



Arbitrary Detention in Saudi Arabia: A Crime against Humanity?

29 November 2012

Table of Contents

1	THE SAUDI CRIMINAL JUSTICE SYSTEM	4
1.1	SHARIA AND ITS ROLE	4
1.2	DECREES AND THE BASIC LAW OF 1992	4
1.3	THE ABSENCE OF A CRIMINAL CODE.....	4
1.4	APPLICABLE NORMS	5
2	INTERNATIONAL LAW APPLICABLE TO SAUDI ARABIA IN THE MATTER OF ARBITRARY DETENTION	5
2.1	ARBITRARY DETENTION IN INTERNATIONAL LAW	5
2.2	THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND PEREMPTORY NORMS OF INTERNATIONAL LAW (JUS COGENS)....	5
2.3	ARBITRARY DETENTION IN THE UNITED NATIONS SYSTEM.....	6
2.4	ALKARAMA AND THE QUESTION OF ARBITRARY DETENTION IN SAUDI ARABIA	7
2.5	UNFULFILLED COMMITMENTS AND SYSTEMATIC VIOLATIONS	7
3	THE DEPRIVATION OF LIBERTY AND CRIMES AGAINST HUMANITY	8
3.1	DEFINITION OF A CRIME AGAINST HUMANITY.....	8
3.2	IMPRISONMENT AS A CRIME AGAINST HUMANITY	10
3.3	ARBITRARY DETENTION IN SAUDI ARABIA: CONSTANT SOURCE OF CONCERN FOR UN BODIES.....	11
4	ARBITRARY DETENTION IN SAUDI ARABIA: A CRIME AGAINST HUMANITY?	11
4.1	REPRESSION OF ALL POLITICAL EXPRESSION, DEMANDS AND ACTIVITIES	11
4.2	THE MAGNITUDE OF ARBITRARY DETENTION IN SAUDI ARABIA	14
4.3	ARBITRARY DETENTION OF HUMAN RIGHTS DEFENDERS AND POLITICAL DISSIDENTS: A SYSTEMATIC PRACTICE?	15
5	CONCLUSION	16

"We, women of Saudi Arabia. We, wives, daughters, sisters and mothers of political prisoners detained in the prisons of Saudi Arabia call upon you. You are our last hope as most of the scholars and imams of Saudi Arabia have turned their backs on us, either because they obey or fear the Interior Ministry. Most of the men and women who supported us ended up in prison or continue to be persecuted. (...) Not knowing when they will be released; not knowing why they are in prison; lacking any sentence against them... this is the fate of most political prisoners in the Kingdom"

Letter by 500 women, relatives of individuals arbitrarily detained in Saudi Arabia, sent in the summer of 2012 to the country's Ulemas requesting their support in obtaining the release of their loved ones.

Alkarama has been working on the issue of arbitrary detention in the Middle East and North Africa since 2004. Since its establishment that year, our organization has documented thousands of cases of individuals arbitrarily deprived of their liberty by their governments and submitted hundreds of these cases to the United Nations Human Rights Council's Special Procedures.

The situation in Saudi Arabia in the past few years has become a major concern for our organization due to the massive scale of the human rights violations being committed in a State which almost completely disregards its obligation to respect the civil and political rights of its population. The phenomenon of arbitrary detention in Saudi Arabia is only comparable to the situation in the jails of Hosni Mubarak's Egypt, at the time filled with tens of thousands of administrative detainees.

The situation in Saudi Arabia is all the more preoccupying as it seems not to worry the international community, even when we today speak of more than 30,000 people detained arbitrarily in the Kingdom. Despite the constant efforts of our organization and numerous other international NGOs, we have not seen any positive evolution of the situation in recent years.

Saudi Arabia's failure to cooperate with the Human Rights Council's Special Procedures demonstrates a clear lack of political will to truly respect its international obligations. Despite their formal pledges to collaborate with the UN procedures, the absence of any responses by the Saudi authorities to communications by the Working Group on Arbitrary Detention and to requests for country visits by the various UN experts is flagrant.

The great majority of cases received by Alkarama in recent years are of individuals arrested and detained for having called on their rulers to undertake constitutional reforms to grant the population greater civil and political rights or for having expressed criticism of the government's policies.

A new phenomenon, rarely seen before in the country, is the occurrence of peaceful protests by the families of detainees calling for the respect of their loved ones' right to know the reasons for their detention or for them to be released. The systematic repression of these protests by the authorities, especially in light of the rapidly evolving regional context, raises serious doubts about the political will of the authorities to undertake any constructive dialogue to improve the human rights situation in the country and to conform to its international obligations.

Its persistence, its massive and systematic character as well as the profile of those subjected to arbitrary detention raises the question of how to qualify this practice under international law. This report has no other goal than to raise awareness of the extent of this practice in Saudi Arabia and to open a debate about the phenomenon, in particular whether it fits within the definition of a crime against humanity as described in article 7 of the Rome Statute of the International Criminal Court.

Following a brief presentation of the Saudi criminal justice system and of the notion of arbitrary detention in international law, the report will address the elements constituting a crime against humanity in view of the Rome Statute. The last section opens the debate as to whether the practice of arbitrary detention in Saudi Arabia could be qualified as such, illustrated by the cases Alkarama has treated.

1 The Saudi Criminal Justice System

1.1 Sharia and its role

Article 1 of the 1992 Basic Law enshrines the Qur'an and the tradition of the prophet as the country's constitution: "The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. *Its constitution is Almighty God's Book, The Holy Qur'an, and the Sunna (Traditions) of the Prophet (PBUH)*. Arabic is the language of the Kingdom. The City of Riyadh is the capital."

