁸⁶ *Ibid.*, art. 163.

²⁸⁷ *Ibid.*, art. 175.

²⁸⁸ *Ibid.*, art. 178.

evidence produced during the trial,” and not on other knowledge of the case.²⁸⁹ Failure to observe proper procedure is grounds for the trial court to dismiss a case, but only if such an “action includes an essential defect that cannot be corrected.”²⁹⁰ The inability to produce or cross-examine witnesses may well constitute such an irremediable action, since it almost invariably skews the evidence.

Article 168 of the LCP generally excludes children from giving testimony: “If a witness is a child or his testimony is otherwise inadmissible, his statement shall not constitute a testimony. However, if the court considers that such testimony could be useful, it may proceed to hear that witness.”²⁹¹ International human rights standards support the right of children to be heard in particular where a case has direct implications for that child, and, where it is considered appropriate for a child to testify, encourage states to provide children with a safe environment to do so.²⁹²

The broadly worded Article 168 excluding “otherwise inadmissible” testimony opens the door to discriminatory admission of witnesses. Under Saudi Arabia’s interpretation of Sharia, a Muslim woman’s testimony is not generally accepted in criminal cases²⁹³ and is worth half the testimony of a man in civil suits (see Appendix).²⁹⁴ Furthermore, Saudi Arabia’s interpretation makes the testimony of non-Muslims admissible only in cases of “necessity.”²⁹⁵ Saudi Chief Judge Salih al-

²⁸⁹ Ibid., arts. 156 and 180.

²⁹⁰ Ibid., art. 192.

²⁹¹ Ibid., art. 168.

²⁹² UN Economic and Social Council, “Guidelines for Action on Children in the Criminal Justice System,” Resolution 1997/30, July 21, 1997, art. 49: “Child witnesses need assistance in the judicial and administrative processes. States should review, evaluate and improve, as necessary, the situation for children as witnesses of crime in their evidential and procedural law to ensure that the rights of children are fully protected. In accordance with the different law traditions, practices and legal framework, direct contact should be avoided between the child victim and the offender during the process of investigation and prosecution as well as during trial hearings as much as possible. The identification of the child victim in the media should be prohibited, where necessary to protect the privacy of the child. Where prohibition is contrary to the fundamental legal principles of Member States, such identification should be discouraged.”

²⁹³ Fu’ad Abd al-Mun’im Ahmad, *On Criminal Lawsuits in Islamic Jurisprudence*, (Riyadh: Modern Arab Bureau, 2001), p. 177.

²⁹⁴ US Department of State, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices – 2006: Saudi Arabia,” March 6, 2007, www.state.gov/g/drl/rls/hrrpt/2006/78862.htm (accessed December 12, 2007). “A woman’s testimony does not carry the same weight as a man. In a Shari’a court, the testimony of one man equals that of two women.”

²⁹⁵ Ahmad, *On Criminal Lawsuits in Islamic Jurisprudence*, p. 101. See also US Department of State, “Country Reports on Human Rights Practices – 2006: Saudi Arabia”: “Under the Hanbali interpretation of Shari’a, judges may discount the testimony of persons who are nonpracticing Muslims or who do not adhere to Hanbali doctrine. Legal sources reported that testimony by Shi’a was often ignored in courts of law or was deemed to have less weight than testimony by Sunnis.”

Luhaidan appeared to deny even this possibility when he told Human Rights Watch that the requirements to be a witness include that “the individual must tell the truth and must be religious. The witness must be of the faithful [Muslim].”²⁹⁶ Such restrictions violate human rights law prohibiting discrimination on the basis of gender or religion and violate the right to a fair trial, especially if unequally applied in favor of the prosecution.

During the investigation of a crime, the prosecutor has the authority to determine which witness testimony should be entered into the file. Article 28 of the LCP does not oblige the prosecutor to devote attention to exculpatory evidence, but only to “those who may possess information with respect to facts and perpetrators of crimes.”²⁹⁷ Prior to the trial stages, the defendant has no opportunity to present exculpatory witnesses. Compounded with the inability to access the prosecution’s file and the extremely short notices afforded defendants before court hearings (see chapter V, section “Right to Adequate Time and Facilities to Prepare One’s Defense”), the prosecutor’s powers to decide which witnesses to include significantly impinge on a defendant’s right to bring witnesses in his or her defense. If a private person is party to the criminal suit, the prosecutor must justify denial of the request of either plaintiff or defendant to hear a witness,²⁹⁸ “unless he considers that their testimony would be useless.”²⁹⁹ Articles 98 and 99 of the LCP give litigants the right to comment on witness testimony during the pretrial investigation. The investigating prosecutor conducts these depositions as he sees fit, either separately or jointly.³⁰⁰ In court, however, witnesses testify separately, and, where necessary, are kept apart.³⁰¹

²⁹⁶ Human Rights Watch interview with Salih al-Luhaidan, December 19, 2006.

²⁹⁷ Law of Criminal Procedure, art. 28.

²⁹⁸ *Ibid.*, art. 73.

²⁹⁹ *Ibid.*, art. 95.

³⁰⁰ *Ibid.*, arts. 98 and 99.

³⁰¹ *Ibid.*, art. 169.

Regulations for the Appeals Court do not contain a review of sound procedures at the trial stage. The Appeals Court assesses the “matter of the appeal on the basis of the evidence included in the file of the case.”³⁰²

Defendants’ ability to bring and cross-examine witnesses is already curtailed by the potential barriers on calling non-Muslim or female witnesses, the absence of a public defender program affording them legal advice, and their own lack of legal expertise. Human Rights Watch also received testimony from individuals whom a judge refused the right to bring or cross-examine witnesses, without giving an adequate explanation. One such case features in the Prologue to this report.

Another prisoner, Zuhair, told Human Rights Watch that police arrested him and a fellow Ethiopian, Maisara, in June 2006 for being in a fight, and told him that a Bangladeshi man had filed a claim against him. Police officers interrogated him and brought him face to face with the Bangladeshi man, who, according to Zuhair,

told the police and me that I was one of the onlookers of the fight and that I didn’t participate in it. After three months, [Maisara] and I went to trial. The Bangladeshi man did not show up in court but sent a representative and I did not have the opportunity to ask the judge to see him. The judge sentenced me to six months and 300 lashes on June 12, 2006.³⁰³

The other Ethiopian, Maisara, confirmed this account, and added, “There was no translator in court. Zuhair understands a little and translated for me, because I did not understand.”³⁰⁴

Mu’ammam told Human Rights Watch that members of his family had accused him of apostasy, and that the case went to court. During the trial, his brothers testified that he “spoke like a Christian when someone dies” and that he had been “an infidel for a long time.” He said his family members forced his Indian driver to testify to his un-

³⁰² Ibid., art. 199.

³⁰³ Human Rights Watch interview with Zuhair, al-Ha’ir Correctional Facility, November 30, 2006.

³⁰⁴ Human Rights Watch interview with Maisara, al-Ha’ir Correctional Facility, November 30, 2006.

Islamic behavior. He also said that prior to being arrested he had lived in Jeddah, but “the judges refused to bring my witnesses from Jeddah,” who could deny such behavior. He said the judge sentenced him for unspecified “commission of sins” (*irtikab al-ma’as*).³⁰⁵

A middle-aged Saudi man, Ziyad, described his trial on drug dealing charges to Human Rights Watch. He said that the judge in his case

ordered me to keep silent and I was afraid to speak up so that he would not give me a harsher verdict. I asked them to bring [a co-defendant, under whose car the police found drugs], who had three prior convictions, as a witness to prove that I had no connection with drug dealing. He told me that he involved me in his trial in order to ease the charge on himself, because otherwise he may face the death sentence.³⁰⁶

A young Saudi currently serving an eight-year sentence in prison told Human Rights Watch how the judge disallowed evidence and the cross-examination of witnesses. Information stored or not stored on a mobile telephone was important in identifying the culprit in this case since it the mobile phone belonging to the purported culprit contained a video of the crime shot from the phone. “My lawyer got the [phone] company to produce all the [information] from my cell phone,” the young man told Human Rights Watch,

but there [was no incriminating information] on it. Judge [name withheld] did not look at the evidence the lawyer submitted. I also asked to present witnesses who could testify to my alibi, like the vice president of the [workplace where I was, name withheld], but the judge refused. During the trial, the judge asked, “Where were you [at the time of the incident],” and the prosecutor produced statements of a witness who said he saw me at the scene of the crime. But the same

³⁰⁵ Ibid. Human Rights Watch interview with Mu’ammarr, Riyadh, December 7, 2006.

³⁰⁶ Human Rights Watch telephone interview with Ziyad, October 2, 2006. Human Rights Watch later confirmed this account by meeting with Ziyad in person, Riyadh, December 3, 2006.

witness said in the same trial that he was tortured into confessing that he saw me. The judge admitted this witness's written statement and did not inquire into the circumstances of the confession.³⁰⁷

He pointed out that that the evidence implicated a culprit wearing a *thob* (common Saudi male dress), whereas he usually wore jeans. Human Rights Watch also spoke with the witness who had given a statement to the prosecutor that he had seen the defendant at the place of the crime. This witness confirmed to Human Rights Watch that he had never seen the defendant before and that he was coerced into making the incriminating statement when he himself was arrested for participating in the same crime, which he also denied.³⁰⁸ Human Rights Watch also spoke to the mother, brother, and lawyer of the first inmate, who confirmed his account.³⁰⁹

Ja'far also believes he received an unfair trial due to the fact that the judge lent credibility to only one witness to his alleged crime, a witness who at the same time was the official who initiated the criminal charge of "insulting the companions" of the prophet against him. Ja'far was unable to challenge the testimony of this prosecution witness in cross-examination, on whose account the entire case against Ja'far rested. This witness did not appear in person to testify or to be cross-examined and the judge did not permit Ja'far to produce a second witness, also an official, who he said could have exonerated him.³¹⁰

Ja'far told Human Rights Watch that Judge al-Khudair

read the charge to me. I told the judge to bring [the witnesses], but then the prosecutor said that there's only one witness, the same [person who arrested me]. I asked for the other ... official to come, because he was there [at the time of the incident] and he knew that I didn't say these things, but the judge did not bring him either.³¹¹

³⁰⁷ Human Rights Watch interview with Thafir (identifying details withheld), November / December 2006.

³⁰⁸ Ibid..

³⁰⁹ Human Rights Watch telephone interviews, Riyadh, February 26 and 27, 2007.

³¹⁰ Human Rights Watch interview with Ja'far, December 17, 2006.

³¹¹ Ibid..

Irfan, a Pakistani man in prison for over six years, told Human Rights Watch that he tried to obtain a verdict of insolvency from the court after the judge sentenced him to prison or payment of US\$162,000 in compensation to his employer for embezzlement. Irfan said the judge told him to bring three witnesses, two of whom should be Muslims with an honorable record (*muzak*) in order to testify to his insolvency, but that he received a court summons two months later, “where my employer brought three witnesses to testify that I was rich.” Before going to court, Irfan said that Ahmad Abdullah al-Shahrani, the head of the Jeddah General Prison, where he was imprisoned, had selected these witnesses when he learned of al-Irfan’s request to produce witnesses to testify to his insolvency. Al-Shahrani intimidated Irfan by threatening to send him to a prison far away if he did not cooperate. Irfan said the three witnesses, all fellow inmates, each got \$810 for their testimonies.³¹²

Reasonable Doubt

The Arabic word commonly used to describe a judge’s actions during trial is *fassala*—literally “to make separate.” In seeking the truth and adjudicating responsibility, the judge must separate fact from fiction and remain open to arguments and evidence supporting a defendant’s innocence as well as guilt. Under international standards of fair trial, a defendant does not have to prove his innocence: the burden is on the prosecution to provide evidence that proves the guilt of the defendant, and to prevail the defense only has to cast reasonable doubt on those claims of guilt. ‘Azzam told Human Rights Watch that, in Saudi Arabia’s prevailing legal tradition, the burden of proof remains on the prosecution. During the first session of a trial, he said, “the prosecutor has to list all the evidence he has, because he has the burden of proof.”³¹³

In practice, and as a review of Saudi court verdicts demonstrates, judges repeatedly convict defendants despite their “doubts” about the defendant’s guilt. Lawyer Hisham explained to Human Rights Watch that where a “judge has doubt about the

³¹² Human Rights Watch telephone interview with Irfan, Jeddah, April 17, 2007.

³¹³ Human Rights Watch interview with ‘Azzam, December 11, 2006.

criminal responsibility, he will issue a discretionary [*ta'zir*] verdict.³¹⁴ Under *ta'zir* sentences, a judge is free to determine the punishment.³¹⁵

Guilty as charged, not as proved

A blatant example of the divergence of the Saudi criminal system from the rule of law is the manner in which judges have the capacity to punish a defendant “on a discretionary basis” even though the prosecution case before them is not proven. This is linked to the vague nature of charges, and reflects an approach to justice, that, while a defendant facing trial may be acquitted of an offense, they are surely “guilty of something.”

Jeddah lawyer Naji told Human Rights Watch about a recent case in which he defended a client against charges of drug consumption and dealing. His client admitted to the consumption charges, and to “stocking up” on a large number of pills, but denied dealing. “There was no evidence that he was a drug dealer other than the large amount of pills. The judge sentenced him for dealing, although he admitted there was doubt about the guilt.”³¹⁶

Muhsin told Human Rights Watch about other cases where doubt overshadowed evidence of guilt for the crime with which the defendant was charged. In one case a prosecutor had brought charges of sodomy against a man, claiming the alleged crime had taken place in a restaurant, in front of witnesses. The defense was able to question the prosecution witnesses who admitted that they had heard the story from a friend but had not themselves been present. Nevertheless, Muhsin said, the judge disregarded this exculpatory testimony.³¹⁷

The lawyer for a number of defendants in the so-called Renaissance Bridge case (see above) shared with Human Rights Watch the verdict of the final ruling the Riyadh

³¹⁴ Human Rights Watch interview with Hisham, December 18, 2006.

