

Human Rights First Society – Saudi Arabia



# Unholy Trespass



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## *Dedication*

**To the future generations of Saudi Arabia**

# Acknowledgments

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## Preface

From November 2002 when I submitted the request for Human Rights First Society's (HRFS) license to November 2010 when this report was finalized, HRFS insisted that applying the rule of law is the highest priority on the human rights' agenda in the Kingdom of Saudi Arabia. We believe that applying the Rule of Law will result in an equal society be it between women and men or between the various religious communities of Saudi Arabia. It is with this in mind that this first report from Human Rights First Society was written to serve as a roadmap for the Saudi officials, so that they will know where the Saudi laws are either in violation of international conventions or treaties or that these laws, when they exist, are not respected by the Saudi authorities.

On December 10, 2010 we celebrate the 62<sup>nd</sup> anniversary of the Universal Declaration of Human Rights Day with optimism and hope that the Saudi government will speed their spinning of the wheel of reform through their observation of the twelve recommendations at the end of this report.

The Human Rights Commission and the National Society of Human Rights are encouraged to apply their mandates in a more aggressive way to facilitate amending, adding or abolishing as appropriate some of the existing laws in the Kingdom of Saudi Arabia to ensure adherence to the international conventions and treaties for human rights.

I applaud every single activist, woman and man, in Saudi Arabia and I believe that cooperation and collaboration between the activists from the vast and varied areas in Saudi Arabia will be the cornerstone in ensuring that the Saudi government will eventually permit NGOs (non-governmental organizations) to operate officially within Saudi Arabia.

Finally to all those peaceful human rights, religious, political and social activists who are in prison when this report was released we send our deepest respect and solidarity and say that it is through true sacrifices like yours that great nations are built.

Ibrahim Almugaiteeb

President, Human Rights First Society

# UNHOLY TRESPASS

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## **Introduction**

Human Rights First Society (HRFS) is an un-licensed, non-profit, non-governmental organization which promotes and defends human rights in the kingdom of Saudi Arabia. HRFS works to promote and defend the rule of law, to protect freedoms of expression and association, and to abolish all forms of discrimination in Saudi society on the basis of gender or religious belief. In the spirit of that mission, HRFS has compiled this report on the rule of law in Saudi Arabia and its impact on the freedoms of the Saudi people.

Many of the written laws in Saudi Arabia are enormously regressive and ultimately lethal to human rights. This report will demonstrate where the written Saudi legal code and Saudi governmental practice under that legal code are in violation of international human rights law.

Part I identifies those parts of codified Saudi Law which are in violation of International Human Rights treaties onto which Saudi Arabia has signed or which it has ratified, as well as internationally accepted standards of customary human rights law.

Part II demonstrates how these laws give the Saudi government wide powers to abuse the human rights of Saudi citizens, with particular attention given to the vulnerability of women, religious minorities, migrant workers and children.

Part III demonstrates where the Saudi government fails to adhere to its own domestic laws in the practice of its treatment of Saudi citizens, violating human rights which it has itself professed to protect in its own law and which is protected under international law.

## **International Law: An Introduction**

A nation state has an affirmative legal obligation to abide by and to enact legislation cogent with the treaties which it has ratified.<sup>[1]</sup> Additionally, pursuant to the law of treaties a state that has signed but not ratified a treaty is obliged to refrain from “acts which would defeat the object and purpose” of the treaty.<sup>[2]</sup>

Other manifestations of international law, such as declarations and standard minimum rules, are not treaties which create binding law upon their signatories, as conventions do. Rather, these documents form the backbone of international customary law – which creates an international standard of law based on its widespread repetition or acceptance by a significant number of nations.<sup>[3]</sup> This creates standards which all nation states are expected to honor and refrain from violating.<sup>[4][5]</sup> This customary law, such as the Universal Declaration of Human Rights (UDHR), can be used to apply diplomatic and moral pressure upon governments.<sup>[6]</sup>

Thus, while conventions derive their authority from a party’s signature on or ratification of codified law, international declarations and other documents derive their authority from common custom among nations. All conventions, treaties and declarations referred to in this document as international customary law can be assumed to be neither signed nor ratified by Saudi Arabia, unless explicitly otherwise stated.



