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Arbitrary arrests  
in Saudi Arabia

Badria Al-Rawi



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TURKEY- ISTANBUL

Bahçelievler, Yenibosna Mh 29 Ekim Cad. No: 7 A2 Blok 3. Plaza D: 64  
Tel/Fax: +90 212 227 2262 E-Mail: [info@eis-eg.org](mailto:info@eis-eg.org)



## Arbitrary arrests in Saudi Arabia

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Arbitrary detention is defined as: the arrest of an individual in a case in which there is no likelihood or evidence that they committed a crime against legal statute, or in which there has been no proper due process of law. As for the incommunicado detention, it is defined as: the detention of persons without allowing them access to or communication with outsiders, including their families and lawyers. The right to be protected against such human rights violations, especially the arbitrary detention, was enshrined in international conventions. Article 9 of the Universal Declaration of Human Rights states that: “No one shall be subjected to arbitrary arrest, detention or exile.” Also, Article 9 of the International Covenant on Civil and Political Rights states that: “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.” The European Convention on Human Rights stated in the first paragraph of article 5, that: “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases (stated in this paragraph) and in accordance with a procedure prescribed by law.”

The Working Group on Arbitrary Detention (WGAD), regards deprivation of liberty as arbitrary in the following cases:

- (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
- (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of

Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

[The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.]

Also, most constitutions of the world provide for the right to protection against arbitrary arrest or unlawful arrest of individuals, including the constitutions of Arab countries. In Saudi Arabia, Article 35 of the Law of Criminal Procedure of 1435 AH prohibits this arbitrary detention, stating: "In cases other than flagrante delecto, no person shall be arrested or detained except on the basis of order from the competent authority. Any such person shall be treated decently and shall not be subjected to any

bodily or moral harm. He shall also be advised of the reasons of his detention and shall be entitled to communicate with any person of his choice to inform him of his arrest.” The articles of this law also address other matters related to the issue of arrest or detention of a person in cases of flagrante delicto, according to the law, let alone those who are arbitrarily detained.

Saudi Arabia is a party to some of the main international human rights conventions, including the Convention against Torture, the International Convention on the Elimination of Racial Discrimination and the Convention on the Rights of the Child, as well as some optional protocols. It is not party to either the International Covenant on Civil and Political Rights or to the Covenant on Economic Social and Cultural Rights. It is bound, however, by the relevant rules of international human rights law, which include the absolute prohibition of torture, the prohibition of the arbitrary deprivation of the right to life and of the prohibition of arbitrary deprivation of liberty, the fundamental principles of fair trial and due process, including the presumption of innocence and the principle of non-discrimination. These rights form part of customary international law. They are proclaimed in the Universal Declaration of Human Rights (UDHR) and are norms of jus cogens (peremptory norms of international law) from which no derogations are permissible.

After reviewing this file and the reports of relevant international organizations and the lawyers and relatives of detainees, we believe that the arrests since the so-called “2017-Campaign” to the “Ramadan Campaign” of 2018, were arbitrary and unlawful – unless the charges against detainees could be made up later on. Detainees are presented as:

- Traitors and agents to third parties (such as the Qatari regime), especially the sheikhs and preachers detained in the campaign of September 2017, or

- Stooges to foreign embassies, such as those arrested in the 2018 campaign, including defenders of human rights and Saudi women's rights such as Lujain Al-Hathoul and Nouf Abdul-Aziz, as well as the Saudi Civil and Political Rights Association, which was formally dissolved and banned by a Saudi court in March 2013; and members of the association face similar ambiguous charges since that period.

- Abusers of friendly countries: especially the United Arab Emirates, as happened with Mohammed al-Hudayef, a media man who criticized in a tweet the Egyptian leadership and the UAE policy, and was arrested 9 months ago.

- Supporters of terrorism: as was the case with Gharm al-Bishi, a preacher who used to call for charitable works, especially the construction of mosques in remote villages. However, the Saudi authorities claimed that he collected money to support terrorist organizations and arbitrarily arrested him in the September 2017 campaign.