The application of Sharia, which can differ depending on the legal schools, requires a level of expertise in Islamic sciences which confers on the religious establishment a crucial role in the judicial system of the State, in particular when it comes to translating the principles of the Sharia into judicial decisions.

The Saudi monarchy, unlike other Muslim countries, never promulgated any complete legislation with regards to criminal matters. There is no criminal code which determines the limits to individual liberties by defining clearly what crimes are punishable, and what the corresponding sanctions for these crimes are.

1.2 Decrees and the Basic Law of 1992

In order to treat issues which were not directly covered by Islamic Law, the royal authorities have begun promulgating Decrees. Aiming to organize and rank the various decrees and rules which have been issued, King Fahd promulgated a "Basic Law" in 1992 which had many of the characteristics of a constitution, including a number of guarantees for defendants.

As part of these efforts aiming for development of legislation undertaken in the early 1990s, articles to reinforce the judicial system were adopted. Firstly, a "Board of Grievances" was created by decree in 1982, followed by the publication of a civil procedures code and a criminal procedures code which came into force in 2002. This code of 225 articles provides rules for issues such as preventative detention; it defines the competence of the different jurisdictions and the procedures to be followed in criminal matters.

1.3 The Absence of a Criminal Code

However, in practice, the judges apply this code only partially, if at all. Though the code provides certain minimum guarantees for defendants, it is still far from guaranteeing detainees their fundamental rights.

For example, it does not allow them to contest the legality of their detention before a court; it fails to guarantee access to a lawyer, contains no articles providing free judicial assistance to those in need and authorizes secret detention for 60 days.

The Code of Criminal Procedure provides the General Prosecutor, who is under the authority of the Ministry of Interior, with the power to deliver arrest warrants and prolong provisional detention for a period of up to 6 months without any judicial control. In practice, when a person is arrested they generally have no access to a lawyer and are not usually informed of the reasons for their detention. The judicial system continues to give primary importance to confessions as evidence, despite the large number of torture cases reported.

Alkarama in fact has been informed by detainees of the methods used to extract these confessions which are then used during trials, if these eventually take place. These methods include beatings, often using batons, over the whole body and in particular on the soles of the feet; sleep prevention; detention in isolation for long periods; detention in refrigerated or over-heated cells; suspension for long periods by the wrists or ankles; electrical shocks, etc. Furthermore, detainees who require medical assistance are rarely provided with it.

1.4 Applicable Norms

Though the government has adopted a code of criminal procedure, the absence of any criminal code constitutes one of the major obstacles to the respect by Saudi Arabia of its international human rights obligations. Because the definition of crimes is based on the interpretation of the Sharia by individual judges, the determination and the severity of the sentences can vary in accordance with the judges' interpretations, leading to serious judicial uncertainty.

In a number of situations, this absence of codification nurtures doubts and confusion as citizens do not know whether a particular action is considered punishable, why, and what sanction they are liable to incur. Furthermore, the sentences pronounced are not always written, nor is the person sentenced necessarily informed of the decision, which does not favour the transparency of judicial procedures.

This situation encourages, both in the law and in practice, arbitrary detention and the use of torture, and is clearly contrary to the relevant clauses of international law.

2 International Law Applicable to Saudi Arabia in the Matter of Arbitrary Detention

2.1 Arbitrary detention in International Law

Arbitrary detention is prohibited under international law by the Universal Declaration of Human Rights in its article 9 (no one may be arbitrarily arrested, detained or exiled). Article 9 of the International Covenant on Civil and Political Rights of 16 December 1966, which entered into force on 23 March 1976, defines the nature of arbitrary detention:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *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.*
3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

2.2 The Universal Declaration of Human Rights and Peremptory Norms of International Law (jus cogens)

Saudi Arabia abstained from the adoption of the Universal Declaration of Human Rights in 1948, holding that some of its provisions are contrary to Sharia. It has not ratified the International Covenant on Civil and Political Rights for the same reasons, and therefore has not expressed its consent to be bound by these international instruments.

Despite its reservations, Saudi Arabia is nonetheless bound to respect peremptory norms of international law (jus cogens). These norms are defined in article 53 of the [Vienna Convention on the Law of Treaties](#) of 23 May 1969, which Saudi Arabia joined in 2003:

For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

The prohibition of arbitrary detention constitutes a peremptory norm of international law, as was pointed out by the UN Working Group on Arbitrary Detention in its opinion [A/HRC/WGAD/2012/8](#) relative to cases of detention in Saudi Arabia submitted by Alkarama, in paragraph 29:

*(...) **the prohibition of arbitrary detention is part and parcel of customary international law** (see e.g. Opinions Nos. 15/2011 (China) and 16/2011 (China)). **The prohibition has been authoritatively recognized as a peremptory norm of international law or jus cogens** (see the established practice of United Nations bodies as expressed by the Human Rights Committee in its general comment No. 29 (2001) on derogations during States of Emergency, CCPR/C/21/Rev.1/Add.11, para. 11), the approach which this Working Group follows in its opinions. **Article 9 of the Universal Declaration of Human Rights prohibiting arbitrary arrest and detention is a deeply entrenched human rights norm reflected in both practice and opinio juris of States** (see, inter alia, International Court of Justice, Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment of 30 November 2010, ICJ Reports 2010, para. 79; Separate Opinion of Judge Cañado Trindade, pp. 26-37, paras. 107-142).*