³¹⁵ “If the offender retracts his confession before or during the enforcement of a hadd penalty, it is halted and replaced by another discretionary penalty if the conditions therefor are met.” Kingdom of Saudi Arabia, “Human Rights in the Judicial System,” 2000, <http://www.saudiembassy.net/Issues/HRights/hr-judicial-2-intro.html> (accessed August 8, 2007).

³¹⁶ Human Rights Watch interview with Naji, lawyer, Jeddah, December 10, 2006.

³¹⁷ Human Rights Watch interview with Muhsin, December 6, 2006.

General Court issued in January 2006.³¹⁸ In their majority ruling, two of the three judges stated, “The crime of armed robbery by the accused has not been proved to us, wherefore we have decided to punish them on a discretionary basis” to prison and flogging. According to the judges, a crime had taken place which, beyond the injury to the victim, “depleted the safety and stability of the believers ... necessitating a personal deterrent against the accused and a general deterrent for all people.” The verdict mentions that the only evidence against one defendant—whom Human Rights Watch interviewed—was his co-defendant’s statements during interrogation.³¹⁹

In a murder trial verdict handed down by judges in the ‘Asir province’s court in Abha, the verdict and the defendant’s testimony reveal that the judges were not concerned with whether there was proof of intentional murder, but whether the defendant’s claim of self-defense was disproven. Human Rights Watch spoke to the defendant Qais and his brother about the incident that 12 years earlier landed then 16-year-old Qais on death row, where he remains today, even though the judges twice reversed themselves in their verdict. He told Human Rights Watch in July 2007 that a new judge in the Abha court had agreed to review the case.³²⁰

After dark on October 27, 1994, 16-year-old Qais, who is partially paralyzed on his left side, accepted a lift from a man in a car. The man took Qais to an abandoned building, where two other men were present. One of the men began to assault him. Qais told Human Rights Watch, “We were on the ground and I pulled out the knife that I carried to defend myself because of my disability, and I stabbed him, I don’t know how many times. He fell to the ground and I ran away,”³²¹ Qais went to the police station, reported what had happened, and found himself detained and transferred to Abha juvenile reformatory after one week.

³¹⁸ One of the convicted defendants asked Human Rights Watch that he remain anonymous.

³¹⁹ Kingdom of Saudi Arabia, Ministry of Justice, Riyadh General Court, “Legal Verdict,” January 2006.

³²⁰ Human Rights Watch telephone interview with Qais, Najran, July 13, 2007. Qais was unable to cite a legal basis for such an unusual review. He said there was no new evidence and no change in the position of the family of his victim, who continued to insist on his execution.

³²¹ Human Rights Watch interview with Qais, Najran, December 14, 2006.

Qais said he had no legal representation in court. When he was called to the judge's chambers, he came face to face with a representative of the deceased, who told the judge he wanted Qais executed in retribution. According to Qais, the judge remarked that such a verdict was not possible in cases of self-defense. In the second session, according to Qais, the brother of the deceased man (the man who had initially offered Qais a lift), appeared in court, and freely admitted that the deceased had asked him to bring "any person, with the intent to rape that person." In the third session, the third person present at the incident, who said he was the owner of the house, also admitted that the intent was to rape Qais, but that he had nothing to do with the assault. In the last session, however, before the judges issued their verdict, the brother recanted his earlier testimony that there was a prior plan to rape Qais.

Qais said that he did not know what Saudi law said about self-defense. He later engaged a lawyer in Riyadh who, he said, "did not do anything." Qais said that the court did not determine his age or assess his mental or physical capacity.

A copy of the verdict bears out Qais's recollection. It notes that the deceased man's brother testified that the deceased "was drinking perfume and that he took [Qais] to a dark room and that [Qais] never met [his brother] before that day as far as he knows." The brother also confirmed his testimony that the deceased's intent in taking Qais to the room was to rape him. The verdict shows the owner also testified to this. Nevertheless, the judges, on January 17, 1996, ruled that Qais was an adult at the time of the crime and could have refused to enter the room or sought help from the other two men, and that the victim's family was therefore entitled to retribution (*qisas*) in the form of Qais's execution.

On August 18, 1996, the Court of Appeals reversed this decision, finding that Qais could not have extricated himself from his predicament. On January 28, 1997, the judges of the first court accepted the Court of Appeals' finding, ruling that the deceased person's family was entitled to blood money, but not retribution. After King Fahd intervened and ordered a review of the case on behalf of the dead man's family, the Supreme Judicial Council on February 25, 1998, found that the Court of Appeal decision omitted that Qais went with the man willingly, that he had a knife, and that he did not call for help, and consequently reinstated the murder charge. On August

31, 1999, the ‘Asir court accepted the Supreme Judicial Council’s finding, explaining that previous conflicting sentences were the result of a lack of a comprehensive investigation involving all parties, and sentenced Qais to death.³²² The other men were not prosecuted for attempted rape.

In another case, Judges Muhammad Al Sulaiman, Salih al-Zahrani, and Abdullah Al Dawud convicted Ramon of the Phillipines of intentionally killing a Saudi national, Fadi, and sentenced him to death in retribution (*qisas*). According to the appeal that lawyer Sultan al-Hujailan filed, the court did not adequately prove intentional murder. In fact, al-Hujailan maintained, Ramon had killed Fadi in self-defense.

Following an evening with friends at Fadi’s house, where they drank whiskey and watched pornographic videos Fadi provided, Fadi and Ramon had a fight when Ramon refused to smoke hashish and get undressed. Ramon claimed that Fadi stabbed him in the neck with a knife, after which they fought vigorously until Ramon got hold of the knife and stabbed Fadi. He then escaped from Fadi’s house by breaking the locks, which Fadi had previously bolted, and fled to the home of his cousin, who delivered him to the Filipino consulate in Khobar about an hour later.

Ramon told Human Rights Watch that after an hour the vice consul convinced him to surrender to the police, but that he did not go entirely voluntarily because he was in no state of mind to make informed decisions. At the police station, Ramon said, they only took his name and checked him into a hospital, where, 30 minutes later, police came back, shackled him, and began asking questions over the next four days. Police then took Ramon back to the scene of the crime, in Khafji, and asked him to conduct a re-enactment, which they filmed. The police had asked him three questions, he said: “Why did you stab [Fadi] in the back? Why did you follow him into another room? And, do you have any witnesses?” Ramon said he could not answer the first two questions other than by pointing to his inebriated and highly emotional state of mind, having been attacked with what he believed was intent to rape him. Thereafter, they sent Ramon to Dammam General Prison where, he said, he spent two years in solitary confinement.

³²² Ministry of Justice, Presidency of the Courts of ‘Asir, Judge’s Office, “Verdicts Issued by Sharia Courts,” Recorded Number 219/2, Serial Number 219, January 17, 1996.

Ramon said that the Philippines consular officials visited him every six months or so, and promised to obtain a lawyer, but that the fees demanded were too high. After two years, his trial began. Ramon told Human Rights Watch that “it was a complete surprise to me” when prison officials took him to court. In court, two judges presided over the trial with Ramon, his two police escorts, the father of the victim, and a clerk present. “At first, they asked me to speak. I spoke for about 30 minutes and told them what happened,” Ramon said. “Then they compared what I said to my written statement and found it was true. Then the judge asked the father if he would forgive me, but he said no. I had no lawyer or consular representation.” Over the next three weeks, with one session per week, there were few developments and Ramon did not speak at any of the sessions. Salih al-Zahrani, one of the two judges at one of the sessions, told the father of the victim to forgive Ramon because he was innocent. In the fifth and last session, the Philippines vice-consul attended but did not speak. In the final session the judge, addressing the verdict to the vice consul, sentenced Ramon to death.

At no point did the judges inform Ramon of the charges of intentional murder or clarify to him the legal differences between intentional murder and murder in self-defense. Ramon told Human Rights Watch that the court asked him for witnesses to prove his innocence.³²³ Lawyer al-Hujailan’s appeal also notes, “The Court enquired if the accused has any proof or witness that what he did was simply to defend himself and his honor from [Fadi], which he negated.”³²⁴

Innocent as charged, but still convicted

Muhammad al-Suhaimi, a middle-school teacher of Arabic, was charged with apostasy. He was found not guilty. However, the judges then proceeded to sentence him “on a discretionary basis,” for “un-Islamic behavior,” but not for any specific crime. In the eight-page verdict dated March 9, 2004, the three judges extensively cited testimony of 12 witnesses, teachers and students, who claimed he had made various statements that were un-Islamic. Al-Suhaimi presented witnesses who

³²³ Human Rights Watch telephone interview with Rodeliu Lanuza, Dammam General Prison, April 25, 2007.

³²⁴ Sultan al-Hujailan, “Report on the Counter Affidavit of [Ramon] on the Court Decision Series Number 3/35 Dating May 29, 2002.”

testified that he is an observant Muslim, albeit a modern thinker, but not concerning the articles of the creed.

The judges ruled that they would “shield the accused from the crime of apostasy against God [*hadd al-ridda*]” but that

Given what the accused pronounced in front of students in school, and given that he is a teacher and students are in a position to meet him and receive his knowledge, ... and given his duty to preserve the trust he has taken upon his shoulders ... those [actions] deserve punishment as a deterrent to him and as an inhibition to others ... and we decided ... to discipline him [*ta'ziruhu*] with a prison term of three years ... and flogging of 300 lashes.³²⁵

Public Trial

Defendants have a right to be tried in person and in public.³²⁶ International law considers the public nature of trials to be the norm, an essential safeguard for the right to a fair trial. The court may close proceedings to the public or interested parties only for narrowly defined reasons.³²⁷ Article 155 of the Law of Criminal Procedure authorizes the court to close proceedings “for [unspecified] security reasons, or maintenance of public morality, if it is deemed necessary for determining the truth.” The UN special rapporteur on the independence of judges and lawyers, following his visit to Saudi Arabia in 2002, wrote that he “is concerned that the ability to close court hearings in circumstances where it is deemed necessary for determining the truth [...] is too broad in scope and undermines the transparency of the court system.”³²⁸

³²⁵ Kingdom of Saudi Arabia, Ministry of Justice, Greater Riyadh Court, Judges Abd al-Latif al-Abd al-Latif, Muhammad bin Khanin, Sa'ud Al 'Uthman, “Legal Verdict,” March 9, 2004.

³²⁶ UDHR, art. 10.

³²⁷ ICCPR, article 14.1 provides that “The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

³²⁸ UN Commission on Human Rights, UN Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, E/CN.4/2003/65/Add.3, para. 103.

International law also provides that court verdicts should be made public: “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 or the guardianship of children.”³²⁹ Saudi law does not fully comply with this requirement. Article 182 of the LCP specifies that “The judgment shall be read in an open session at which the parties must be present, even [if] the case has been considered in closed sessions.”³³⁰ Article 183, however, only requires the court to “formally communicate [the judgment] to whomever the court deems appropriate.”³³¹

In practice, few trials appear to be open to the public, and Human Rights Watch does not know of any trial that members of the media attended. For example, Al Jazeera reported eyewitness accounts of the December 1, 2004 hearing in the trial of three reform advocates, who said that police had cordoned off the court house, arrested seven friends and supporters of the accused (including two journalists), and planted plainclothes policemen inside the courtroom to give the pretense of an open hearing.³³² The BBC reported in December 2004, “In October, a judge adjourned the trial of the three reform campaigners after they refused to answer questions because the hearing “was being held in secret,” adding that “the son of one of the accused said they had to be taken by force into the courtroom on Wednesday and did not speak once in court because they insist on a public hearing.”³³³ Five persons present that day independently and separately confirmed this account to Human Rights Watch at various points since August 2005.

During its visit to Saudi Arabia in December 2006, Human Rights Watch attempted to attend court hearings in Jeddah on December 9, and in Najran on December 13. In Jeddah, the head of the Partial Court, Judge Abdullah al-‘Uthaim, refused to give

³²⁹ ICCPR, art.14.1.

³³⁰ Law of Criminal Procedure, art. 182. The article sets out standard elements a verdict must contain, such as the accusation, the response of the accused, the evidence, and the legal basis for the ruling.

³³¹ *Ibid.*, art. 183.

³³² “New twist in Saudi reformists' trial,” *aljazeera.net*, December 1, 2004, <http://english.aljazeera.net/NR/exeres/350FB8Co-11C5-41A1-BC13-C493E891050B.htm?GUID={CA3FA078-EE13-4BDA-A613-76B60CE87980}> (accessed May 16, 2005).