## **Positive Developments**

Government and societal tolerance for the public discussion of human rights and civil liberties in Saudi Arabia has increased substantially in the last decade. <sup>[7]</sup>

The Gulf Cooperative Council (GCC), which includes Saudi Arabia, has agreed to establish a regional human rights body tasked with highlighting the steps taken by the GCC states to improve the human rights situation of Gulf citizens. <sup>[8]</sup>

The campaign of progressive reforms advocated and implemented by the Custodian of the Two Holy Mosques, King Abdullah, have made Saudi Arabia in 2010 a substantially different place than it was before his reign. Women have a more visible presence in political life and increased access to education, employment and professions previously denied them. <sup>[9]</sup> Perhaps most significantly, the scholarship program opened to women and men alike, allows them to earn professional degrees abroad, including doctorates and PhDs. <sup>[10]</sup> A Saudi Government Human Rights Commission has been established <sup>[11]</sup> and reforms have been made to the judicial system. <sup>[12]</sup>

Norah al-Fayez was the first woman appointed to the position of Deputy Minister of Education, and two women were elected, mostly by their male peers, to the board of the Jeddah Chamber of Commerce. <sup>[13]</sup>

These reforms prove that human rights are compatible with a devout Islamic society. HRFS applauds these reforms as movement in the right direction, but strongly cautions that international enthusiasm over these changes should not be cause to forget how much more needs to be done.

## **I. The Saudi Legal Code is a Violation of International Human Rights Law**

The system of governance in Saudi Arabia is absolute monarchy.<sup>[14][15]</sup> In a society where the will of the people does not decide the law, one can expect the laws to grant sweeping powers to those who govern. Saudi laws are no exception to this rule.

### **Surveillance and Invasion of Homes in the Law**

The Law of Criminal Procedure authorizes unchecked and arbitrary intrusion into the private lives and homes of Saudi citizens. Article 41 states that a “criminal investigation officer” may search any inhabited place as long as the Bureau of Investigation and Prosecution (BIP) issues that officer a warrant to do so.<sup>[16]</sup> No standard is given for when such a warrant may be issued, and no independent judiciary is involved in issuing it.<sup>[17]</sup> This gives a government agency license to search the homes of its citizens arbitrarily.<sup>[18]</sup> There is even indication that certain agents of the state are deputized to “issue warrants” themselves, independent of the BIP – giving virtually any government agent free reign in people’s homes.<sup>[19]</sup>

Agents of the state are also empowered to invade people’s correspondence and communications arbitrarily. The Law of Criminal Procedure allows a special government agent to “authorize seizure of mail, publications, parcels and surveillance and recording of telephone conversations.”<sup>[20][21]</sup> Saudi Arabia is a member of the Organization of the Islamic Conference (OIC)<sup>[22]</sup> and as such adopted the Cairo Declaration on Human Rights in Islam (CDHRI) in 1990.<sup>[23]</sup> The CDHRI states that “Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance . . . *The state shall protect him from arbitrary interference* (emphasis added).”<sup>[24][25][26]</sup> This binding law directly prohibits the surveillance of telephone conversations so blatantly allowed for in the Saudi legal code.

The right to privacy and freedom from arbitrary intrusion by government forces is also a mainstay of international human rights customary law. The UHDR establishes that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence. . . .”<sup>[27]</sup> The International Convention on Civil and Political Rights (ICCPR), ratified by 165 nations,<sup>[28]</sup><sup>[29]</sup> state almost verbatim that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”<sup>[30]</sup> The Universal Islamic Declaration of Human Rights (UIDHR) similarly enshrines the principles that every person has a right to privacy and a right to their personal property, which cannot be deprived unless necessary for the public interest.<sup>[31]</sup> These principles protect the privacy of the homes and lives of Saudis which the Law of Criminal Procedure does not respect.