2.3 Arbitrary Detention in the United Nations system

The UN Working Group on Arbitrary Detention was created by Resolution 1991/42 of the Commission on Human Rights to combat this practice, which is still widely practiced throughout the world, and is particularly acute in countries governed by authoritarian regimes.¹

Composed of [five independent experts](#), among other things the WGAD is mandated to investigate arbitrary deprivations of liberty in the world, and act on information brought to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to governments. The Working Group has identified five categories of arbitrary detention that violate the main international human rights conventions in force today:

Category 1. *When there is no legal basis for the deprivation of liberty (for example when a person is kept in detention after completion of the sentence, if he or she has never been charged or tried or despite the existence of an amnesty law applicable to him or her).*

Category 2. *When a person is detained for exercising the rights and freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (for example signing a petition calling for constitutional reforms).*

Category 3. *When a person has been deprived of his or her liberty following a trial that did not meet the standards of a fair trial enshrined in the Universal Declaration of Human Rights and other relevant international instruments (for example being denied the right to consult a lawyer).*

Category 4. *When asylum seekers, migrants and refugees are subjected to prolonged administrative detention without possibility of administrative or legal recourse.*

Category 5. *When the deprivation of liberty constitutes a violation of international law relating to discrimination based on birth, social origin, ethnic or national origin, religion, economic status, political or other opinion, gender, sexual orientation, disability or other status, and which has the purpose or may result in disregarding the equality of human rights.*

¹ The Working Group on Arbitrary Detention was created by the Commission on Human Rights resolution No. 1991/42. Its mandate was further clarified and extended by resolution 1997/50 of the Commission, and extended for a new three-year period by resolution 15/18 adopted on 30 September 2010.

2.4 Alkarama and the Question of Arbitrary Detention in Saudi Arabia

Since its foundation, Alkarama has been particularly concerned with the question of arbitrary detention in the Arab world, where it has documented thousands of cases of persons arbitrarily deprived of their liberty or detained without trial or legal process, either because of political opinions or under various pretexts such as the fight against terrorism.

In Saudi Arabia, a country that is particularly affected by this scourge, Alkarama has identified several thousand cases in recent years, and submitted a large number of these to the United Nations Special Procedures. In particular, our organization has been commissioned by victims or their relatives to submit hundreds of these cases to the Working Group on Arbitrary Detention. With respect to Saudi Arabia, the Working Group has rendered 33 opinions regarding 60 people over the past 8 years, each time confirming the validity of our actions and the arbitrary nature of the reported detention.

Amongst the recurrent problems relative to arbitrary detention in Saudi Arabia reported by our organization, we have identified the following trends:

- The victims are arrested without being informed of the reasons for their arrest.
- The victims are not formally charged or brought before a judicial authority.
- The detainees are not informed of the duration of their detention before judgment.
- The detainees are not permitted to consult or choose a lawyer or counsel of their choice; they do not have the ability to see the evidence against them, if it exists.
- The detainees are not able to contest the validity of their detention before an independent judicial authority.
- Inmates do not know that they must be brought before a court and in the cases where they are to be judged, the dates of their trials are not communicated to them. When trials do take place, they fail to meet the minimum standards for a fair trial (lack of lawyer, trials held in secret, exclusive use of confessions extracted under torture or duress, lack of access to the prosecution's case, the inability to appeal the judgement).
- Some detainees continue to be held after the expiration of their sentence.

The violations identified in the cases received by Alkarama confirm the concerns of the Special Rapporteur on the Independence of Judges and Lawyers during his visit to Saudi Arabia in 2002 ([E/CN.4/2003/65/Add.3](#)). The Special Rapporteur noted in his conclusions many points of concern regarding the independence of the judiciary in the country. Among these points, many concerns related to legal loopholes favoring the practice of arbitrary detention, confirming the violations identified by Alkarama:

The interference of the judicial authorities (para. 85), unequal treatment based on the interpretations of judges (para. 88), the absence of lawyers and adequate defence for the accused (para. 91) the imbalance between the rights of the prosecution and the accused (para. 96), preventive detention extending beyond legal limits (para. 97), and the importance given to confessions as proof (para. 100).

The compilation prepared by the Office of the High Commissioner for Human Rights in view of the Universal Periodic Review of Saudi Arabia on 20 November 2008 ([A/HRC/WG.6/4/SAU/2](#)) confirms these concerns and notes no improvement in the situation in recent years. It is recalled that "CAT was concerned about allegations of prolonged pre-trial detention beyond the statutory limits prescribed by law, at the limited degree of judicial supervision of pre-trial detention and about reports of incommunicado detention. The Working Group on Arbitrary Detention adopted a number of Opinions where it concluded that the Government deprived individuals of their liberty in contravention of the Universal Declaration of Human Rights" (para. 29).

2.5 Unfulfilled Commitments and Systematic Violations

A member of the Human Rights Council since 2006, Saudi Arabia committed in its voluntary pledges addressed to the UN Secretary General "[to spare no effort to contribute to the activities and deliberations of the Council to protect and promote the rights of man.](#)" However, in practice, the large

number of human rights violations documented by Alkarama depict a reality far removed from the goodwill expressed in that document, particularly where it concerns the issue of arbitrary detention.