³³³ “Arrests at Saudi reformers' trial,” *BBC News Online*, December 2, 2004, http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/4061469.stm (accessed May 16, 2005).

permission, saying “you cannot enter court sessions.”³³⁴ In Najran, an armed guard refused to allow Human Rights Watch to attend an ongoing session “because it is a criminal case.”³³⁵ A court clerk told Human Rights Watch that “you are the first one to want to attend a trial.” The clerk later asked the two judges for permission, but they, too, refused, without providing a reason. In a conversation after the hearing ended the judges explained to Human Rights Watch that the case involved a murder.³³⁶

(Concern about transparency in Saudi courts goes beyond the closed trials. According to a report in *Arab News*, Abd al-‘Aziz al-‘Uwaishiq gave a presentation at the Riyadh Economic Forum in December 2005 in which he deplored “that there was no way that members of the public could possibly know what the regulations were,” since they often remained unwritten. In particular, “Even though the Council of Ministers issued a ruling in 2002 that the Ministry of Justice should announce the results of all its religious judicial hearings, this has not been done. The paper also said that judicial and non-judicial committees rarely announced their findings and regulations.”³³⁷)

Double Jeopardy

International law protects a person from being “tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”³³⁸ In Saudi Arabia, a verdict is final if the party against whom a verdict is rendered accepts it.³³⁹ In private rights cases, where other individuals, but not the state, pursue civil or criminal suits, a grant of pardon by the plaintiff, and, in public rights cases, an amnesty by the ruler, also terminate criminal action or a sentence.³⁴⁰

³³⁴ Human Rights Watch interview with Judge Abdullah al-‘Uthaim, Jeddah, December 9, 2006.

³³⁵ Human Rights Watch conversation with an armed guard in the Summary Court, Najran, December 13, 2006.

³³⁶ Human Rights Watch conversation with a court clerk (*katib qabd*) in the Summary Court, Najran, December 13, 2006, and Human Rights Watch interview with two judges of the Summary Court, Najran, December 13, 2006.

³³⁷ Raid Qusti, “Transparency, Accountability in Focus at Riyadh Forum,” *Arab News*, December 6, 2005.

³³⁸ ICCPR, art. 14.f. Article 19(a) of the Arab Charter on Human Rights provides that “No one may be tried twice for the same offence. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release.”

³³⁹ Law of Criminal Procedure, art. 213.

³⁴⁰ *Ibid.*, arts. 22 and 23.

Before a verdict becomes final, one or both parties to a suit at law, including the public prosecutor, can decide to appeal within a period of 30 days of the judge's issuing the verdict to the Court of Appeals, which may refer the case back to the lower court with a recommendation or reversal.³⁴¹ Otherwise, the Court of Appeals issues a final verdict where the "judgment is complete in every respect, and if urgent action is deemed necessary."³⁴² The Court of Appeals automatically reviews death sentences, and sentences of amputation.

The Law of Criminal Procedure makes an exception for appeals by the prosecutor or the civilian plaintiff (seeking a criminal conviction). Under Article 206 of the LCP, "Any of the litigants [have the right to] apply for reconsideration of any final judgment imposing punishment" in five situations relating to the availability of new evidence.³⁴³

Fahd told Human Rights that the *mabahith* of Najran arrested him and his brother Shakir in his home in June 2001. Police found an unlicensed and unloaded rocket-propelled grenade launcher (RPG) in his home. Fahd admitted to buying the weapon illegally. The judge sentenced Shakir to four years in prison, and Fahd, another brother, Musa, and a fourth defendant (not a family member) to five years. Fahd told Human Rights Watch,

A representative from the Ministry of Interior in Riyadh came two months before the end of my brother [Shakir]'s sentence to retry the case before the Ruler [*Wali al-Am*], so that we would receive the "right" sentence. We told the judge that we have been tried already and that he doesn't have the right to try us two times for the same crime.³⁴⁴

³⁴¹ Regulation of Cassation of Sharia Judgments, *Umm al-Qura Newspaper*, issue 3284, November 25, 1989, art. 1, and Law of Criminal Procedure, art. 194.

³⁴² Law of Criminal Procedure, art. 205. See also Regulation of Cassation of Sharia Judgments, art. 11.

³⁴³ Law of Criminal Procedure, art. 206.

³⁴⁴ Human Rights Watch telephone interviews with Fahd, Najran, November 10 and December 15, 2006.

Judge Muhammad al-`Amir of Najran, in a decision issued on May 12, 2006, wrote that he decided to transfer the case of Fahd, Shakir, and the third brother, Musa, to the appeals court, following the initial verdict issued by Judge Abdullah al-Dawud on November 29, 2001. In that verdict judge al-Dawud had convicted Musa for acquiring a weapon, Shakir for co-ordinating between Musa and Fahd, and Fahd for purchasing a weapon in Yemen. As a justification, judge al-`Amir wrote that he had studied a letter by the head of the Supreme Judicial Council (No. 4/2663 of February 11, 2004) concerning a case similar to this.³⁴⁵

Malfi al-Harbi detailed in *al-Riyadh* newspaper another case where a court retried and convicted a young man who had already served his prison sentence, because the judge considered the verdict too light. According to the report, the General Court of al-Rass issued two verdicts in the same case for the same defendant. One year after he had served his four-month prison sentence and flogging of 90 lashes had been carried out, for a transgression of public morality, the court sentenced him again for the same crime, this time to four years and 700 lashes.³⁴⁶ The judge based his decision to reopen the case on a letter with observations on the case by the head of the Supreme Judicial Council, dated September 27, 2006, by which point the first sentence had already been carried out.³⁴⁷

Summary Justice, Perverted Justice

In several cases documented below, detainees faced summary justice even when they had spent considerable time in prison before the court sentenced them. Detainees sometimes did not know the charges against them, and, when appearing in court faced summary rulings against them. The failure to inform defendants of the charges is against Saudi law.

The *mabahith* arrested Badi around June 2002, in Ra's Tannura in the Eastern Province, and took him to their detention facility in Dammam. Badi was a successful

³⁴⁵ Kingdom of Saudi Arabia, Ministry of Justice, Partial Court of Najran, Judge Muhammad al-`Amir, "Judicial Verdict," May 12, 2006.

³⁴⁶ Malfi al-Harbi, "Two Judicial Verdicts against Offender who had completed the sentence the first time," *al-Riyadh*, February 7, 2007, <http://www.alriyadh.com/2007/02/07/article222998.html> (accessed February 7, 2007).

³⁴⁷ *Ibid.*

businessman running a technical support company for construction work with contracts with Aramco, the Saudi oil company, and others. He told Human Rights Watch that at first he had no idea why the *mabahith* arrested him. The *mabahith* investigator proceeded to question him about a phone interview he had given to Al Jazeera a year-and-a-half earlier, at the time of mass arrests of Ismailis in Najran. Badi, who is Ismaili, said that he had contacted Al Jazeera when he got news of the events in Najran and was subsequently persuaded to give an interview.

Badi described what happened after his arrest:

I was taken to a cell, alone, underground, and talked to nobody except for my interrogator and, twice, the judge. It was miserable and I began talking to the ants in my cell. You couldn't go to the toilet more than twice, you couldn't drink water when you wanted, so every time the soldier let me, I drank as much as I could... After two months of interrogation, I was taken to the judge. Up to that point, the interrogator had not formally charged me. The judge asked me to confirm that I had talked to Al Jazeera. I did. Only then did the prosecutor present charges [of disobeying the ruler].³⁴⁸

Luqman, also from Najran, experienced a similar delay in being charged. He told Human Rights Watch that the authorities issued an arrest warrant for him in Najran around May 2001, but that he lived in Riyadh and was not detained until two years later, in May 2003. He said that in five meetings in Riyadh with Assistant Minister of Interior for Security Affairs Prince Muhammad bin Nayef during the period 2001–2003, he “just asked why I was writing bad words about the government, but he didn't arrest me.” Luqman explained that he had written “more than 20 telexes to the [Najran] Governorate and to the Ministry of Interior complaining about the settling of Yemeni tribes in the Shurfa area [of Najran].”

After two years in Riyadh, Luqman continued, “I was finally arrested in Riyadh, transferred to Najran after three days, and spent one month there at the *mabahith* detention facility. Then they flew me to Jeddah to meet a high-ranking official (*waki*)

³⁴⁸ Human Rights Watch interview with Badi, December 14, 2006.

in the Ministry of Interior, al-Rubai'i, who asked me the same questions about my writings. I stayed one month [confined to] a hotel there, and then was flown back to Najran, where I stayed another month [in detention] before being taken to court."³⁴⁹

Ebot, a Cameroonian national working without authorization in the country for six years, told Human Rights Watch that in January 2006 a Saudi man he vaguely knew had asked him to come to the Sofitel Hotel on Palestine Street in Jeddah to give information to the police about fellow Cameroonians whom the police were seeking on suspicion of fraud involving currency exchanges. He came voluntarily, he said, but the officers arrested him without informing him of the reasons. After three months of interrogation, beatings, and threats of sexual abuse, he said he agreed to sign a "compromise" statement admitting to receiving a few hundred Riyals for translation services for a fraudulent scheme of currency exchanges. Shortly afterward police from the criminal investigation department took him to Jeddah's Partial Court, where an official put his fingerprints on the statement. He did not see a judge, and, as of February 2007, he did not know what crime, if any, he was charged with or whether his arrest came as the result of a private claim against him.³⁵⁰ As of November 2007, Ebot had not been sent to trial.

Sharif, a Nigerian working without authorization in Saudi Arabia, described his experience in court on charges of making a fraudulent business proposition. At Sharif's third court session in April 2007, for the first time a translator was available to him, "who read from an Arabic paper with a police logo on it. But his English was so bad that I told him I didn't understand. The translator then said that the judge said that 'there is no need for you to understand; an answer of just "yes" or "no" to the charges is sufficient'." Sharif described what happened then:

After about six weeks I was taken to a secretary at the court to put my fingerprint on a large piece of paper ... and the secretary said, "It's your sentence." I was angry and demanded to see the judge. The judge told me, "Accept your verdict because then you will be included in a big [expected] amnesty." I said that I could not accept the verdict,

³⁴⁹ Human Rights Watch interview with Luqman, Najran, December 15, 2006.

³⁵⁰ Human Rights Watch telephone interviews with Ebot, Jeddah, February 20 and March 4, 2007.

because I did not understand anything at the court session. They brought a translator, who this time spoke good English, and who told me that the verdict said that my sentence was three years. I did not accept it, and the judge said it would go to the Court of Appeals for review. This was May 26. I have not heard anything since.³⁵¹

One detainee in al-Ha'ir Correctional Facility, Sa'd, described to Human Rights Watch what happened between his arrest and trial. "I've been here for theft and fighting. I spent two months in jail, then I was held here [at al-Ha'ir] for four months before I saw a judge. I never had a lawyer. They just showed me a paper and told me to sign it, but I don't know what it said. They said I confessed, and then the judge sentenced me to five years in prison."³⁵²

In October 2006, a judge sentenced a young woman from Qatif to 90 lashes for illegally mingling with the opposite sex. The young woman stated that she had met a man she vaguely knew in his car in a car park to retrieve a photograph of herself. She had recently married and did not want another man to have her picture. A gang of men then attacked them both, and brought her to another location, where they raped her. Up to the point of the judge's verdict, she was unaware of facing any charges herself, she told Human Rights Watch, although the judges had questioned why she had left the house at all in the first place.³⁵³ In November 2007 the judges of Qatif General Court increased the woman's sentence to six months in prison and 200 lashes. Court officials cited as reasons that she and her lawyer had spoken to the media. This second ruling greatly increased international attention to the case. On December 17, King Abdullah canceled the sentences of the young woman and the young man, but let their guilty conviction for illegal mingling stand.

³⁵¹ Human Rights Watch telephone interview with Sharif, Buraiman prison, Jeddah, September 4, 2007.

³⁵² Human Rights Watch interview with Sa'd, a detainee in al-Ha'ir Correctional Facility, November 30, 2006.

³⁵³ Human Rights Watch interview with the young woman from Qatif, Khobar, December 8, 2006.

VIII. Torture, Inhuman and Degrading Treatment

Under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it acceded in 1997, Saudi Arabia is obliged to “take effective legislative, administrative, judicial or other measures to prevent acts of torture”³⁵⁴ as well as to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.”³⁵⁵

Article 2 of the Saudi Law of Criminal Procedure establishes that persons arrested shall not be subjected to “bodily or moral harm” or “any torture or degrading treatment.”³⁵⁶ Article 35 formulates a positive obligation on officials to “treat [a person arrested in flagrante delicto] in a way to preserve his dignity.”³⁵⁷ However, Article 2 and subsequent provisions of the LCP do not define the terms “torture” and “degrading treatment” or provide legal sanction for practicing torture.

Due process rights are an important safeguard against ill-treatment in custody. Where detainees can exercise their right to communicate with the outside world, to appoint a lawyer, and to seek judicial review of the lawfulness of their detention, the risk that abuse during detention will be exposed becomes much higher.

But procedural safeguards alone are not enough to stop ill-treatment. Two other deterrent elements are important. First, the law should criminalize specific acts of ill-treatment and make inadmissible any evidence obtained from such practices.³⁵⁸ This is especially important to protect a detainee’s right not to incriminate him or herself. The UN special rapporteur on the independence of the judiciary remarked in his report on Saudi Arabia, “Reliance on confessional evidence exacerbates the

³⁵⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 2.

³⁵⁵ *Ibid.*, art. 16.

³⁵⁶ Law of Criminal Procedure, art. 2.

³⁵⁷ *Ibid.*, art. 35.