## Criminalization of Free Speech, Association and Assembly

The Basic Law of Governance explicitly states “Whatever leads to sedition and division, or undermines the security of the State or its public relations . . . shall be prohibited.”<sup>[32]</sup> This language criminalizes free expression and speech. When a state harasses, arrests or detains individuals because of that individual’s non-violent expression of ideas, that state is violating that individual’s right to free speech. Under international customary law, everyone has an inviolable right to free expression without fear of reprisal by the state. The UDHR ensures that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference,”<sup>[33]</sup> and the ICCPR ensures the same.<sup>[34]</sup> The criminalization of speech certainly constitutes this kind of interference.

“*Whatever leads to sedition and division (emphasis added),*” seems to give the government the power to prohibit actions that lead to expression or “division.” This might include peaceful assembly to express ideas or affiliation with organizations created for that purpose. This law therefore advances violation of the right to “meet and assemble peacefully,” which is protected under the Arab Charter of Human Rights (hereafter, the Arab Charter) to which Saudi Arabia has acceded and which is thus binding law.<sup>[35]</sup> It is also a right protected under international customary law, by the UDHR,<sup>[36]</sup> the ICCPR,<sup>[37]</sup> and the UIDHR.<sup>[38]</sup><sup>[39]</sup> This statute in the Basic Law of Governance is therefore unlawful.

## Arbitrary Arrest and Prolonged Detention in the Law

Saudi Arabia is infamous for being one of the only nations in the world without any penal code.<sup>[40]</sup> Without any designation of which behaviors constitute a crime, the citizenry has no way of avoiding criminal behavior and the government can only engage in arbitrary detention of people on charges it can only claim to be criminal. This is why international customary law forbids arrest and detention for any crime not in writing. 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.”<sup>[41]</sup> The ICCPR contains this same provision.<sup>[42]</sup> The UIDHR adds that “No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.”<sup>[43]</sup> Saudi Arabia clearly violates these rules, having no written penal code to speak of, without which all arrests become arbitrary.

The Law of Criminal Procedure allows the Minister of the Interior to decide which “crimes” will merit detention in a similarly arbitrary fashion.<sup>[44]</sup> Once convicted, Saudi law provides no limits on how long a citizen may be sentenced to detention. The Law of Criminal Procedure merely instructs that “Detention or imprisonment . . . shall be for the period prescribed

by the competent authority.”<sup>[45]</sup> Thus, whomever the “competent authority” may be,<sup>[46]</sup> is unrestricted by the law on how long they may detain an individual.<sup>[47]</sup> Ultimately, the maximum detention time between arrest and “referral to a court” is set by this law at six months.<sup>[48]</sup> However, no definition is given for “referred to a court” – it may mean ‘see a judge’ or it may mean the act of ‘scheduling a hearing.’<sup>[49]</sup>

These statutes violate Saudi obligations under the Arab Charter, which states "No one shall be subjected to arbitrary arrest, search or detention without a legal warrant."<sup>[50][51]</sup> It also violates well established international customary law which protects people from arbitrary arrest and detention by their governments. The UDHR and CDHRI each protect people from “arbitrary arrest, detention.”<sup>[52][53]</sup> The ICCPR even underscores the seriousness of arbitrary arrest by mandating compensation for the victim of such arrest.<sup>[54]</sup>

International customary law has established that detention must have its limits. The International Standard Minimum Rules for Non-Custodial Measures<sup>[55]</sup> (Hereafter the Rules for Non-Custodial Measures) require a state to "avoid unnecessary use of imprisonment," and that “the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing disposition.”<sup>[56]</sup> It adds that pre-trial detention should be left as a "means of last resort.”<sup>[57]</sup> By leaving detention to the discretion of “competent authorities,” and by proscribing no limit on how long a court may detain someone; Saudi law fails to reserve detention as a last resort or avoid unnecessary detention. The UDHR supports this serious consideration of detention, stating “Man is born free. No inroads shall be made on his right to liberty except under the authority and in *due process* of the Law. (Emphasis added)”<sup>[58]</sup>