Saudi Arabia is not a party to major international instruments, including the International Covenant on Civil and Political Rights. The Kingdom reported in 2002 on the occasion of the visit of the Special Rapporteur on the Independence of Judges and Lawyers its intention to consider ratification of the Covenant (para. 12). In its national report to the Universal Periodic Review examined by the Human Rights Council in 2008 (A/HRC/WG.6/4/SAU/1, para. 18) the government stated that although Saudi Arabia is not yet party to the International Covenant on Civil and Political Rights, many of the provisions of the Covenant were being applied. Despite this, Saudi Arabia is still not a party to the international treaty.

The attitude of Saudi Arabia with Special Procedures mandate-holders also indicates a lack of willingness to cooperate with the mechanisms of the Human Rights Council, despite being a member. It has not issued a standing invitation for mandate-holders to visit the country, and the last visit by a mandate-holder was in 2008 (by the Special Rapporteur on Violence against Women, its Causes and Consequences). Requests by six other mandate holders are unanswered; in particular, neither the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions (2005), nor the Special Rapporteur on Torture (2006, renewed in 2007), nor the Working Group on Arbitrary Detention (2008) have been allowed to visit the country.

During the period covered by the first Universal Periodic Review of Saudi Arabia in 2008, a total of 47 communications concerning 99 people were submitted to the government. The State only responded to 13 of these. To the low rate of response from the authorities (27%) are added the insufficiency and relevance of arguments invoked by the State; the UN Working Group on Arbitrary Detention has found that it is not provided concrete responses to its questions, and that "the Government is itself satisfied of providing the Working Group with generalities and not concrete information." ([A/HRC/13/30/Add.1–Opinion 22/2008 Al Alouane](#), p. 36, para. 11)."

Saudi Arabia has a very weak criminal justice system. Despite the reforms undertaken in the early 2000s, it very clearly fails to meet international standards governing arrest, detention and judgment procedures, as well as the rights of detainees. It continues to operate largely in secret on a summary basis and promotes impunity for human rights violations. The security forces hold sweeping powers to detain suspects and deny them basic rights. Alkarama is greatly concerned by the unwillingness displayed by Saudi Arabia to undertake the necessary actions to improve the situation and to comply with its international obligations, despite the repeated requests to do so made to it by various United Nations bodies, other States, and non-governmental organizations.

The Saudi authorities' massive and systematic recourse to arbitrary detention is a grave violation of human rights, and has serious consequences for the general state of civil liberties in the country, affecting thousands of victims and their families, which lead us to question the legal nature of this practice and its qualification under international law.

3 The Deprivation of Liberty and Crimes against Humanity

3.1 Definition of a Crime against Humanity

It is commonly accepted that murder, genocide, enforced disappearances and torture, among others, are considered in certain circumstances to be crimes against humanity. Arbitrary detention may *a priori* seem less serious, perhaps because of its character, and therefore could be considered to be excluded from this definition by international law.

However, the 1998 Rome Statute establishing the International Criminal Court considers imprisonment or other severe deprivation of physical liberty in violation of the fundamental rules of international law, and includes it in its definition of a crime against humanity laid down in article 7:

For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a. Murder;*
- b. Extermination;*
- c. Enslavement;*
- d. Deportation or forcible transfer of population;*
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;***
- f. Torture;*
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;*
- i. Enforced disappearance of persons;*
- j. The crime of apartheid;*
- k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*

In addition, paragraph 2 of this article sets out that:

'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack,

The three elements in this definition are essential for a serious violation of human rights to be classified as a crime against humanity. The violations must be committed as part of a "widespread or systematic attack," the attack must be directed against a "civilian population," while the mental element of the offence is constituted by the knowledge of the attack and of the intent to participate in it. Finally, this attack does not necessarily have to take place in wartime.

The widespread and systematic character of the attack are essential to define a crime against humanity. These two criteria are not necessarily combined (even if in practice they are usually met) and are not clearly defined at the international level. The law, however, provides some element of a response to this question.

An attack is widespread when it is massive and frequent, conducted collectively and directed against a multiplicity of victims. However, the quantitative criterion is not enumerated and international law does not provide a threshold of a minimum number of victims affected.² For Philippe Kirsch, Chairperson of the Preparatory Commission for the International Criminal Court, four elements can help define a systematic character³:

- The existence of a political goal, a plan under which the attack is perpetrated, or an ideology in the broadest sense to destroy, persecute, or weaken a community;
- The commission of a criminal act against a large group of civilians or the repeated and continuous commission of inhumane acts with a link between them;

² Blaskic case, International Criminal Tribunal for the former Yugoslavia (ICTY).

³ Philippe Kirsch, Chairperson of the Preparatory Commission for the International Criminal Court and Ambassador of Canada to Sweden, *Terrorisme, crimes contre l'humanité et Cour pénale internationale* (Terrorism, Crimes against Humanity and International Criminal Court – in French only), <http://www.sos-attentats.org/publications/Kirsch.pdf> (accessed 25 October 2012).

- The perpetration or implementation of public or private resources whether military or otherwise;
- Involvement of the military authorities or others in the definition and establishment of a methodical plan.

For an attack to be considered systematic, it requires a high degree of organization and thus refers to a specific policy or plan of the State. While this policy may not necessarily be formally stated, the attack must "resort to the use of significant public or private resources."⁴

Finally, the mental element of this incrimination encompasses two aspects: intent and knowledge, as detailed in article 30 of the Rome Statute, which states:

1. *Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.*
2. *For the purposes of this article, a person has intent where:*
 - a. *In relation to conduct, that person means to engage in the conduct;*
 - b. *In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.*
3. *For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.*

The perpetrator must be conscious of contributing to, through his or her act, a broader plan aimed at a large number of people, even if he does not "share" the objectives of the attack.