³⁵⁸ “Any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Convention against Torture, art. 15.

problems of prolonged detention, placing pressure on the investigator to obtain a confession from the accused.”³⁵⁹

Fair trial standards provide that, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.” Furthermore, “No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”³⁶⁰

Article 102 of the LCP seems to echo international legal prohibitions on mistreatment of prisoners, stating,

The interrogation shall be conducted in a manner that does not affect the will of the accused in making his statements. The accused shall not be asked to take an oath nor shall he be subjected to any coercive measures. He shall not be interrogated outside the location of the investigation bureau except in an emergency to be determined by the Investigator.³⁶¹

However, other sections of Saudi law open the door to such mistreatment. Article 34 of the LCP puts pressure on the suspect to confess, by continuing a suspect’s detention “if the accused fails to establish his innocence.”³⁶² Article 101 of the LCP suggests that in case of the defendant’s refusal “to sign [his or her statements under interrogation], a note to that effect shall be entered into the record.”³⁶³

Second, in international law prosecutors must pursue all incidents of ill-treatment and prosecute the perpetrators, notwithstanding their status, and judges must not

³⁵⁹ UN Commission on Human Rights, Report by the Special Rapporteur on the Independence of Judges and Lawyers, Civil and Political Rights, Including the Questions of Independence of the Judiciary, Administration of Justice, Impunity, Dato’ Param Kumaraswamy, E/CN.4/2003/65/Add.3, January 14, 2003, para. 100.

³⁶⁰ Body of Principles, principle 21.

³⁶¹ Law of Criminal Procedure, art. 102.

³⁶² *Ibid.*, art. 34.

³⁶³ *Ibid.*, art. 101.

shy from ruling against officials. The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations in 2000, known as the “Istanbul Principles,” provide authoritative guidance on what the obligation to investigate torture requires.³⁶⁴ International standards require that claims of ill-treatment are independently investigated to ensure that such investigations are thorough, effective, and credible.³⁶⁵ Principle 3b of the Istanbul Principles provides that persons “potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.” The Istanbul Principles further recognize that circumstances may dictate that investigations be carried out by independent commissions or similar entities.

The threshold for starting an investigation—“reasonable grounds”—does not require that the complainant or victim be able to adduce irrefutable evidence of torture. Article 13 of the Convention against Torture obliges states to “ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”³⁶⁶

Saudi law contains significant gaps in the investigation of claims of torture and ill-treatment, the protection of those who make such claims, and their right to a remedy. Article 38 of the LCP provides detainees with the right to submit complaints—presumably including complaints about torture under interrogation—to the Bureau of Investigation and Public Prosecutions. Prosecutors serve under the Ministry of Interior and are thus not fully independent of law enforcement authorities.

³⁶⁴ Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Principles), United Nations General Assembly Resolution 55/89, Annex 1, December 4, 2000.

³⁶⁵ The Convention against Torture, article 12, requires each state party to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.” According to the Istanbul Principles (principle 5(a)), an independent commission of inquiry is called for “[i]n cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons.”

³⁶⁶ The Convention against Torture, article 13, states, “Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

Finally, Article 14.1. of the Convention against Torture requires states to provide victims of torture redress, compensation, and rehabilitation.³⁶⁷

Coerced Confessions

In a procedure called “confirmation of statements” (*tasdiq al-aqwa*), a defendant is required to verify statements he or she made during interrogation. The defendant does not always see a judge during this process, which consists of affixing a fingerprint to written statements for authentication and later use in court, and often denotes the end of formal interrogation. Once verified, the statements are entered as evidence, and judges do not question their veracity.

Human Rights Watch learned of repeated and consistent accounts of how detainees were ill-treated and forced to sign confessions that were later used at trial.

At al-Hair prison, Human Rights Watch interviewed a group of eight prisoners who all said that interrogators had routinely beaten them at the police station—with ashtrays, shoes, fists, sticks, and electrical cables—in order to encourage quick confessions. They said that they were hung from their arms or legs and/or doused with cold water. One prisoner claimed that officers beat him so badly he was hospitalized, then beat him again when he was returned from the hospital.³⁶⁸ They also said that they had initially refused to confess to the crime they were accused of and had then been transferred to the criminal evidence (forensics) section, for further interrogation. Other prisoners at al-Ha’ir prison told Human Rights Watch that the criminal evidence (forensics) department, where their interrogations took place, was a separate “confession extraction center,” where the authorities send suspects who do not confess at the police station.³⁶⁹

The group of eight prisoners claimed that medical forms recording their injuries routinely represented their injuries as “occupational accidents.”³⁷⁰ The eight

³⁶⁷ Convention against Torture, art. 41.1.

³⁶⁸ Human Rights Watch interviews with detainees at al-Ha’ir Correctional Facility, November 30, 2006.

³⁶⁹ Ibid.

³⁷⁰ Ibid.

prisoners all agreed that the worst form of pressure came from the police using their families to force them to confess.³⁷¹

Refusing to confess also brought the prospect of solitary confinement at a police station in special 1 x 1.5 meter cells, prisoners in al-Ha'ir told Human Rights Watch.³⁷² In this cell block, solitary confinement stays ranged from nine days to three months. Most detainees claimed to have been detained there for periods of between one and two months.

One detainee in al-Ha'ir, Amjad, told Human Rights Watch how increasing pressure, including psychological and physical abuse, led him to confess. At the police station

they made my life difficult because I refused to confess. They accused me of rape, told me they had witnesses and laboratory evidence. "So why do you need me to confess?" I asked. At the police station, they kept me in a one-meter by one-and-a-half-meter room and said they would keep me there until I confessed. I spent two months isolated in that cell, chained to the bed for three days of the week, and I refused to confess. After the two months, they took me to the criminal evidence [forensics] section [*al-adilla al-jina'iya*]. The conditions were even worse than the prison. The cell was in a confined basement. I spent five days there and they beat me until I confessed. They beat me on my feet, under my feet; they whipped me on my back.³⁷³

When the *mabahith* interrogated Badi on charges of belonging to a political party, he told Human Rights Watch that he confessed under torture. After the holiday of Eid al-Fitr in January 1999,

They bent my right hand backwards, almost all the way, I was chained to the cell bars for three days. I got toilet breaks, but did not sleep. I

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Human Rights Watch interview with Amjad, a detainee in al-Ha'ir Correctional Facility, November 30, 2006.

did not see anyone else during that time. The cell was closed and there was a camera inside. The cell was one by two meters, without a toilet or a bed. At first I refused to answer their questions ... Then the *falaqa* [beatings on the soles of the feet] began. They put a stick over two desks, slipped it under my knees, with my arms tied below them. So I confessed. I spent four months in solitary confinement, and then went to a communal cell, with Afghanistan veterans. I did not pray, and they attacked me, so I went back into solitary. After one year, they released me.³⁷⁴

Jihad appealed his conviction in November 2006 for having met a suspected weapons smuggler, on the grounds that it was based solely on the general prosecutor's allegations, which repeated a confession coerced during interrogation. Human Rights Watch examined the appeal pleadings which set out his claim as to how *mabahith* officers attacked him, insulting, slandering and defaming him, kicking him in the face with heavy boots, then hitting him with a stick over all his body, before he was interrogated, and before he knew the reason for his arrest. During the interrogation, which lasted several weeks, law enforcement officers broke his jaw by inserting a boot into his mouth, and "until blood ran from his face and most of his body parts," according to a statement prepared by his lawyer.³⁷⁵

When Human Rights Watch met him, Fawwaz had been in Najran General Prison awaiting trial since his arrest on March 12, 2005, on charges of concealing a criminal. He told us that he does not deny that he met the cashier for al-Ahli company one week after the cashier stole money from the company, but said that he had no role in the theft. Fawwaz told Human Rights Watch that he was severely beaten during his three months in the Criminal Investigation Department (CID) where CID officers and the public prosecutor interrogated him. Besides beatings, he alleges officers deprived him of sleep for prolonged periods of time. He said he confessed as a result of torture, and had verified his statements in the confirmation of statements (*tasdiq*

³⁷⁴ Human Rights Watch interview with Badi, December 7, 2006.

³⁷⁵ Jihad, Appeal against judge Fahd bin Abdullah al-Saghir's verdict 179/2, November 2, 2006. Prepared by lawyer Isma'il.

al-aqwa) procedure. He was afraid the court would now use his notarized, but coerced statements.³⁷⁶

Usama told Human Rights Watch a similar story of a coerced confession later notarized in a quick court procedure. Police arrested Usama at a checkpoint shortly after an incident involving shots fired at a large demonstration outside the governor's residence in Najran in April 2000. Usama described sexual threats, insults to his faith, beatings, being forced into stress positions for extended periods, and sleep deprivation he endured seven years ago. He told Human Rights Watch,

I confessed that I shot in the air, that I set vehicles on fire. After I finished writing, a few minutes later, we went to the judge's house at one o'clock in the morning. We were in a minibus, and the judge came to the bus and asked me, "Are those your words?" I said, "it is my writing, but not my words, I was tortured," and pleaded with him to rescue me from the interrogation. He told me only to say the truth, and went away. All along, my interrogator was smiling at the judge and scowling at me, in the minibus.

Usama continued,

I went back to the *mabahith*. They made me stand for one entire day. The next day, my three interrogators and two others came into a room and started beating me. Then they started telling me the answers they wanted me to fill in. I wrote another set of words. Now it was that Abdullah and I had fired into the air. The next day, we went to the Summary Court, to another judge, who asked, "Are these your words?" This time, I said yes.³⁷⁷

Ebot, the Cameroonian national in jail since 2006, told Human Rights Watch that during his two months and 20 days at a police station, police officers twice beat him

³⁷⁶ Human Rights Watch telephone interview with Fawwaz, Najran, December 15, 2006.

³⁷⁷ Human Rights Watch interview with Usama, December 14, 2006.

so badly he required hospitalization. Ebot explained that the police brought him to the hospital's back entrance and told the nurse who treated him while he was in hand and foot shackles that Ebot had fallen in his cell. He said that he had confessed after the second beating and was taken to a court clerk at Jeddah's Partial Court on Tahliya Street two days later, where the clerk told him there was nothing he could do about his outwardly visible injuries. The clerk took Ebot's statement to a judge, returned it, and affixed Ebot's fingerprint as authentication.³⁷⁸

³⁷⁸ Human Rights Watch telephone interview with Ebot, March 4, 2007.

PART 3: NATIONAL SECURITY SUSPECTS

XI. Detention of National Security Suspects

Saudi Arabia's secret police (*mabahith*) keeps a large number of detainees in its own detention centers around the country, often arbitrarily, and largely beyond the reach of the law. This practice is not new.³⁷⁹ The recent growth in the number of detained national security suspects is linked to the series of bombings within Saudi Arabia that commenced in March 2003 and, more importantly, coinciding with the war and ensuing insurgency in neighboring Iraq. Besides potential domestic and international *jihadis*, national security suspects include political dissidents whose activities reached new heights with a series of petitions for change submitted to then-Crown Prince Abdullah since 2002.

Political Dissidents Detained Arbitrarily

Muhanna al-Falih had spoken publicly in favor of his relative, Dr. Matrook al-Faleh, a prominent advocate for constitutional and political reform arrested on March 16, 2004. The *mabahith* arrested Muhanna al-Falih on December 13, 2004, and he spent 10 months in detention without charge before being released. Al-Falih told Human Rights Watch that he owed his release to a royal amnesty.³⁸⁰

The *mabahith* arrested Da'ud in October 2004 for participating in a public demonstration in Riyadh that the London-based government opponent Sa'd al-Faqih had called for. Public gatherings in Saudi Arabia are prohibited, and official tolerance for private gatherings is decreasing.³⁸¹ Da'ud insisted that a public prosecutor interrogate, charge, and bring him to trial, and demanded access to a

³⁷⁹ In the mid- and late 1990s, a time of heightened tension between the Islamist opposition and the Saudi regime, the United Nations Commission on Human Rights decided to keep Saudi Arabia under special scrutiny. See Commission on Human Rights, States examined under the 1503 procedure by the Commission on Human Rights (up to 2005), <http://www.ohchr.org/english/bodies/chr/stat1.htm> (accessed March 19, 2007).

³⁸⁰ Human Rights Watch telephone interview with Muhanna al-Falih, Juf, November 29, 2006.

³⁸¹ Rasheed Abou-Alsamh, "Saudis cling to outlet for free expression. The kingdom has told some private discussion groups to register or quit altogether," *The Christian Science Monitor*, April 11, 2007.

lawyer. A former cellmate told Human Rights Watch Da'ud's demand for a trial may be the reason he is still in *mabahith* detention, since the prison administration responded harshly to his demands.³⁸²

Iman told Human Rights Watch that her husband, Bandar, was arrested on January 30, 2006, at his office in Mekka. She said he was sympathetic to the opposition movement headed by Sa'd al-Faqih in London. In December 2006 he had gone on hunger strike to demand a trial.³⁸³

Sabri has been in the *mabahith* prison since his arrest in his Riyadh apartment on October 13, 2005. His mother told Human Rights Watch that the *mabahith* raided their apartment in Juf and took mobile telephones and a computer. She later found out that the reason for Sabri's arrest was a commentary he had written on women protesting in front of the *mabahith* offices in Juf, on an internet site associated with al Qaeda.³⁸⁴

Counseling Instead of Trials

Those who find themselves under arrest by the *mabahith* suspected of considering, assisting with, planning, or undertaking violent acts may never actually be charged or face trial, and there may never be an independent determination that they are guilty of any offense or have committed any crime. Instead, rather than being faced with evidence of their wrongdoing in the course of a fair trial, they may be told that they are to undergo reeducation. The Ministry of Interior supervises a Consultation Committee that teaches detainees official interpretations of the conditions for armed struggle (*jihad*) to convince detainees that only jihad declared by the ruler is legitimate, as in Afghanistan in the 1980s, but not in today's Iraq or elsewhere. The problem, from a human rights perspective, is that outside of treatment for illness, there is no lawful ground in international law for detaining a person who has not been convicted, such as in order that they undergo a reeducation program. Such involuntary detentions are always arbitrary. Education programs, while they may

³⁸² Human Rights Watch interview with Zaid, Riyadh, November 30, 2006.