### Secretive and Unfair Trial Proceedings under the Law

In Saudi Arabia, the BIP is responsible for prosecuting crimes. The BIP prosecutor is given a quasi-judicial role in a Saudi court, including the power to dismiss witnesses.<sup>[59]</sup> 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 prosecutors shall be strictly separated from judicial functions."<sup>[60]</sup> The incestuous nature of the Saudi Judiciary is therefore unlawful. Furthermore, the BIP is itself under the control of the Ministry of Interior (MOI). This means a government agency is controlling an agent of the courts, which is also contrary to international customary principles on the independence of the judiciary. International law ensures under the ICCPR<sup>[61]</sup> that each person has a right to be tried by an *independent* tribunal. This has been re-affirmed by the Vienna Declaration of Human Rights.<sup>[62]</sup>

Saudi law does not assure any right to public trial. The Law of the Judiciary states that "court hearings shall be public, unless the court decides that they be held in a closed session in

deference of morals . . . or for the maintenance of public order."<sup>[63]</sup> No explanation is given for what "morals" or "public order" might mean, giving a judge great discretionary power over whether or not a trial is secret. The trial may also be kept secret from "certain classes of people"<sup>[64]</sup> or in "Petty Cases".<sup>[65]</sup> No indication is given to which "classes of people" this is referring, and the Law of Procedure Before Shari'ah Courts states that "petty cases" are defined by the "Supreme Judicial Council" (now the Supreme Court).<sup>[66]</sup> <sup>[67]</sup> Again, this provides the courts with complete discretion in deciding whether or not a trial will be public.

Without public trials, it is impossible to determine if a Judiciary is observing the rights of the accused. It is therefore the presumption in international customary law that a secret trial is an abusive trial. The Declaration on Individuals, Groups and Organs articulates this principal well, when it says "everyone has the right . . . to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments."<sup>[68]</sup> The UDHR,<sup>[69]</sup> the ICCPR<sup>[70]</sup> and the Body of Principles for the Protection of all Persons Under any form of Detention or Imprisonment (hereafter, the Principles on Any Form of Detention),<sup>[71]</sup> each articulate the right to a public trial. In providing arbitrary criteria for when a judge may close trials to the public, Saudi law infringes both on the rights of the public to view trials and the rights of the accused to have their trial made public.

Saudi law also provides several trial procedure rules that intrude upon the rights of the accused. For example, a criminal investigator may "throw out" witnesses for the accused whenever the investigator deems their testimony would be "useless."<sup>[72]</sup> Yet a right to have witnesses heard at trial is protected under the Arab Charter<sup>[73]</sup> and by the ICCPR.<sup>[74]</sup> Also, if the court is "satisfied" that a submitted confession is authentic, then "it shall take no further action and decide the case."<sup>[75]</sup> An accused may even be punished for the action of challenging a confession as a forgery if that confession is found later by the court to be authentic!<sup>[76]</sup> Thus even where the state fails to exact a confession, this statute gives them the impetus to forge a confession, which the accused will then be discouraged from challenging. Accepting a confession in this manner appears to indicate that the court begins with the assumption that the accused is guilty. This alone is a violation of a person's right to be considered innocent until proven guilty as established under the UDHR,<sup>[77]</sup> the ICCPR,<sup>[78]</sup> the Principles on Any Form of Detention,<sup>[79]</sup> and the CDHRI.<sup>[80]</sup> This use of confessions also implicates international law prohibiting a court from forcing a person to testify against themselves. The Arab Charter ensures that no one shall "be compelled to testify against himself or to confess guilt,"<sup>[81]</sup> the ICCPR repeats this provision verbatim,<sup>[82]</sup> and the Principles on Any Form of Detention states 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 . . ."<sup>[83]</sup>