- Opposing the Kingdom's new orientation and ideas: such as normalization with Israel, which led to the arrest and pressure on Saad bin Matar al-Otaibi, a Saudi thinker.

The lists of the arbitrarily detained Saudis included preachers and clergy men, including Salman al-Awda, Abdul Aziz al-Tarifi, Awed al-Qarni, Mohamad al-Hudhayf, Saleh al-Munajid, Ali al-Amri, Abdul-Mohsen al-Ahmad, Yousef al-Ahmad, Mohamed Al-Hibdan and others.

In addition, many writers, journalists, thinkers and university professors were also arbitrarily arrested, including: Saad bin Matar al-Otaibi, Ibrahim al-Sakran, Abdullah al-Maliki, Fahad al-Sunaidi, Ziad bin Nuhait, Yousef Ahmed Al-Qasim, Malik Al-Ahmad, and Essam Al-Zamil. Also, arbitrary detention included some of the singers and novelists such as Rabi' Hafez and Fawaz al-Ghaslan. Until June 2018, the number of the arbitrarily detainees exceeded 80 persons.

Some of those detainees do not know their fate and are not allowed to hire a lawyer, as was the case with Sheikh Sami al-Ghaihab, the former director of the anti-extortion



department at the Commission for the Promotion of Virtue. The most surprising matter is that the Saudi authorities arrest those who just show solidarity with detainees through writing comments on the social media outlets. This is what happened with Maya Al-Zahrani one night after expressing solidarity with Nouf Abdel-Aziz, an arbitrarily detained activist; and what happened before with Khaled Al-Oudeh, who wrote a tweet expressing solidarity with his brother, Salman Al-Oudeh, and was arrested one night after the detention of his brother.

“The Saudi government seems so consumed with silencing dissent that even activists who have gone quiet for fear of retribution are being targeted again,” said Sarah Leah Whitson, Middle East director at Human Rights Watch, adding that “Saudi Arabia is holding thousands of people for more than six months without bringing them to courts; and sometimes detention extends to more than a decade.” Hamad bin Shamsi, a Human Rights Watch spokesperson said that “The Saudi authorities have not yet cooperated with human rights organizations and have not responded to demands to disclose information about the conditions of male and female activists who were detained in the latest arbitrary arrest campaign two weeks ago.”

Amnesty International further noted that: “Here again we call on the authorities to release all peaceful activists immediately and unconditionally. They should at least declare the whereabouts of the detainees and allow them access to their families and lawyers.”

In a statement titled “Press briefing notes on Saudi Arabia and Afghanistan” the spokesperson for the UN High Commissioner for Human Rights, Liz Throssell, called on the Saudi authorities to release detainees and human rights activists in the 2018 campaign. The statement also stated that “The lack of transparency regarding the arrest of activists in Saudi Arabia raises concern that they may be subjected to physical or psychological torture.” It called on the Saudi authorities to immediately disclose

information about the detention conditions of all activists detained since May 15, and to secure their rights to know the reasons for their detention, the possibility of appointing a lawyer and communicating with their relatives.

In addition to the statements made by the official and non-official international human rights organizations, two important reports were published in this regard: the first was in 2017, titled “Confidentiality” prepared by the former British Attorney General and Member of the House of Lords, Lord Ken Macdonald, with international human rights lawyer Rodney Dixon. The two lawyers prepared a report at the request of the families of the victims of political detention in Saudi Arabia and submitted it to the United Nations, based on the testimonies of detainees' relatives, and with the assistance of the Arab Organization for Human Rights in Britain. The report addresses the legality of those arrests and detentions as a matter of international law, and makes sure whether any violations of international law form part of a pattern of conduct on the part of KSA; and introduce any relevant recommendations to the families of detainees.

The report concluded that the arrests in September 2017 were arbitrary arrests, as they were carried out without specific or clear charges, and that there were no information about the detainees' health status, their whereabouts, or whether they could communicate with their loved ones. “The evidence we have reviewed demonstrates that the September 2017 arrests and detentions of more than sixty persons in KSA were arbitrary and in breach of international human rights law. Those detained have not been charged with any offence, and the information about the reasons for their arrests and circumstances of their imprisonment are very limited. There is cause for serious concern about the treatment of many of those detained, including Mr Salman Al-Awda who has recently been hospitalised and others who are, effectively, disappeared,” the report said.