³⁸³ Human Rights Watch telephone interview with Iman, Mekka, December 3, 2006.

³⁸⁴ Human Rights Watch telephone interview with the mother of Sabri, Juf, December 5, 2006. The website, www.alqal3a.net, has posted messages from Osama bin Laden and his close associates.

form part of a post-conviction regime, cannot be forced upon persons whose guilt has not been established.

The Consultation Committee's head, Abd al-Rahman al-Hadlaq, told Human Rights Watch that research on national security prisoners revealed that the root of the problem is ideological.³⁸⁵ His goal was, he said, to "want them to love life, not death." To that end, security detainees, including those transferred to Saudi custody from the US detention facility at Guantanamo, undergo between one and three sessions each lasting two to three hours with a cleric and a psychologist, or they enter the larger classroom program in which 20 students spend two months receiving two lectures per day in 10 subjects, such as "the meaning of jihad," "the status of non-Muslims," "declaring a person an infidel (*takfir*; from *kufr*, unbelief)," and "basic psychology," among others. The latter program ends with an examination, and the instructors draw up evaluations and recommendations for the security forces. Al-Hadlaq did not explain how the committee determines who is eligible for this program.

Al-Hadlaq said that graduation from the program and a positive recommendation does not invariably lead to release. On the other hand, "many ask to participate," he said, "because they know that they won't be released without completing the program." Assistant Minister of Interior for Security Affairs Prince Muhammad bin Nayef told Human Rights Watch in December 2006 that the authorities have released more than 700 persons who had undergone the program.³⁸⁶ Al-Hadlaq said that over 2,000 persons had participated since the start of the program around mid-2004. By December 2007, 1,700 reportedly remained in the program in detention, and 1,500 had been released.³⁸⁷ The success rate, measured as those who no longer consider non-Muslims their enemies, was close to 90 percent, he said.³⁸⁸ Successful

³⁸⁵ Human Rights Watch interview with Abd al-Rahman al-Hadlaq, head, Consultation Committee (Ministry of Interior), Riyadh, December 1, 2006.

³⁸⁶ Human Rights Watch interview with Assistant Minister of Interior for Security Affairs Prince Muhammad bin Nayef bin Abd al-'Aziz, Riyadh, December 3, 2006.

³⁸⁷ Glen Carey, "Saudis Battle Bin Laden's Jihad With 150 Clerics, Art Classes," *Bloomberg.com*, December 12, 2007, <http://www.bloomberg.com/apps/news?pid=20601085&sid=ag7s5nUhz8nc&refer=europe> (accessed December 13, 2007).

³⁸⁸ Human Rights Watch interview with Abd al-Rahman al-Hadlaq, December 1, 2006. In later interviews with newspaper reporters, Ministry of Interior spokespersons said that the success rate was determined by recidivism of those released. In April 2007 there had been nine cases of former security detainees who had "reoffended." Richard Beeston, "A chance to start

completion of the program is a necessary, but not sufficient condition for release. Many detainees who reportedly received commendations from their instructors remain imprisoned.

Prince Muhammad bin Nayef further explained the reasons for taking such a pedagogic rather than legal approach: “We have extremists, but we shouldn’t make them more extreme. We should defuse them ... I want the person to come out of prison with less hate, accepting all nationalities. Maybe you see it from an American point of view where all have to go to court. You see, some of them are from tribes and their tribes may feel insulted if they see their names in a court. It’s a rehabilitation center.”³⁸⁹

Prince Muhammad and al-Hadlaq acknowledged that innocent persons could be detained. The determination of what activities are potentially harmful and what persons require reeducation in detention is made by the Ministry of Interior, based on “evidence” they have. There is no independent adjudication on a person’s guilt.

Asked if the program distinguished between those who harbored violent thoughts—protected under freedom of opinion unless expressed to directly and immediately incite acts of violence—and those who planned or carried out acts of violence, Prince Muhammad bin Nayef answered, “If you are a *takfiri*, there is little difference.” Judging from some of those detained, apparently no distinction is made between legitimate speech and unlawful instigation of or involvement in acts of violence: Walid al-Sinani, a religious figure who has called the Saudi government and its rule *kufri* (unbelief) has remained in detention without charge since 1995 and reportedly resisted attempts to change his opinion in an early version of the consultation program. In January 2003, Minister of Interior Prince Nayef bin Abd al-‘Aziz told Human Rights Watch that Sa’id bin Zu’air, a religious academic who at that time had been imprisoned since 1995, remained in detention because he refused to sign a statement “confessing” to having formed a society with others. Prince Nayef said that others, whose crimes were more serious than Zu’air’s, had signed confessions

again for the militants who would be model citizens,” *The Times* (London), April 2, 2007. Since then, the Ministry of Interior has said that 3,000 national security suspects had been detained. “Saudi Prince Rules Out Vote ...,” *The Washington Post*, July 3, 2007.

³⁸⁹ Human Rights Watch interview with Prince Muhammad bin Nayef bin Abd al-‘Aziz, December 3, 2006.

and been released without trial.³⁹⁰ The authorities released Zu'air later that year. On June 6, 2007, the *mabahith* rearrested Zu'air on suspicion of instigating violence via the internet.³⁹¹

Al-Hadlaq made a finer distinction, saying, “we only detain persons if they act on their opinions, by jihad, financing, or encouraging others to practice jihad by glorifying it.” The program’s lead psychologist, Dr. Turki al-Otiyan, said, “Through the internet, some people do bad things and we have to detain them, because they have a problem in their head.”³⁹²

One former detainee, Zaid, told Human Rights Watch how the *mabahith* arrested him in Riyadh based on a commentary he had written on the website of government opponent Sa’d al-Faqih in London, *islah.net* (now defunct). His 200-word contribution criticized the Council of Senior Religious Scholars. Zaid said that he participated in the consultation program on two days, describing the teachers as “mercenaries.” “The psychologist wanted clearly to show that I was mentally ill,” he said. “The shaikhs wanted to show that I was ill-guided in religion. It was all a bit of a joke and didn’t change what I thought.” Zaid said that he didn’t mind the program, but that he was especially glad not to have been sent to court because he “didn’t want to be sentenced by these harsh Islamist judges to a long sentence. In the end, I got out after 5 months and 15 days, maybe because my father knows Prince Muhammad bin Nayef.”³⁹³

Detention Without Trial of Suspected *Jihadis*

Security suspects often find themselves detained on allegations of having committed an offense, but are never charged with an actual offense and never have their day in court to prove that the evidence against them is inadequate. In effect,

³⁹⁰ Human Rights Watch interview with Minister of Interior Prince Nayef, Riyadh, January 26, 2003.

³⁹¹ “Sa’id bin Zu’air Among the 11 Financiers and Instigators Recently Arrested Whose Arrest Will Lead us to Uproot Terrorism”, *Al-Riyadh*, June 13, 2007, <http://www.alriyadh.com/2007/06/09/article255945.html> (accessed July 25, 2007). A person who spoke to bin Zu’air’s family told Human Rights Watch that the authorities arrested bin Zu’air for failing to disclose that his son-in-law, a wanted terrorist suspect, had visited him at home. Human Rights Watch interview with Saudi intellectual, Riyadh, March 13, 2008.

³⁹² Human Rights Watch interview with Turki al-Otiyan, Riyadh, December 1, 2006.

³⁹³ Human Rights Watch interview with Zaid, November 30, 2006.

security detainees are often held without trial, on allegations but not evidence. For example, Yazid has been in *mabahith* custody since December 10, 2004. He underwent the consultation program “a long time ago,” indicating passage of more months than he could easily remember, and received a “good report from the committee,” according to his brother, Sultan. His brother said Yazid was accused of wanting to help those going to Iraq for jihad, but that there had been no judicial proceedings.³⁹⁴ According to Sultan, another man, Darwish, asked Yazid to provide a passport for a 17-year-old to travel to Iraq, although Yazid was in no position to comply with his request even if he had wanted to.³⁹⁵

Fathi has been in al-Ha’ir’s *mabahith* prison since about September 2003. His apparent offense was that he had made a telephone call to a neighbor, Harun, whose name appeared two months later in a governmental list of most wanted terrorists.³⁹⁶ A relative said his family petitioned the Ministry of Interior for the release of Fathi, and “the Ministry of Interior said that [Assistant Minister of Interior for Security Affairs] Prince Muhammad bin Nayef had ordered speedy trials, but nothing has happened.”³⁹⁷

Mu’tasim has been in the *mabahith*’s Prison 37 in Dammam since his arrest on March 28, 2004. His brother Adib told Human Rights Watch that his family had innocently housed a wanted Bosnian man and the man’s pregnant wife and child after some neighbors pleaded with them, saying the man had come for Hajj (pilgrimage) but was unable to return to his country due to his wife’s medical complications. Security forces later killed the Bosnian man in Riyadh.³⁹⁸ Despite Prince Muhammad bin Nayef’s instructions of November 29, 2005, to refer Mu’tasim to court, no action has been taken, Adib said. In December 2006 Mu’tasim went on hunger strike to demand his release or trial.³⁹⁹

³⁹⁴ Human Rights Watch telephone interview with Yazid, Buraida, December 14, 2006.

³⁹⁵ Ibid.

³⁹⁶ Human Rights Watch telephone interviews with a relative of Fathi, November 23 and December 7, 2006.

³⁹⁷ Ibid.

³⁹⁸ Al Qaeda in the Arabian Peninsula’s Second-in-Command was a Moroccan named Yunis al-Hayari, who entered the kingdom on a Bosnian passport with his Bosnian wife. Saudi security forces killed al-Hayari in Riyadh on July 3, 2005, about one year after the alleged events described here took place.

³⁹⁹ Human Rights Watch telephone interview and email exchange with Adib, Dammam, November 29 and December 2, 2006.

Muhammad Salih al-Hamili was arrested on November 19, 2004, at his home after he brought a wanted man to the Buraida hospital, where he is a nurse, for treatment. His wife, Rima Abd al-'Aziz al-Juraish, told Human Rights Watch that he is now in Buraida's *mabahith* prison and that the sheikhs of the Consultation Committee have visited him, but that he has not appeared before a judge. She does not know whether he has been sentenced.⁴⁰⁰

Several more family members of those currently imprisoned contacted Human Rights Watch, all telling a similar story of prolonged detention without trial. Some family members acknowledged sympathy or involvement with the Iraq insurgency on the part of their husbands or sons, while others protested the innocence of their relatives. All said they despaired of learning why or for how long their relative was being detained.

Suja, a Brazilian, has not seen her Saudi husband, Bashir, since he was arrested on June 17, 2003, from his office in Dammam on the pretext that an injured party to a traffic accident had filed suit against him. Suja, who had left for a family visit to her native Brazil days earlier with their newborn child, said her husband called her in Brazil about every two weeks, although there have been interruptions. She said that the authorities have not charged him with a crime or brought him before a court in over three-and-a-half years. "He is stubborn and has a big mouth," Suja told Human Rights Watch. "He is not shy about speaking his mind and he told me he will never accept what the religious authorities who visit him in jail try to convince him of." Suja said that her husband, who graduated from the University of New Mexico in 2001 and is religiously observant, was imprisoned for suspected contacts with violent extremists. She added that he has asked for, and been denied, access to legal counsel, although his interrogators frequently promised him that he would be taken to court "soon."⁴⁰¹

⁴⁰⁰ Human Rights Watch telephone interview with Rima Abd al-'Aziz al-Juraish, Buraida, November 29, 2006.

⁴⁰¹ Human Rights Watch telephone interview and email exchange with Suja, Goiaña, Brazil, February 8 and 15, 2007.

Mabahith Prison Oversight

Mabahith detention centers do not appear to be subject to any independent or judicial oversight. Judges and prosecutors do not venture there, Muhsin, a former judge told Human Rights Watch.⁴⁰² Another former judge, Isma'il, shook his head in disbelief when he heard that Hamad Jarba, the head of the Prison Supervision Department of the Bureau for Investigation and Public Prosecutions (the public prosecutor's office), had told Human Rights Watch that staff of his department visit all prisons, including *mabahith* prisons, twice a week to ensure there are no violations of the law, such as torture or excessive delays awaiting trial.⁴⁰³

Family visits take place at the discretion of the detention authorities. A relative told Human Rights Watch that the wife and children of Majid have not been able to see him for over a year. The relative said Majid, who was arrested in Jordan on his return from Afghanistan in 2003 and deported to Saudi Arabia, had "recanted" his views in meetings with the Consultation Committee.⁴⁰⁴

Suja told Human Rights Watch that her parents-in-law can usually visit their son every two weeks, but that there have been interruptions.⁴⁰⁵ Even where visits are possible, they take place in the immediate presence of an armed guard.⁴⁰⁶ Commonly, no visits are allowed in the first months during interrogation.⁴⁰⁷

Families of detainees also told Human Rights Watch of their failed efforts to learn of what lies ahead for their loved ones. Ministry of Interior officials, they say, promise an impending release or an imminent transfer to court. More often, families meet a wall of silence in response to their enquiries and petitions for clemency (*istirham*).⁴⁰⁸ Nawwaf's mother said that she called Ibrahim al-Muhanna, a senior official in the Ministry of Interior, almost every day and that he told her that "in the computer there

⁴⁰² Human Rights Watch interview with Muhsin, December 6, 2006.