Moreover, deciding a case entirely upon a confession, without hearing the defendant's witnesses or argument – is a denial of a fair trial altogether. No one shall be judged guilty

without a fair trial, pursuant to the UIDHR,<sup>[84]</sup> the UDHR,<sup>[85]</sup> the ICCPR,<sup>[86]</sup> and the Convention on the Protection of all People from Enforced Disappearance.<sup>[87]</sup><sup>[88]</sup> Punishing a person for challenging a confession they believe to be forged clearly violates the CDHRI which states that “Every person has not only the right but also the obligation to protest against injustice; . . . to self-defense against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities . . .”<sup>[89]</sup>

### Torture and Capital Punishment under the Law

In the Saudi legal code the government is empowered to exact certain kinds of physical punishment against convicted criminals in addition to the death penalty.

The list of physical punishments can include stoning to death, amputation, flogging or other forms of specially proscribed bodily harm. These punishments are acknowledged several times in The Law of Criminal Procedure and their judicial administration is discussed in some detail therein.<sup>[90]</sup> While HRFS has not heard of any sentences of stoning in many years, and very few sentences of amputation in the last ten,<sup>[91]</sup> the fact that these punishments remain on the books at all enables violation of international law prohibiting torture.

On September 23<sup>rd</sup>, 1997, Saudi Arabia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT).<sup>[92]</sup> Saudi Arabia is therefore legally obligated by the CAT to “take effective legislative, administrative, judicial,” measures to prevent “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him . . .”<sup>[93]</sup> Because sentences like stoning, amputation and flogging all cause “severe pain and suffering” for the purposes of punishment, Saudi Arabia has legal obligations to take legislative action against these forms of punishment.

Capital Punishment in Saudi Arabia is performed by decapitation with a sword. HRFS is opposed to all forms of capital punishment, but under international customary law those countries which retain capital punishment are obliged to exact the punishment humanely. Pursuant to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (hereafter Safeguards on the Death Penalty), "Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering."<sup>[94]</sup> The practice of beheading does not meet this standard because beheading can cause tremendous suffering.<sup>[95]</sup> Beheading also constitutes degrading treatment under the CAT.<sup>[96]</sup> Law sanctioning this method of capital punishment is thus in violation of international customary law as well as the Kingdom’s obligations under the CAT.

## Denying Women Equal legal Status to Men Under the Law

Under the system of male guardianship every woman must have a male relative (a *Mahram*) make or endorse all important decisions for her.<sup>[97]</sup> Despite government assurances that male guardianship is not part of Shari'ah law and will be abolished,<sup>[98]</sup> written Saudi law continues to acknowledge it and is built upon the assumption of its validity. The Law of Procedure Before the Shari'ah Courts states that “a judgment incorporating a provision for expeditious execution . . . shall be made . . . if the judgment is for . . . delivering a minor to a nurse-maid or a women to her *Mahram*. (Emphasis added)”<sup>[99]</sup> Here, the law is identifying women as having the same legal status as minors and gives the male guardian (*Mahram*) status above her.

On September 7, 2000 the Saudi government ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).<sup>[100]</sup> Saudi ratification came with the reservation that “In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.”<sup>[101]</sup> Such a reservation effectively negates the whole convention because the object and purpose of CEDAW in no way contemplates a different legal status for women than for men. Reservations that are incompatible with the object and purpose of a treaty violate international law precisely because such reservations render any obligations under the treaty meaningless.<sup>[102]</sup>

Saudi Arabia is nevertheless bound by its ratification of the Arab Charter which prohibits all forms of discrimination on the basis of sex in courts and before the law.<sup>[103]</sup> In addition, it is bound by the consensus under customary law that women are equal to men as established by the 187 states that have ratified the CEDAW,<sup>[104] [105]</sup> and the 160 states party to the International Convention on Economic, Social and Cultural Rights (ICESCR),<sup>[106]</sup> as well as the ICCPR,<sup>[107]</sup> the UDHR,<sup>[108]</sup> the UIDHR<sup>[109]</sup> and the CDHRI<sup>[110]</sup> – all instructing that women are equal to men, both before law and generally.<sup>[111]</sup> Gender equality is therefore binding upon the Kingdom despite its illegal reservations to CEDAW.