3.2 Imprisonment as a Crime against Humanity

Imprisonment and all other forms of severe deprivation of physical liberty can thus be qualified as a crime against humanity according to the criteria outlined above, whether it is systematic and widespread, if it is directed against civilians and when the perpetrators have the intention and the awareness of participating in a state or organization's policy.

Imprisonment has been a constitutive element of crimes against humanity since the Nuremberg Trials of Nazi criminals, and was subsequently taken up by international criminal tribunals for the former Yugoslavia and Rwanda. These courts have convicted defendants who kidnapped and imprisoned groups on a religious basis and submitted them to serious violations of their human rights (rape, torture, forced labor, etc.).⁵

The Rome Statute establishing the International Criminal Court speaks specifically of "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law." These basic provisions include those issued by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which forbid arbitrary detention.

Imprisonment becomes a serious violation of the right to personal liberty if it is used in a systematic and widespread manner, if it is the result of arbitrary arrest (no legal basis justifies the arrest), if it is motivated by the exercise of certain rights and freedoms guaranteed by human rights instruments, or if the minimum standards for a fair trial were not respected, if asylum seekers, migrants or refugees are subjected to prolonged administrative detention without the possibility of review or if the detention is a violation of international law relating to discrimination which aims towards or can result in ignoring the equality of human rights. The detainee must therefore be informed of the charges against him or her, have the ability to be defended by a lawyer of his or her choice, and also be

⁴ In the Akayesu case, ICTY, *Les éléments constitutifs généraux* (General Constitutive Elements – in French only), http://www.iccnw.org/documents/ASF_rapportRome_csc_light.pdf (accessed 25 October 2012).

⁵ See the case of Kordic and Cerkez of 26 February 2011 http://www.icty.org/x/cases/kordic_cerkez/acjug/en/cer-aj041217e.pdf (accessed 25 October 2012).

brought before a court within a reasonable time, or to be able to appeal to a court capable of ordering his or her release if the detention is considered illegal.

In addition, imprisonment can be likened to torture or enforced disappearance in some cases. Indeed, the conditions of detention may be the source of crimes against humanity when they are constitutive of cruel, inhuman, or degrading treatment. In addition, according to the Chairman of the Working Group on Arbitrary Detention, Mr. El Hadj Malick Sow, secret detention or detention in solitary confinement for an extended period is "a form of enforced disappearance and if applied systematically could constitute a crime against humanity⁶."

3.3 Arbitrary Detention in Saudi Arabia: Constant Source of Concern for UN Bodies

Regarding the issue of arbitrary detention in Saudi Arabia, both local and international human rights organizations, as well as United Nations bodies have repeatedly expressed concern about this violation of the fundamental right to freedom.

The Working Group has noted that it has adopted fifteen opinions relative to arbitrary arrest or detention in the course of the last three years specifically concerning the Saudi monarchy.⁷ Saudi Arabia remains the first country in the world in terms of the number of opinions issued by this UN body, which adopts a total of approximately 50 opinions per year for all the countries of the world. It is understandable then that the issue of arbitrary detention remains a matter of concern to the Working Group, and is a reflection of continued human rights violations in the country.

It is therefore necessary to examine the phenomenon of the practice of detention in Saudi Arabia in light of the elements constituting a crime against humanity:

- Are arbitrary detentions in the country directed against a group on the basis of the criteria defined by the Rome Statute, in this case for political reasons?
- Are these arbitrary detentions committed in the context of a "widespread or systematic attack?"
- Do the arbitrary detentions reflect a high degree of organization and relate to a specific policy or plan of the State, with knowledge of the attack and the intent to commit it?

4 Arbitrary Detention in Saudi Arabia: a Crime against Humanity?

Does the substantial number of arrests and detentions of people peacefully expressing their political opinions fall under the definition of a crime against humanity under international criminal law, as per the definition provided by the Rome Statute?

In other words, is the arrest, followed by detention, of a large number of individuals for political purposes, in itself a widespread practice that is *aimed at a particular group, in application of a State policy?*

4.1 Repression of all Political Expression, Demands and Activities

The right to take part in the conduct of public affairs, directly or through freely chosen representatives, is a fundamental rights recognized and protected by the Universal Declaration of Human Rights (art. 20), in the same way that the right to freedom of opinion and expression (art. 19), and the right to peaceful assembly (art. 21) are.

The Saudi monarchy, however, conducts public affairs without the participation of the rest of the population, and in practice, the royal family has the monopoly of public powers. Political parties and associations are banned, and citizens, viewed as subjects, do not have a legal framework to express

⁶ Press release by the Office of the High Commissioner for Human Rights, 7 May 2011 <http://www.ohchr.org/fr/NewsEvents/Pages/DisplayNews.aspx?NewsID=10812&LangID=E> (accessed 25 October 2012).

⁷ United Nations Working Group on Arbitrary Detentions No. 22/2008; 36/2008; 37/2008; 21/2009; 10/2011; 11/2011; 17/2011; 18/2011; 19/2011; 30/2011; 31/2011; 33/2011; 41/2011; 42/2011; et 43/2011

any political power. All individuals critical of the monarchy and demanding the respect of his or her legitimate civil and political rights is repressed. No one is above the risk of being detained for strictly political reasons, and no sector of society remains untouched: university professors, religious personalities, human rights defenders, bloggers, lawyers, judges, poets, simple citizens and even supporters of the monarchy that dared to present measured criticisms about the government's management of the country and suggestions for reforms have been affected. They are systematically arrested and imprisoned, often without formal accusations and without access to an effective defense. These individuals are often detained for long periods of time, in some cases for more than 10 years without legal proceedings, and without the perspective of a trial.