⁴⁰³ Human Rights Watch interviews with Hamad al-Jarba, November 29, and Isma'il, December 7, 2006.

⁴⁰⁴ Human Rights Watch telephone interview with a relative of Majid, Jeddah, December 5, 2006.

⁴⁰⁵ Human Rights Watch telephone interview and email exchange with Suja, February 8 and 15, 2007.

⁴⁰⁶ Human Rights Watch telephone interview with Mamduh, Riyadh, December 5, 2006.

⁴⁰⁷ Human Rights Watch telephone interview with 'Aisha, wife of Rabah, Fuwailiq, December 8, 2006.

⁴⁰⁸ *Ibid.*

is no problem except that he went to Iraq without telling us.”⁴⁰⁹ Syrian authorities arrested Nawwaf in December 2003 and detained him for five months before deporting him to Saudi Arabia. His mother says the then-17-year-old only spent one week in Iraq before trying to return home. He was detained in al-Ha’ir *mabahith* prison and then in Juf, where his family home is. Jamila told Human Rights Watch that she had “sent over 100 telegrams to Ibrahim al-Muhanna” to inquire about the fate of her husband, Karim. The *mabahith* arrested Karim on October 12, 2005, in Baha, saying he belonged to a “deviant group.” His wife did not receive a reply.⁴¹⁰

Human Rights Watch also spoke to relatives who said their loved ones were serving sentences, implying that they had received a trial, or who said that they had appeared at least once before a judge to confirm statements they had made during interrogation. Nawwaf’s mother said that early in July 2004, shortly after his arrival in Juf, around 40 days after being deported from Syria to Saudi Arabia, he confirmed statements in front of a judge, but that no further court appearance date was set or had taken place since.⁴¹¹ Husam told Human Rights Watch that he appeared at the Lesser Court in Riyadh’s Murabba district five months after his arrest to confirm his statements. About a month later, he said, the judge “accused and sentenced me to six months for causing sedition and problems” and released him for time served.⁴¹² Others, like Banda and Bashir, have gone on hunger strike to demand their prompt release or trial. The Arab Commission for Human Rights reported that on July 8, 2005, a group of prisoners in the *mabahith* prison in Abha, in the southern ‘Asir province, demanded their prompt release or referral to court, and that on July 19, 30 prisoners in Juf’s *mabahith* prison went on hunger strike demanding that prisoners kept beyond the expiry of their sentences be released and that those in detention for more than one year be tried.⁴¹³

⁴⁰⁹ Human Rights Watch telephone interview with the mother of Nawwaf, Juf, December 21, 2006.

⁴¹⁰ Human Rights Watch telephone interview with Jamila, wife of Karim, Baha, December 8, 2006.

⁴¹¹ Human Rights Watch telephone interview with the mother of Nawwaf, December 21, 2006.

⁴¹² Human Rights Watch telephone interview with Husam, Riyadh, December 5, 2006.

⁴¹³ Arab Commission for Human Rights, “Strangulation of Mabahith Prisoners in ‘Asir Continues,” July 13, 2005, <http://www.achr.nu/new852.htm> (accessed July 26, 2007); and Arab Commission for Human Rights, “For the Second Time within Two Months, 30 Prisoners Begin an Open-ended Hungerstrike in al-Juf’s Mabahith Prison,” November 20, 2005, <http://www.achr.nu/new900.htm> (accessed July 26, 2007).

The “Forgotten” Shia

One distinct group of prisoners whom Saudi authorities never charged or brought to trial are Shia Saudis arrested on suspicion of involvement in attacks on June 25, 1996, in Khobar that killed 19 US military personnel and injured 350 people. Some had been arrested before the attacks, after the discovery of explosives in a car, while others were swept up in the immediate aftermath of the attacks. A federal indictment in the US handed down on June 21, 2001, names the following Saudi persons, among others who remain at large, as being involved in the 1996 Khobar bombings: Mustafa al-Qassab; Salih Ramadhan; Ali al-Marhun; Husain Al Mughis; Mustafa al-Mu'allim; Al-Sayyid Fadhil al-'Ulawi; and Abdullah al-Jarrash. They are all in the *mabahith* prison in Dammam, after spending up to nine years in al-Ha'ir *mabahith* prison without charge or trial.

The US indictment for the Khobar bombings also lists another Saudi, Hani al-Sayigh. Canadian authorities arrested al-Sayigh in 1997 and deported him to the US, which in turn deported al-Sayigh to Saudi Arabia on October 11, 1999, prior to the federal prosecutor's indictment in 2001. Al-Sayigh has remained detained without trial in Saudi Arabia ever since.⁴¹⁴

The *mabahith* arrested Abd al-Karim Nimr on November 5, 1999. Nimr had returned to Saudi Arabia in 1994 from exile after the current minister of labor, Ghazi al-Qusaibi, reached an agreement with the Shia political opposition abroad and the king promised to release political prisoners, restore travel rights, and curb discriminatory language or practice by officials.⁴¹⁵ Despite these assurances, however, the authorities arrested Nimr on his return from exile and conducted a “thorough interrogation” for seven months, his brother Abdullah Nimr told Human Rights Watch. The interrogation focused on his role in the Hezbollah of the Hijaz, or Saudi Hezbollah, while abroad.⁴¹⁶ After his release, Nimr led a quiet life until his arrest in 1999, three years after the Khobar bombings, his brother said. Abdullah al-Nimr told Human Rights Watch that a Ministry of Interior official “unofficially” told him that

⁴¹⁴ “Halt El Sayegh Deportation to Saudi Arabia. Saudi Promise Not to Torture Insufficient,” Human Rights Watch news release, October 5, 1999, <http://hrw.org/english/docs/1999/10/05/saudia1759.htm>.

⁴¹⁵ International Crisis Group, “The Shiite Question in Saudi Arabia,” Middle East Report N° 45, September 19, 2005, p. 3.

⁴¹⁶ Human Rights Watch interview with Abdullah al-Nimr, brother of Abd al-Karim al-Nimr, Qatif, December 18, 2006.

Nimr's arrest is connected to the Khobar bombings. Nimr is not listed in the US indictments.⁴¹⁷

According to a letter dated December 5, 2004, which Human Rights Watch has reviewed, the Social Affairs Committee of al-Ha'ir *mabahith* prison paid the equivalent of \$5,400 to Nimr's wife apparently for sustenance, noting that he "has not been sentenced."⁴¹⁸ On November 1, 2004, the family retained Saudi lawyer Sulaiman al-Rashudi as legal counsel. Al-Rashudi's efforts, as well as the many letters the family sent to the National Society for Human Rights, the minister and assistant minister of interior, and the king, did not lead to Nimr's indictment or release from prison.⁴¹⁹

Not all Shia security detainees linked to the Khobar bombings remained in prison without trial. A brother of Hani al-Sayigh, Muhammad al-Sayigh, told Human Rights Watch that the *mabahith* arrested him in September 1998 and asked questions "mostly about Hani."⁴²⁰ Interrogators said that Muhammad al-Sayigh had carried a Kalashnikov and an M-16 in Lebanon, and about seven months after his arrest, a judge sentenced him to four years in prison and 700 lashes, noting that "you are a Shia. Your creed is infidel. If it were up to me, I would sentence you to death," and that Muhammad al-Sayigh had "begun to love Iran more and more." The authorities released him after another brother met with Prince Muhammad bin Nayef, assistant minister of interior for security affairs.⁴²¹

Muhammad Sayigh and another brother we spoke with had not been able to determine whether US officials had visited Hani while in detention in Saudi Arabia, since a *mabahith* official is present at all times during their meetings and they understood that such questions were off limits. The US never made public the guarantees it claimed to have sought and received from Saudi Arabia, prior to

⁴¹⁷ Ibid.

⁴¹⁸ Letter from the Social Affairs Committee of al-Ha'ir Correctional Facility concerning Payments to the Wife of Abd al-Karim al-Nimr, December 5, 2004.

⁴¹⁹ Human Rights Watch interview with Abdullah al-Nimr, December 18, 2006.

⁴²⁰ Human Rights Watch interview with Muhammad al-Sayigh, Qatif, December 17, 2006.

⁴²¹ Ibid.

Sayigh's deportation in 1999, that he would not be mistreated and would receive a fair trial. The Sayigh brothers told Human Rights Watch that Hani compared his treatment in al-Ha'ir *mabahith* prison favorably with what he received earlier in the United States or later in Dammam's *mabahith* prison, where the authorities transferred him on April 19, 2005.⁴²² At the time of Sayigh's deportation from the US, CNN quoted Interior Minister Prince Nayef as saying that his government had "specific evidence and information that confirm the involvement of Al-Sayegh in the unjust terrorist act in the city of Khobar about three years ago."⁴²³ In July 2001, shortly after the US indicted Sayigh, the *New York Times* quoted Prince Nayef as saying that those indicted, including Sayigh, would be tried "very soon" in a Saudi court.⁴²⁴

Nearly six years later, Saudi Arabia has yet to bring those it arrested in connection with the 1996 Khobar bombings to trial. In a recent development, the authorities granted furlough to Abdullah al-Jarrash in June 2005, and to Ali al-Marhun in September 2006, to attend a family wake before returning them to prison. Assistant Director of Prisons for the Riyadh region Muhammad Sayyid bin Nasir told Human Rights Watch that every prisoner has a right to go on furlough of up to three days for the death, marriage, or severe illness of a close relative.⁴²⁵ In 2005 the decision to move the Shia Khobar bombings suspects from Riyadh to Dammam, granting furlough, and the expectation of an amnesty on the occasion of Crown Prince Abdullah's accession to the throne in August 2005 raised the families' hopes that a trial or release were forthcoming.

Unlike their Sunni counterparts, these nine Shia suspected of violent crimes cannot hope that the experts of the Consultation Committee will test their disposition to violence and write them a favorable report, possibly speeding up their release should they find no inclination or plans to violence. Al-Hadlaq told Human Rights

⁴²² Ibid.

⁴²³ "Departed Khobar bombing suspect arrives in Saudi Arabia. Al-Sayegh, 30, says he was not involved in the Khobar Towers bombing," *CNN.com*, October 11, 1999, <http://edition.cnn.com/US/9910/11/khobar.suspect/index.html> (accessed February 21, 2007).

⁴²⁴ Neil MacFarquhar, "Saudis Say They, Not U.S., Will Try 11 in '96 Bombing," *New York Times*, July 2, 2001.

⁴²⁵ Human Rights Watch interview with Muhammad Sayyid bin Nasir, assistant director of prisons for the Riyadh region, al-Ha'ir Correctional Facility, November 30, 2006.

Watch that no Shia had participated since the program began in 2003.⁴²⁶ Abdullah Nimr confirmed to Human Rights Watch that the Committee did not visit his brother.⁴²⁷

⁴²⁶ Human Rights Watch interview with Abd al-Rahman al-Hadlaq, December 1, 2006.

⁴²⁷ Human Rights Watch interview with Abdullah al-Nimr, December 18, 2006.

PART 4: ORGANIZATION OF THE SAUDI JUDICIARY

X. Recent Developments in the Court System

In 2005, as Saudi Arabia was negotiating its accession to the World Trade Organization with US backing, officials announced a significant restructuring of the judiciary by instituting specialized courts, codifying elements of a penal code, and moving towards institutionalizing rules of precedent. The primary focus of a new Law on the Judiciary, finally published on October 1, 2007, lay in the restructuring of the court system. “The government hopes to speed up cases and ensure fair and equitable results through the new judicial system having specialized courts in labour, commercial, domestic law and criminal cases,” one reporter wrote.⁴²⁸

Under the new, amended Law on the Judiciary, the old Supreme Court, the Supreme Council of the Judiciary, loses its powers of adjudication and becomes responsible for appointing judges and inspecting their work. The judiciary law expands the number of courts of appeals from two to 13 (one for each region) and establishes new courts:

- A Supreme Court, which assumes the appeals court duties of the Supreme Council of the Judiciary for *hudud* and *qisas* cases, and, additionally, becomes an appeals court for decisions of the lower courts of appeal where the grounds for appeal are that the lower courts violated Sharia provisions or statutory laws, that a lower court was not duly constituted or lacked jurisdiction, or where it misrepresented facts.⁴²⁹
- New, specialized courts including personal status, traffic, commercial, and labor courts (the latter two having previously been executive tribunals located within ministries).

⁴²⁸ Sabria S. Jawhar, “Specialization, legal precedent to make a difference in courts,” *Saudi Gazette*, April 4, 2005, republished as “Saudis Introduce Legal Precedence in ‘Sweeping Judicial Reforms,’” *Global News Wire - Asia Africa Intelligence Wire*, reproduced in BBC Monitoring/BBC, April 4, 2005.

⁴²⁹ Law of the Judiciary, art. 11, published in *al-Watan*, October 3, 2007.