The treatment of women as minors is also reflected in Saudi Labor law, which requires that, "women shall work in all fields suitable to their nature,"<sup>[112]</sup> and forbids women to work at night<sup>[113]</sup> or in “hazardous jobs or industries,”<sup>[114]</sup> just as it does for minors.<sup>[115]</sup> On June 15, 1978, Saudi Arabia ratified, *without* reservations, the Discrimination in Employment and Occupation Convention (hereafter, the Discrimination Convention).<sup>[116]</sup> This convention ensures equal access to opportunity in employment regardless of sex.<sup>[117]</sup> Employment discrimination in Saudi law is thus unlawful pursuant to its obligations under the Discrimination Convention. The Discrimination Convention further mandates that Saudi Arabia take legislative action to prevent and repeal any law which promotes discrimination in employment.<sup>[118]</sup> Saudi Arabia is thus called upon not just to honor equality but to defend it legislatively, which its law fails to do.

## II. The Saudi Legal Code Facilitates Violations of its Citizens' Human Rights

Wide powers are granted to the government by its laws to trespass upon the rights of its citizens and on the basis of their gender. This awesome power enables government to infringe upon more rights which are neither explicitly violable in the written law, nor explicitly protected.

### The Saudi Legal Code enables the government to Abuse the Rights of Political Dissidents, Human Rights Activists & Social Critics.

The Saudi laws which enable intrusion upon citizen's homes, lives and liberty are used as weapons against those the government wishes to silence. Political dissidents, human rights activists and social critics,<sup>[119]</sup> are consistently and frequently harassed, arrested and detained.<sup>[120]</sup> Harassment, arrest and detention for expressing ideas non-violently constitutes the kind of interference with free speech prohibited by the international customary law discussed in Part I.

In fact, international customary law provides special protections to the specific kinds of expression typically engaged in by human rights activists. The Declaration on Individuals, Groups and Organs protects the right "freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms," and "To complain about the policies and actions of individual officials and governmental bodies."<sup>[121]</sup> Recall that the UIDHR proscribes that, "Every person has not only the right but also the obligation to protest against injustice,"<sup>[122]</sup> and that, "Every person has the right to protection against harassment by official agencies."<sup>[123]</sup> Protesting injustice and disseminating information is exactly what activists and critics in Saudi Arabia are targeted for doing.<sup>[124]</sup>

The Saudi Law of Criminal Procedure, which allows government officials to effectively issue their own search warrants and tap citizens' personal communication, is used to engage in arbitrary search of private homes and seizure of personal property of activists and critics.<sup>[125]</sup> These individuals' homes and communications are protected by international customary law discussed in Part I. This law guarantees the inviolability of their homes and their right to privacy from government interference and monitoring.

Two Saudi men were arrested after taking part in or attempting to hold protests against Israel's current military action in Gaza. They were held incommunicado. Even though charges against the men were dropped, the BIP informed them that they would continue to be held in prison.<sup>[126]</sup>

The Saudi government also uses its powers under its Law of Criminal Procedure to subject dissidents, activists and critics to arbitrary arrest and prolonged detention.<sup>[127]</sup> Saudi



Arabia’s complete lack of criminal code allows arbitrary arrests for such made-up crimes as “annoying others.”<sup>[128]</sup> These acts infringe upon all of the rights to freedom from arbitrary arrest and detention also set out above in Part I.