Since the September 2001 attacks in New York, counter-terrorism measures are often used as justification by the authorities to explain arrests of individuals, despite the fact that the person is known to have expressed purely political demands, such as the need to implement political reforms to enhance the participation of the public in the political system, or for having expressed their opinions in a peaceful manner.

The majority of the individual cases of arbitrary detention documented by Alkarama between 2004 and 2012 concern individuals having expressed, either privately or publicly, their political opinions or criticism of the authorities relating to foreign or domestic policy.

The case of **Dr Saud Mukhtar Al-Hashimi** is certainly revealing of the authorities' attitude: a medical doctor, active defending civil and political freedoms, and well-known in the reformist movement working towards constitutional reforms, he is a good example of the fate reserved for human rights defenders and opposition figures in the Kingdom. He was arrested by the intelligence services (Mabahith) in Jeddah on 2 February 2007 while he was meeting with eight other well-known members of Saudi civil society at one of their homes. Dr Al Hashimi was arrested with the eight others for 'supporting and financing terrorism', as well as for having carried out 'illicit activities relating to the illegal collection of funds and misappropriation of funds for suspicious individuals'.

In fact, the group had gathered to discuss the creation of an association for the protection of civil and political freedoms and the need to undertake constitutional reforms in the country. Their associative activities had previously been tolerated by the political authorities and the activists arrested had never hidden their political opinions. After having presented his opinion on various Arab media about the political situation in the Middle East and his vision for political reform, the Saudi authorities requested that Dr Al Hashimi no longer speak on Al Jazeera "due to his position on human rights issues in the Arab world".

Dr Al Hashimi's detention, as well as that of the eight others arrested alongside him, was declared arbitrary in opinion No. 27/2007 of the Working Group on Arbitrary Detention, following a communication about the case submitted to it by Alkarama. In this decision, the Working Group stated that the Saudi government had not contested the affirmations made that political motives relating to questions of freedom of expression and peaceful assembly lay behind these arrests. It concluded that the nine individuals had been victims to violations of articles 9 (relating to arbitrary arrest and detention), article 19 (on freedom of opinion and expression), and 20 (freedom of association and peaceful assembly) of the Universal Declaration of Human Rights.

Dr Al Hashimi was sentenced by the Special Criminal Court of Riyadh to thirty years of imprisonment following an unfair trial in November 2011, more than four years after his arrest. Prior to his unfair sentencing, he had been subjected to torture and cruel, inhuman and degrading treatment and forced to sign transcripts of his interrogations without being able to read them. Accused of terrorism by this court, Dr Al Hashimi was unable to access legal counsel while preparing his defense. At present, he remains in detention and continues to suffer ill-treatment in prison.

The case of **Hanane Abdurahman Samkari** is another example of the fate reserved for relatives of detainees. In 2010, Ms Samkari participated in a peaceful protest in front of the Ministry of Interior to protest against the detention of her husband Mohammed Al Jazairy, the father of her three children. Her husband has been detained since 11 August 2003 without formal accusations or legal proceedings.

On Saturday 25 December 2010, in the middle of the night, men dressed in civilian clothing broke into Ms Samkari's home in Mecca, arresting her and her three children (Abdulrahman, Jana and Nammur, respectively aged 4, 8 and 13), and confiscating all of their personal belongings. Ms Samkari was first detained with her children in Mecca before being transferred to Dhabhan prison in Jeddah, a high-security prison. The detention conditions described by Ms Samkari to her relatives during their visits are deplorable – cells that constantly lit, psychological pressure and cruel, inhuman and degrading treatment.

It is without doubt that the victim was arrested and detained with her young children for having exercised her right to peacefully protest against the arbitrary detention of her husband. Like him, she was not informed of the charges held against her. The detention of her children is in total violation of Saudi Arabia's international obligations, particularly the Convention on the Rights of the Child. In order to benefit from "an atmosphere of happiness, love and understanding", and from "special care and assistance" and special care and assistance", Abdulrahman, Jana and Nammur spent more than a year in detention and suffered physical and psychological ill-treatment. Presented to an unspecified judicial body on 13 May 2012, Ms Samira was finally released with her children on 29 June 2012, more than a year after her arrest.

Abdelaziz Mohamed Al Wohaibi, lawyer and human rights activist, was arrested on 16 February 2011, alongside six others in various cities throughout the Kingdom: Mssrs Ahmed b. Saad Al Gharam Al Ghamidi, university professor, Saoud b. Ahmed Al Dughiter, human rights activist, Abdulkareem b. Yussef Al Khodr, university professor, Mohamed b. Nasser Al Ghamidi, human rights activist, Walid Mohamed Abdullah Al Majed, a lawyer et M. Mohamed b. Hussein b. Ghanem Al Qahtani, human rights activist.

On 9 February 2011, the six men had addressed a request to register a political party "Hizb Al Umma Al Islami", to the King's Cabinet (*Al Diwan al Malaki*), request which had been registered under No. EHSA00466836.

The registration request included the Statutes of the new party, which were made public in a press release announcing that "the constitution of this party corresponds with political developments in the region and the evolution of political activities in Saudi Arabia. It is time to affirm our public freedoms and political rights, namely the right of the people to elect the *Majlis Ashura* (Consultative Council), and to adopt legislation which organizes these political rights".