The king announced a budget of \$1.8 billion for building the new courts and training new and old judges.⁴³⁰

The new Law of the Judiciary of October 2007 nominally granted the courts greater independence. It cancelled a provision in Article 20 of the old Judiciary Law that allowed the executive to interfere directly in judicial proceedings. If the minister of justice “does not approve” of a decision by the Court of Appeals,

he shall remand it to the [court’s] General Panel for further deliberation. If the deliberation does not result in reaching a decision acceptable to the Minister of Justice, the matter shall be referred to the Supreme Judicial Council for determination, and its decision on such shall be considered final.⁴³¹

The new law also gives the Supreme Judicial Council powers to supervise courts and promote or discipline judges, which had previously fallen to the Ministry of Justice. The office of the inspector of the judiciary was also moved from executive control under the Supreme Judicial Council.⁴³² Despite these improvements, the judiciary’s independence remains insufficiently protected. The Ministry of Justice maintains financial and administrative control over the judiciary, and the king appoints the heads of the Supreme Judicial Council (of which the chief prosecutor and a representative of the Ministry of Justice are ex-officio members), and of the Supreme Court.⁴³³

Changes to the court system were in part inspired by the high caseloads of judges. *Al-Hayat* newspaper quoted the Justice Ministry’s legal adviser Ashraf Siraj as saying that each judge has between 15 and 20 cases on his docket every day.⁴³⁴ A 2003

⁴³⁰ Tariq Alhomayed, “The Judiciary is the Gateway to Reform,” *Asharq Alawsat* (English Edition), October 3, 2007, <http://www.asharqalawsat.com/english/news.asp?section=2&id=10420> (accessed October 18, 2007).

⁴³¹ Law of the Judiciary, art. 20.

⁴³² Human Rights Watch is grateful to Saudi criminal law expert Dr. Abdullah Fakhri Ansary for additional comments on the new Law of the Judiciary.

⁴³³ *Ibid.*, arts 71, 5, and 10.

⁴³⁴ Sa’ud al-Tayawi, “20 Cases Daily for Each Judge, and 745,000 a Year, Because of the Population Increase and its Expanding Usage [رُقْعَةٌ] in Our Country,” *al-Hayat*, October 9, 2006.

study of Saudi Arabia's judicial structure observed that the "number of judges per hundred thousand citizens is 4.2 in the Kingdom, whereas it is 27.76 in Egypt, 41.77 in France, 43.5 in Germany, 55.17 in Britain and 22.8 in the US."⁴³⁵ Saudi Arabia has just 662 active judges working in over 266 courts for a population of 21 million, in addition to an estimated 5.5 million legal and up to several million undocumented foreigner residents.⁴³⁶ By far the two busiest jurisdictions are Riyadh and Mekka, which includes Jeddah. In the *hijri* year 1426 (2005-6), 18 judges in Riyadh's Summary Court considered 26,298 cases, averaging 1,461 cases per judge per year. Of these cases, 9,837, or 37.4 percent, were criminal cases, and judges issued a verdict or decision in 6,376 cases.⁴³⁷ Prior to the new law the country's only two appeals courts were also located in Riyadh and Mekka.

Until the new courts become functional, Saudi Arabia will retain its current structure of courts of first instance, general courts, and two appeals courts. Summary (also known as Lesser or Partial) Courts take on criminal cases and civil cases where the disputed amount is below SAR 20,000 (\$5,400).⁴³⁸ General Courts, or Greater Courts, take on a limited number of criminal cases involving *hadd* and *qisas* punishments. Under the new Law of the Judiciary, the Summary Courts will become criminal courts, and the General Courts will become civil courts.

Many Saudis, including high officials, told Human Rights Watch that stresses on the judicial system, such as the high caseloads, resulted from the increase of foreigners working and living in the kingdom. Ministry of Justice statistics tell a different story: Saudis commit more crimes than foreigners in all Saudi regions and in almost all categories of crime, with very few exceptions (in Mekka and Jazan, foreigners commit more thefts).⁴³⁹ The number of cases reaching Saudi courts peaked in 1424, declining

⁴³⁵ Ibrahim Al-Esa and Abdullah An-Nassiry, "The Legislative and Judicial Structure in the Kingdom of Saudi Arabia, Executive Summary," December 25, 2003. The study was prepared in light of Saudi Arabia's negotiations to join the World Trade Organization, which it joined in December 2005.

⁴³⁶ Ministry of Justice, *Book of Statistics, 2005-2006*, http://www.moj.gov.sa/Layout/showpage.asp?art_id=377 (accessed April 24, 2007), pp. 5 and 12.

⁴³⁷ *Ibid.*, p. 76.

⁴³⁸ Human Rights Watch interview with Yasir Khuja, December 11, 2006. The law cites the value as SAR10,000. Law of Procedure before Shari'a Courts, art. 31.

⁴³⁹ Ministry of Justice, *Book of Statistics, 2005-2006*, p. 14. Foreigners legally and illegally residing in Saudi Arabia make up roughly one third of the population. Foreigners are predominantly young adult workers, and mostly male, which would put

by 5.2 percent in 1425 and again by 6 percent in 1426, while the number of foreigners has not declined.⁴⁴⁰

Judicial Training Institute

Prior to 2000, the king could appoint any person deemed to have sufficient qualifications to the position of judge, whereas today the king can only appoint judges who have trained at the High Judiciary Institute. Former judge Abd al-'Aziz al-Qasim told Human Rights Watch that judges "receive three years training on the job," during which they "perform administrative tasks," without substantive legal training. After that, "they are appointed as assistant judges (*qadi mulazim*)" and are usually posted to a position outside the big cities, where they begin to adjudicate cases. Al-Qasim said that "supervision over judges' work is only pro forma, not substantive. There is an inspector who every year will conduct a review of verdicts, but only along formal lines."⁴⁴¹ The High Judiciary Institute's president, Zaid Abd al-Rahman al-Zaid, told Human Rights Watch that of the 100 current students at the institute, 70 were assistant judges, the remainder being individuals who had an interest in pursuing further education in the institute's two main areas of study, comparative jurisprudence and Sharia public policy (*siyasa shari'a*).⁴⁴² Under a new Cabinet order on judicial training, al-Zaid said, judges "are appointed assistant [*mulazim*] judges, spend two years in the institute where they obtain a Master's degree, and then do one year's practical training. They do not work as judges throughout those three years, whereas previously they could work as judges right away during their three-year practical training."⁴⁴³ Arif al-Ali, a professor at the institute, told Human Rights Watch that in 2006 the institute added a new comparative law course that touches on human rights. Among the topics studied under the two courses "Introduction to Regulations" are international human rights

them in the categories of those most likely to commit crimes, whereas over half the Saudi population is children under age 18. Also less likely to commit crimes are the elderly, and Saudi women whose movements are severely restricted.

⁴⁴⁰ Ibid., p. 16.

⁴⁴¹ Human Rights Watch interview with Abd al-'Aziz al-Qasim, December 6, 2006. He lost his judgeship for his membership in the Committee for the Defense of Legitimate Rights.

⁴⁴² Human Rights Watch interview with Zaid al-Zaid, university professor, Riyadh, December 19, 2006.

⁴⁴³ Ibid.

treaties and their implementation.⁴⁴⁴ Al-Zaid added that students also study comparative law, including Egyptian and French civil and criminal codes.⁴⁴⁵

While no women studied at the institute, al-Zaid saw no legal barrier to their future participation, but explained instead that, “the facilities [for ensuring segregated instruction] are not there.”⁴⁴⁶ Regarding the absence of Shia students studying at the institute, al-Zaid explained that instruction touches upon all four Sunni and two Shia schools of legal thought, but that “there are no Shia who study here.”⁴⁴⁷ The two Shia courts in Saudi Arabia handle chiefly cases of marriage, divorce, inheritance for up to two million Shia Saudis in the Eastern Province, but do not have jurisdiction over criminal or other civil cases. Al-Zaid said that the institute was the oldest judicial training institute in the Arab world, founded in 1965.⁴⁴⁸ Al-Zaid did not answer a question regarding the geographical provenance of students. Najran and the Eastern Province are home to most of Saudi Arabia’s Shiites, and the Western Hijaz has not traditionally followed the Wahhabi Hanbali jurisprudence. Critics frequently accuse the judiciary of recruiting only from Qasim and Riyadh provinces, the historic Wahhabi heartland. One critic remarked, “For every 25 judges from al-Qasim, there are 24 from Riyadh, and one other one. But we cannot question discrimination.”⁴⁴⁹

According to one source, the number of judges has more than doubled from 900 in 2002 to 1,844 in 2006. Ministry of Justice statistics listed 662 active judges in 2005/2006 (see above). To reach the average ratio internationally for the number of judges per 100,000 persons, the kingdom would require over 5,200 judges.⁴⁵⁰

⁴⁴⁴ Human Rights Watch interview with ‘Arif al-Ali, university professor, December 19, 2006. Al-Zaid provided Human Rights Watch with a course outline for the human rights module. It contained, among other subjects, UN human rights treaties and the Special Procedures of the UN Human Rights Council.

⁴⁴⁵ Human Rights Watch interview with Zaid al-Zaid, December 19, 2006.

⁴⁴⁶ Ibid.

⁴⁴⁷ Ibid. Al-Zaid clarified, “The two Shia judges in the two Shia personal status courts in Qatif and Hofuf must have been appointed before the time of the High Judiciary Institute,” when the king could appoint judges who had not undergone training at the Institute.

⁴⁴⁸ Ibid.

⁴⁴⁹ Human Rights Watch interview with Zhafir al-Yami, lawyer, Riyadh, November 30, 2006. Al-Yami is an Ismaili Shia originally from Najran.

⁴⁵⁰ Hamad al-Jumhur, “New and Complete Laws Covered Litigation Procedures in All Branches. The Judiciary in King Fahd’s Era Enjoyed Special Attention Represented by the Completion of the System of Judicial Laws,” *al-Riyadh*, August 8, 2005, http://www.alriyadh.com/2005/08/08/article86249_s.html (accessed August 7, 2007). Musa bin Marwa, “Global Average Is

XI. Bureau of Investigation and Public Prosecution

In 1989 the government created the Bureau of Investigation and Public Prosecutions, although the Bureau was not fully established until 1995.⁴⁵¹ The law, which declared that Bureau members have “full independence” and are subject only to the “provisions of the Islamic Sharia and statutory laws,”⁴⁵² nevertheless located the prosecution service administratively within the Ministry of Interior.⁴⁵³ The Bureau’s lack of actual independence becomes apparent upon reading the law governing it. The minister of interior nominates the chief prosecutor.⁴⁵⁴ He chooses and appoints members of the Bureau Management Committee.⁴⁵⁵ He has the right to order this Committee to initiate investigations.⁴⁵⁶ In addition, he has the power to inflict disciplinary measures on the Bureau’s members.⁴⁵⁷

Practice bears out the Bureau’s lack of independence. A recent media report quotes Minister of Interior Prince Nayef bin Abd al-‘Aziz as ordering the prosecution service to investigate certain cases previously dealt with by the CPVPV.⁴⁵⁸ The administrative location of the Bureau in the Ministry of Interior—rather than the Ministry of Justice—may have contributed to what the Bureau’s head said was an absence of proceedings against officials for their wrongdoing.⁴⁵⁹ According to the UN Guidelines

26 Judges for Every One Hundred Thousand and in the Kingdom Only Four. Number of Judges Raised to 1844, and Saudi Needs 5213,” *al-Watan*, October 31, 2006, <http://www.alwatan.com.sa/daily/2006-10-31/local/local01.htm> (accessed August 7, 2007).

⁴⁵¹ Human Rights Watch interview with former prosecutor (name withheld), New York, May 25, 2007.

⁴⁵² Law of Investigation Authority and Prosecution General, art. 5. In this report, we refer to the agency as the Bureau of Investigation and Public Prosecutions.

⁴⁵³ Human Rights Watch interview with Shaikh Muhammad Al Abdullah, November 29, 2006.

⁴⁵⁴ Law of Investigation Authority and Prosecution General, art. 10.

⁴⁵⁵ *Ibid.*, arts. 4(a) and 4(b).

⁴⁵⁶ *Ibid.*, art. 4(c)(2).

⁴⁵⁷ *Ibid.*, art. 26.

⁴⁵⁸ “Prince Nayef Directs Bureau of General Investigation and Prosecution to Begin Investigations in Molestation Cases,” *Al-Sharq al-Awsat*, May 25, 2006, <http://www.aawsat.com/details.asp?section=43&issue=10040&article=364801&search=قضايا%20المعاكسات%20وما%20شابهها&state=true> (accessed March 15, 2007).

⁴⁵⁹ “There was, for example, one case where a person [in prison] said that he was mistreated and the evidence was cigarette burns on his chest and streaks on his back, and a committee investigated that, and the forensic doctor found that they were self-inflicted. We spoke to the whole [prison] ward. [Human Rights Watch asks: We have many reports of abuse in prison, why do you only have one case of an investigation?] Maybe something happens but we have not proved it. Maybe the investigation

on the Roles of Prosecutors, “Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.”⁴⁶⁰ While Saudi public prosecutors only rarely bring criminal charges against officials, such as in two recent cases involving deaths in CPVPV custody, a specialized prosecution service within the Board of Grievances (see below) has prosecuted officials for abuse of power, one of the crimes over which the board has jurisdiction (see Appendix).⁴⁶¹

XII. Board of Grievances

The Board of Grievances, a tribunal “directly linked to the king”⁴⁶² and whose judges the king appoints and fires, has jurisdiction to hear complaints filed by private citizens. These complaints can include unlawful administrative decisions (though not injuries suffered as a consequence) and violations of Saudi laws, including suits for compensation as a result of injury suffered from such violations.⁴⁶³ There is a rather broad exception, however. The Board may not hear cases where the ruler invokes sovereign rights, even if there appears to be a violation of a law.⁴⁶⁴ In addition, the Board decides contractual disputes where the government is a party.

took place at the branch level and was not reported to us here at the head quarters.” Human Rights Watch interview with Ibrahim Juhaïman, head of the prosecutions department within the Commission for Investigations and Public Prosecutions, Riyadh, November 29, 2006. “We receive about 800 complaints of abuse in a six-month period.” Human Rights Watch interview with Hamad Jarba, head of the prison inspection department within the Commission for Investigations and Public Prosecutions, Riyadh, November 29, 2006. In response to further questioning from Human Rights Watch it emerged that there was no system for deciding which complaints a branch level prosecution office should refer to the headquarters of the prosecution service.