The two lawyers said that “In order to prepare our opinion, we have interviewed various witnesses who wish to remain anonymous due to concerns for their safety and security. We have also interviewed Al Qst (an NGO advocating for human rights in KSA) who has gathered information from several sources in KSA, including persons in detention and family members of those detained. We have researched publically available material and information about the arrests and detentions, and various reports on the situation in Kingdom of Saudi Arabia.”

Accordingly, they affirmed that the arrests are arbitrary and constitute a clear violation of international human rights law, especially with the frequent reports and stories about the practice of torture against detainees. “These violations should not be seen as a single event or unusual. Our research shows that they are part of a long-standing pattern of systemic human rights violations in KSA, in particular in the detention and mistreatment of individuals who are believed to have expressed criticism of the state,” the report adds.

The second report, published by the United Nations in June 2018, titled “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson - Mission to Saudi Arabia”. The report says that “The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, conducted an official visit to Saudi Arabia, from 30 April to 4 May 2017, at the invitation of the Government, to assess progress Saudi Arabia achieved in its law, policies and practice in the fight against terrorism, measured against international human rights law and standards.”

The report says that the United Nations accuses Saudi Arabia of using anti-terrorism laws to justify arrests and torture. The report states that the definition of terrorism in the Saudi Terrorism Law of 2014 is intended to include many acts that would be



classified as terrorist crimes. According to Ben Emmerson's report, "The 2014 Law had a very broad definition of terrorist crimes, which encompassed any act "directly or indirectly intended to disturb the public order of the state, or to destabilise the security of society, or the stability of the state, or to expose its national unity to danger, or to suspend the basic law of governance or some of its articles, or to insult the reputation of the state or its standing, or to inflict damage upon one of its public utilities or its natural resources. Anyone, whether Saudi Arabian or a foreign national, whether inside the country or abroad, who was accused of such conduct could be prosecuted as a "terrorist" inside Saudi Arabia. This included those who attempted to "change the ruling system in the Kingdom" or "harmed the interests, economy, and national and social security of the Kingdom". Under such a broad definition, anyone challenging the authority or policies of the state could qualify as a terrorist." Under this broad definition of terrorism, anyone challenging the authority or the Kingdom policies would be classified as a terrorist. In this context, many activists, jurists or preachers have been arbitrarily detained.

In a related context, it is not the first time that international reports or institutions have accused or condemned Saudi Arabia for arbitrary arrests, including the United Nations Working Group on Arbitrary Detention, which issued a number of reports, including: Report No. 8 of the year 2012 and 22 and 52 of the same year, all of which condemn Saudi Arabia's arbitrary detention of Saudi nationals or residents. In 2013, reports 32, 45 and 46 in this regard were also published; and in 2014, reports 14 and 32; in 2015, Reports 13 and 38; and in 2016, Report No. 61.

In the past year (2017), the UN Working Group published two reports: No. 10 and No. 63, all about the arbitrary arrests in Saudi Arabia.

On the other hand, the UN Human Rights Council will complete its report on Saudi Arabia in November 2018. However, Saudi Arabia's allies seem to have put economic

interests and security ties ahead of the priority of human rights. Amnesty International says these states will not openly criticize them, which gives them absolute authority to do what they want. Saudi Arabia's allies also unequivocally support Saudi Arabia's crackdowns under the pretext of counter-terrorism. "Its [Saudi Arabia's] international allies, who seek to collaborate on security and intelligence, have to confront the fact that, using the pretext of 'counter-terrorism', the government's draconian crackdown has eradicated virtually all forms of peaceful dissent in the country," James Lynch, deputy director of Amnesty's Middle East and North Africa program said.

After all, Saudi Arabia continues to be a member of the Human Rights Council, which consists of 47 member countries responsible for the promotion and protection of human rights around the world. Although the US State Department's annual report of 2016 pointed to the absence of an independent and impartial judiciary, lack of transparent trials, practice of arbitrary detention, and extraction of confessions of detainees under torture.