These arrests are just a few example of the authorities' will to repress all attempts by civil society in the Kingdom to organise itself freely and peacefully in order to exercise the civil and political rights set forth in the Universal Declaration of Human Rights.

Fadhel Maki Al-Manasif was arrested in October 2011 and detained at Dammam prison, in the east of the country. He had already been detained a first time in March 2009 for three months without any charge or trial. He was arrested a second time in May 2011 and was released in August before being against arrested on 2 October, and detained since. He has been accused of participating in peaceful protests in the east of the country, which has witnessed numerous protests, namely about the discrimination faced by the Shia minority in Saudi Arabia. Mr Al-Manasif had acted as a mediator between the authorities and the protestors on numerous occasions. He had, for example, met with the Emir of the province, Mohammad Bin Fadh Bi Abdulaziz on 8 March 2011, as well as the provincial Governor, Mr Abdallah Al-Othman on 26 April 2011. He remains detained and has not been informed of any upcoming legal proceedings. It seems clear that the reasons for his detention are related to his human rights engagements in the region.

Finally, the case of **Mohammed Salih Al-Bjady** is also relevant. He was arrested in Buraydah on 21 March 2011 following a peaceful protest organized against the detention without trial of thousands of individuals on purely political grounds.

Following a long period of secret detention, Mr Al-Bjady was referred to a special criminal court responsible for treating terrorism-related cases. Accused of being a member of ACPRA (Civil and

Political Rights Organisation), a non-governmental organization, of having questioned the independence of the judiciary and of possessing illegal books, Mr Al-Bjady was sentenced, following a manifestly unfair trial without access to legal counsel, to four years of imprisonment, followed by a travel ban of five years. The special criminal court informed his lawyers that it did not recognize their right to represent him. At present, Mr Al-Bjady remains in detention at Al-Hayer prison, and there are concerns for his health.

These examples illustrate the way the Saudi government represses criticism and all discordant voices – and the methods employed are often remarkably similar: individuals are arrested by unidentified agents without being shown an arrest warrant, and are not informed of the reasons for their arrest or which authority has ordered it. Victims are often tortured physically and psychologically, and all suffer ill-treatment. Long periods of secret detention are common, followed by transfer to collective cells. Some individuals are even detained for numerous years without being informed of the accusations held against them.

Very often, access to legal counsel is denied, and if individuals are judged, it is generally by a special court, under the direct control of the Minister of Interior, a member of the royal family. While many of the authorities regularly justify this treatment as being necessary to counter terrorism, in the majority of cases documented by Alkarama where such a justification was given, it was later demonstrated that the individuals had been targeted for expressing their opinions, protested peacefully, or had claimed political rights.

The behaviour of the Kingdom's authorities betrays its determination to single out all people and groups who express "political demands" or seek to fulfill one or another of their civil and political rights protected by the Universal Declaration of Human Rights.

4.2 The Magnitude of Arbitrary Detention in Saudi Arabia

The reported number of cases of arbitrary detention in Saudi Arabia vary according to the source. Officially, the General Directorate of Prisons stated there were some 49 000 detainees in October 2011.⁸ The Minister of Interior, at the origin of massive arrest campaigns since the 11 September 2001 terrorist attacks, presents states that there are 11 527 individuals "suspected of terrorism" arrested between 2001 and 2011, half of whom have since been released. As for those still in detention, 2 215 have been presented to the 'competent criminal courts', 1 612 accused, with 'the rest (*sic*) remaining in prison'⁹ [but no explanation is provided as to whom 'the rest' refers to].

No information on the capacity of prisons in the country, and therefore of potential overcrowding, is available. ACPRA estimates that there are close to 30 000 political detainees in the country.¹⁰

In fact, it is extremely difficult to obtain a precise idea of the number of political detainees in the country. There are no detailed statistics on government websites and the authorities have remained silence in the face of the numerous NGO demands for information in this regard. As mentioned above, requests for visits by five of the Human Rights Council's Special Procedures have not been fulfilled, and the government does not provide answers to the majority of communications sent to it by the Special Procedures. International NGOs are regarded with suspicion and all human rights defenders working with NGOs are systematically arrested and detained. Unfortunately, several lawyers working with our organization in recent years have been arrested for this reason, and some have been detained for several years.

The National Society for Human Rights, the only registered human rights organization in the country, with ties to the government, declared that Saudi Arabia was ready to received visits by "unbiased and legitimate" non-governmental organizations, adding that the government was not in a position to fulfill

⁸ US Department of State Country Reports on Human Rights Practices for 2011, Saudi Arabia, p.4 <http://www.state.gov/documents/organization/186659.pdf> (accessed 25 October 2012).

⁹ Idem, p.7

¹⁰ <http://www.rfi.fr/moyen-orient/20120925-arabie-saoudite-prisons-Tarfiya-familles-manifestation> (accessed 25 October 2012).

the "hundreds of requests" for visits it received as it was difficult to find them appropriate contacts.¹¹ In fact, it is extremely difficult to establish contact with representatives of this institution. It is also important to add that Alkarama's website is blocked in Saudi Arabia, and that Amnesty International's website has been blocked on several occasions because of its criticisms of new anti-terrorism legislation.

Although it is difficult to establish an exact number of the victims of arbitrary detention in the country, given the lack of detailed official statistics, and the inability to visit Saudi Arabia to investigate, in light of the number of cases received by our organization, the allegations made by several NGOs and the testimony of former detainees, it must be said that a large number of individuals are detained for purely political motives.