⁴⁶⁰ Guidelines on the Role of Prosecutors, guideline 15.

⁴⁶¹ *Arab News* reported that “the Board of Grievances in al-Juf sentenced five officers of the anti-drug department to 18 months after being convicted of misusing their power and allegedly beating to death a Saudi citizen.” P.K. Abdul Ghafour, “Security Officers Warned Against Abuse of Power,” *Arab News*, March 14, 2007.

⁴⁶² Law of the Board of Grievances, *Umm al-Qura Newspaper*, issue 2918, May 22, 1982, art. 1 (unchanged in updated law of 2007).

⁴⁶³ *Ibid.*, art. 8, (article 13 in updated law).

⁴⁶⁴ *Ibid.*, art. 9 (article 14 in updated law). For an example of a human rights violation where the Board declined to hear a legal challenge, see Human Rights Watch, Letter to King Abdullah Regarding the Illegal Imposition of Travel Bans, February 9, 2007, <http://hrw.org/english/docs/2007/02/09/saudia15305.htm>.

Under a new Law on the Board of Grievances promulgated on October 1, 2007, the Board lost jurisdiction over cases of bribery, embezzlement, and fraud. Otherwise, the new law continues the provisions of the old law.

However, the new law of the Board of Grievances structures the court differently, dividing the existing two tiers of trial and appeals chambers into three levels comprising the Supreme Administrative Court, the Administrative Appeals Courts, and the Administrative Courts. The new Board of Grievances law implicitly acknowledges rules of precedent for cases under its jurisdiction.⁴⁶⁵

The new Law of the Board of Grievances abolishes the Board's internal prosecution department, the Bureau of Supervision and Investigations, for cases against public employees, usually for embezzlement or abuse of power, or labor disputes, as well as three crimes regulated by statutory law against any person, regardless of whether he or she is a public employee: bribery, forgery, and impersonating a public official. Jurisdiction over these crimes has been moved to the new criminal courts of first instance. Under the old law complaints seeking disciplinary action against government officials were rare. In one recent case that resulted in prosecution, *Arab News* reported in March 2007 that "the Board of Grievances in al-Juf sentenced five officers of the anti-drug department to 18 months after being convicted of misusing their power and allegedly beating to death a Saudi citizen."⁴⁶⁶

It remains unclear how a prisoner detained beyond the expiry of his or her sentence can file a grievance against the detaining authority. Under Article 13 of the new Law of the Board of Grievances, an administrative decision includes instances where the administrative authority refuses to, or abstains from taking a decision it should by law have taken.⁴⁶⁷ Under that definition, a prisoner could sue the prison authority or the Bureau of Investigation and Public Prosecutions for their failure to take the administrative decision to release him or her after the prison term has expired. The prosecution's internal Bureau Management Committee, however, retains disciplinary jurisdiction over its prosecutors. In situations where prosecutors fail in their

⁴⁶⁵ Law of the Board of Grievances, 2007, art. 11.e., published in *al-Watan*, October 3, 2007.

⁴⁶⁶ P.K. Abdul Ghafour, "Security Officers Warned Against Abuse of Power," *Arab News*, March 14, 2007.

⁴⁶⁷ Law of the Board of Grievances, 1982, art. 8 (article 13 in updated law).

administrative duty to release prisoners who are detained without any legal basis, the ability of a wronged prisoner to seek redress in the Board of Grievances conflicts with the powers of the Bureau Management Committee, which has sole power to discipline errant prosecutors.

Lawyer Ahmad bin Khalid al-Sudairi caused a stir when he sued the Ministry of Justice before the Board of Grievances over what he claimed were unlawful articles of the Executive Regulations for the Law on the Procedure Before Sharia Courts. The minister of justice, in response, questioned al-Sudairi's standing before the Board of Grievances. Lawyer Khalid Ahmad 'Uthman in turn argued that al-Sudairi had standing to challenge the lawfulness of the regulation because, as a lawyer, such regulations directly affect his work and his suit seeks to prevent harm resulting from its unlawful application. Such application, he argued, falls under the category of "administrative decisions," and therefore the Board of Grievances has jurisdiction.⁴⁶⁸

'Uthman's interpretation leaves open citizens' challenges to a number of Saudi administrative decisions. Challenges to the constitutionality of statutory laws, however, are not possible as long as the ruler followed all required procedures in passing them. The Board of Grievances' jurisdiction under its new law has yet to be tested.

⁴⁶⁸ Khalid Ahmad 'Uthman, "Al-Sudairi's Law Suit and Judicial Review of Executive Regulations," *Eqtisadiyah Newspaper*, March 29, 2007.

RECOMMENDATIONS

Human Rights Watch recommends that Saudi Arabia initiate reforms in four areas of its criminal justice system to strengthen due process and fair trial rights in compliance with international human rights law and standards.

First, the Saudi cabinet should pass, amend and rescind laws and decrees as necessary to bring Saudi Arabia into compliance with international human rights law, including by enacting a penal code that allows detainees to challenge the lawfulness of their detention, and prohibits jailing persons solely for indebtedness.

Second, the Ministry of Interior and the Bureau of Investigation and Public Prosecution should make changes in its practices when arresting and interrogating a person, to ensure greater transparency and prevent ill-treatment of detainees.

Third, the Ministry of Justice and the Supreme Judicial Council should strengthen the rights of defendants to ensure they can get a fair trial, including by providing defense lawyers free of charge to indigent defendants and allowing defendants to effectively challenge the evidence against them.

Fourth, the Saudi government should remove the prosecutorial offices from the control of the Ministry of Interior, and remove the power to arrest, detain, and release suspects from the prosecution.

Changes to Law

- Accede to the International Covenant on Civil and Political Rights, its additional protocols, and the Optional Protocol to the Convention Against Torture.
- Draft and adopt a Penal Code that states clearly and accessibly what acts constitute criminal offenses.
 - The Penal Code should not criminalize the exercise of rights protected under international human rights law;

- The Penal Code should unambiguously criminalize use of torture and cruel, inhuman and degrading treatment or punishment. It should also provide punishment for those persons who, in their capacity as government officials, commit such offenses.
- Prohibit the detention or imprisonment of persons solely for their inability to fulfill a contractual obligation or to pay a court-imposed fine or court-mandated damage award.
- Vest the power to remand in custody in a judge or an independent judicial officer, excluding prosecutors or law enforcement officers.
- Provide detainees, including foreigners detained by the Passports Department and all persons in *mabahith* prisons, with the legal right to challenge the lawfulness of their detention in an independent court.
- Rescind Ministry of Interior Decree No. 1245, of October 1, 2002, specifying major crimes that require mandatory pretrial detention, and amend Article 112 of the Law on Criminal Procedure accordingly. Allow only judges to determine pretrial detention on a case-by-case basis.
- Rescind Royal Decree 7560/Ba/Mim, of July 11, 2005, allowing for the imprisonment of security suspects for up to one year without trial, and all other laws, regulations, orders and decrees that contradict the Law of Criminal Procedure and violate the prohibition against arbitrary arrest.
- Allow witness testimony without discrimination on the basis of sex, age, religion, race, or nationality.

Rights in Detention

Interrogation

- Promptly, and prior to interrogation, allow the detainee to communicate with legal counsel of his or her choice, and inform him or her of this right at police stations, CPVPV stations, *mabahith* offices, and other custodial settings of law enforcement agencies.
- Videotape, date, and serialize all interrogations, and make those tapes available to the detainee and his or her counsel.
- Before interrogation, inform the defendant of the right not to incriminate him or herself.

- Do not require a detainee to pledge to abstain from certain acts or perform certain acts as a condition of release, unless such a pledge is part of a formal, judicially-sanctioned agreement and does not in any way inhibit the exercise of the detainee's human rights.

Transparency

- Provide detainees with a list of lawyers operating in the area, and allow detainees to engage a lawyer of their choice.
- Provide detainees and their legal counsel with access to their court and prosecution files while in detention.
- Give defendants or their legal counsel copies of all written material pertaining to their case, with translation services if necessary.
- Provide detainees with access to Saudi statutory laws and prevalent interpretations of Sharia criminal law, including the Ministry of Justice's new compendium of legal opinions.

Trial Protections

- The lawyers' association within the Saudi Chambers of Commerce should form a committee to act as a resource for discussion of Saudi criminal law, training of lawyers in criminal law, and outreach to the public.
- Institute a public defender program, linked to the lawyers' association, for detainees who cannot afford to hire a lawyer, and a quick referral system to competent criminal defense lawyers with adequate resources to mount an effective defense.
- Allow the defendant and his or her counsel adequate time to study the charges and evidence against him or her before proceeding with a hearing of the evidence and pleadings.
- Ensure that witnesses for the prosecution and defense actually appear in court so defendants may cross-examine them.
- Issue guidelines for introducing evidence, including guidelines for assessing the credibility of witnesses.
- Issue sentencing guidelines, including on the meaning of guilt proven beyond reasonable doubt for discretionary sentences.

Institutional Changes

- Remove the Bureau for Investigation and Public Prosecution from the administrative control of the Ministry of Interior and other law enforcement agencies.
- Task judges or other independent judicial officers, excluding prosecutors, with a review of the decision to charge a suspect and to remand him or her in custody.

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We would like to express our sincere thanks to those Saudi and foreign nationals who mustered the courage to contact us during our visits to the kingdom to share their stories. Many turned to Human Rights Watch for lack of other effective means of redress. With few exceptions they expressed fear of government retaliation for speaking to Human Rights Watch. To protect these persons, some of whom are in detention, we have substituted pseudonyms for their real names.

Joe Stork, acting director of the Middle East and North Africa Division and Ian Gorvin, senior program officer in the Program Office, edited the report. Aisling Reidy, senior legal advisor, provided legal review. Amr Khairy, Arabic language website and translation coordinator, provided assistance with translation into Arabic. Assef Ashraf and Ross Halbert, associates for the Middle East and North Africa Division, prepared this report for publication. Additional production assistance was provided by Andrea Holley, director of publications, Grace Choi, publications specialist, and Fitzroy Hepkins, mail manager.

Appendix: Human Rights Watch Discussions with Officials of the Government of Saudi Arabia, Riyadh, March 8-15, 2008

The Human Rights Commission of Saudi Arabia invited Human Rights Watch to visit Saudi Arabia from March 8 to 15, 2008, to discuss with government officials, prior to publication, four Human Rights Watch reports on aspects of the human rights situation in the kingdom, including this report. Human Rights Watch wishes to express its sincere appreciation to Shaikh Turki bin Khalid al-Sudairi, the Commission's president, and Dr. Zuhair al-Harithi, a board member, for their efforts to arrange and facilitate this dialogue, involving representatives and experts from eight ministries. This is the first time among countries in the Middle East and North Africa region that the government has engaged with us in open discussions at this level and on this scale regarding Human Rights Watch's findings and recommendations, and interpretations of law. In addition to ministerial experts, we met with 10 of the 18 members of the Commission's board, many of whom have held high positions in relevant ministries in the past.

On February 26 we had sent the Commission a full copy of this report in English and Arabic, in addition to copies of earlier written communications with Saudi ministries seeking clarification on particular cases, points of law, or policy.

During our discussions, several experts clarified that the testimony of a woman or that of a non-Muslim is generally admissible in criminal matters, although an adviser in the office of the minister of justice qualified this principle by pointing out that a woman's testimony would be given only half the weight of a man's testimony.

A former adviser to the minister of justice clarified that in cases of imprisonment for debt, it is up to the claimant to prove that the debtor possesses sufficient funds to satisfy the alleged debt before a judge can order that person to be held in custody (tahaffuz) pending trial.

Former and current Ministry of Justice officials were unable to specify the precise nature of crimes such as witchcraft, disobedience to the ruler, or sedition.

A representative of the Bureau for Investigation and Public Prosecution told Human Rights Watch that all communication between a detainee and his or her lawyer is confidential (see section on Right to Inform Others of One's Arrest). He further explained that all criminal charges against a suspect are supposed to be made in writing and at the beginning of the interrogation, which has to take place within 48 hours of arrest in cases of flagrante delicto, and within 24 hours of executing an arrest warrant in all other cases. He also explained that the legal basis for the detention of national security suspects without trial beyond the six-month maximum as stipulated in the Law of Criminal Procedure, is vested in the powers of the ruler, that is, the king: under Saudi interpretation of Sharia, the ruler is considered, in addition to his executive functions, to be a source of legislation as well as of adjudication.

This representative, as well as a former prosecutor, explained that, as a result of new decrees codifying drugs- and weapons-related crimes issued about two years ago, it is no longer the case that the judge adjudicates guilt and the ruler sets the punishment. Now the judge issues both a verdict and a sentence.

The officials and Human Rights Commission board members emphasized that Saudi Arabia is a developing country whose justice system continues to evolve. They made this point to explain that the Ministry of Interior continues to house the Bureau for Investigation and Public Prosecution since, as a new department, the prosecution office needed to project executive power. Our interlocutors expressed great hope in current efforts by the Council of Experts, a body that the Council of Ministers has tasked with drafting laws, to codify criminal law and to produce a written penal code. They could not set an expected timeframe for concluding this endeavor.