The Saudi government's lack of cooperation with the Human Rights Council's Special Procedure (despite being a member) and international NGOs, and the opacity of the justice system, reinforce Alkarama's preoccupations relating to the magnitude of the phenomena. Regardless of this, it is beyond doubt that arbitrary arrests and detentions take place on a massive scale, in view of the multiplicity of individuals and the frequency of this phenomenon over a long period of time.

Since its establishment in 2004, Alkarama has received several thousand cases of arbitrary arrests and detentions, for the most part for political motives. In 630 cases, Alkarama was approached by the victim's relatives in order for their loved one's case to be submitted to the UN's Special Procedures. Unfortunately, given their lack of resources to treat individual cases, these mechanisms can only treat a limited number of cases. It is therefore beyond doubt that in Saudi Arabia, imprisonment for political purposes is used by the authorities in the context of large repression campaigns comparable to an "attack directed against any civilian population" consisting of the "multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack".

It must be recalled that jurisprudence relating to imprisonment as a crime against humanity sets out that the quantitative criteria is not quantifiable, and no threshold in terms of the number of victims is required by international law.¹²

4.3 Arbitrary Detention of Human Rights Defenders and Political Dissidents: a Systematic Practice?

As set out above, the systematic nature of an attack can be identified by four elements, that is to say, a plan by which the attack is carried out, the repeated and continual commitment of inhumane acts which are connected to each other, the use of public or private resources on a large scale, and the implication of military or other authorities, indicating a high degree of organisation.

This policy of repression of political dissidents is not new in Saudi Arabia. Following the first Gulf war in 1990-1991, large parts of Saudi society began calling for social and political reforms. Various religious and business leaders, as well as academics, wrote a letter expressing their "grievances" to the King, which they then detailed in a document called the "Advisory Memorandum". These individuals also created the first human rights organization in the country, the "Committee for the Defense of Legitimate Rights" (CDLR).¹³ The government responded to these demands by a mass arrest campaign, which forced the CDLR to move its headquarters to London. The majority of individuals arrested were released in the 1990s, but were confronted with a number of different restrictions in their professional lives, or when attempting to travel.

The decade following the year 2000 witnessed the perpetuation of this policy, following on from the 11 September 2001 attacks and those which followed in Afghanistan in 2001 and Iraq in 2003. The American interventions were viewed by the majority of Saudi public opinion as being approved and supported by the monarchy in power, and led to strongly criticism of the Western presence in the

¹¹ US Department of State Country Reports on Human Rights Practices for 2011, Saudi Arabia, p.23

¹² Blaskic case, ICTY.

¹³ Islamic Human Rights Commission, *Saudi Arabia's Political Prisoners: Toward a Third Decade of Silence*, London, 2011.

country and against the government itself. The political tension created by the Kingdom's foreign policy and the 2003 terrorist attacks in the country pushed the government to adopt an anti-terrorism policy which has since been used to justify the arrest of all individuals criticizing the government. The case of Dr. Al-Hashimi cited above is a perfect example: peaceful political dissident, he was accused of financing terrorism.

The decade following 2010 does not seem to have heralded any major changes in the government's security policies. Public protests are not tolerated, be they against the Israeli attacks against Gaza or in favour of more citizen political participation. The practice of imprisoning dissidents is a political response by the government to all contestation of the Saud family's monopoly of power in the country, its policy for more than 20 years. The fact that a large number of detentions are politically motivated seems evident, and the persistence of this practice by the State allows us to characterise it as being systematic in nature.

The creation of the special criminal court, a exceptional court, to judge certain political detainees, placed under the direct control of the Ministry of Interior in 2008 is another important element that demonstrates the direct role of the State in this practice, and the use of public resources to apply its policy. The Saudi authorities' systematic use of arbitrary detention has raised concerns with the Working Group on Arbitrary Detention. In its Opinion No. 8/2012 relating to four cases of arbitrary detention submitted to it by Alkarama, it noted that there was a "persistent pattern of arbitrary arrests and detention in Saudi Arabia as well as a silence on the part of the Government by not availing itself of the opportunity to respond to allegations set forth by the source and presented to this Group".¹⁴

5 Conclusion

The Saudi authorities' systematic use of arbitrary arrests and detentions against numerous individuals for having exercised one of the fundamental rights set out and protected by the Universal Declaration of Human Rights has persisted for some time. Since the terrorist attacks in New York in September 2001, this phenomenon has worsened and the authorities have increasingly resorted to the argument of the need for increased security and the pretext of counter-terrorism measures to justify these massive violations.

The imprisonment of a large number of civilians – up to 30 000 according to some sources – arrested in the context of mass campaigns is comparable to an attack, violating fundamental principles of international law, and, given its nature as a State policy, therefore amounting to a crime against humanity according to the Rome Statute.

Saudi Arabia's geostrategic importance, and the financial and economic interests of some powerful members of the international community should not serve as a reason to avoid addressing this important question, as it creates a sentiment of double standards when addressing human rights violations around the world

The political evolution which the region is currently experiencing is an opportunity to have a positive and lasting impact on the human rights situation in this sub-region. The international community's attitude and the influence it can have on State which are violating their population's human rights on a massive scale without distinction will therefore be decisive.

¹⁴ Available on Alkarama's website: http://en.alkarama.org/images/stories/8-2012_OPINION_Saudi_Arabia_Al_Fouzan_Al_Twijri_Al_Barahim_Al_Khamissi_adopted_2_May_2012_Final.pdf (accessed 25 October 2012).