“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.”<sup>[129]</sup>

Moreover, there are thousands of individuals allegedly involved in terrorism who are currently being detained indefinitely, some without trial.<sup>[130]</sup> These individuals have the same rights to prompt hearings and fair trials as activists and social critics. Without fair and prompt trials for these individuals there is no way to determine whether Saudi Arabia is actually fighting terrorism, or merely giving the world that impression by detaining thousands of innocents. The lack of a sufficiently independent judiciary also results in government intrusion into trial practices,<sup>[131]</sup> violating the sanctity of a judiciary’s independence established in international law, as discussed in part I.

On August 27th, 2010, during the Grievance Court trial of Suliman AlReshoudi in which he was suing the MOI for detention without being charged for crime, MOI sent an urgent and secret cable to the judge. Mr. AlReshoudi's legal team was not allowed to see this message, demonstrating incestuous control of the government over the courts - and thus a lack of independence in the Judiciary.<sup>[132]</sup>

Sometimes, political dissidents and social critics are not allowed to speak with or visit with their family or loved ones while in detention.<sup>[133]</sup> This is in violation of the international customary law that protects untried prisoners’ rights under the Principles on Any form of Detention. These principles require detained persons to being given “all reasonable facilities for communicating with his family and friends,” and a prisoner’s right “to be visited by and to correspond with members of his family.”<sup>[134]</sup>

### The Impact of the Saudi Legal Code Upon the Status of Women.

The acceptance in the Saudi legal code of women as legal minors allows institutions and individuals to discriminate against women with impunity.

Women are kept segregated from men by a system of gender segregation, tantamount to apartheid.<sup>[135]</sup> Where men and women violate this apartheid of the genders, they are punished.<sup>[136]</sup> Such segregation implicates all of the aforementioned international customary law which prohibits the discrimination of a person based on their sex. When this system of segregation

affects a woman's employment or acts as a barrier to equal employment with men, Saudi Arabia's obligations under the Discrimination Convention require it to take legislative action to prevent this apartheid.

Under the system of male guardianship, women are required to have a male guardian's permission for actions ranging from divorce<sup>[137]</sup> to studying abroad.<sup>[138]</sup> While no specific law mandates it, women are still forbidden from driving as well,<sup>[139]</sup> and cannot pass on their citizenship to their children.<sup>[140]</sup> In addition to the aforementioned laws which prohibit discrimination based upon sex, these practical restrictions of male guardianship upon a woman's ability to move and make choices for herself violate a person's right to liberty and freedom of movement. The UDHR,<sup>[141]</sup> ICCPR,<sup>[142]</sup> and the Declaration for the Elimination of Violence against Women<sup>[143]</sup> exemplify the high regard for a person's basic right to freedom of movement and general liberty under international customary law.

In recent years the Saudi government has opened more employment opportunities to women than were previously available.<sup>[144]</sup> Nonetheless, the Saudi labor law allowing the exclusion of women from jobs not "suitable to their nature," facilitates the exclusion of women from military and most government jobs, especially executive posts.<sup>[145]</sup> Yet, CEDAW demands that women have the right to perform functions "at all levels of government,"<sup>[146]</sup> and access to the "same employment opportunities" as men.<sup>[147]</sup>

As a result of discrimination against women in these jobs, women have little choice but to choose those educations which guarantee them jobs. On August 17, 1973, Saudi Arabia ratified the Convention against Discrimination in Education (CADE) without reservations.<sup>[148]</sup> This legally binding CADE prohibits the deprivation of "any type" of education on the basis of sex,<sup>[149]</sup> and requires that the government address *any* such discrimination through enacting legislation and policy.<sup>[150]</sup> Forcing women into certain courses of study via discrimination in employment constitutes a deprivation of education which the government must correct through legislation or policy. Moreover, women's schools and university curricula can be different from men's, depriving women of an educational opportunity which is as full as a man's.<sup>[151]</sup> (This convention also protects men's rights to study secondary and university curricula such as *Altarbiah Alnasaweeah* (Feminine Studies), which they are denied because of gender apartheid).<sup>[152]</sup> The CADE forbids limiting women (or men) to "education of an inferior standard,"<sup>[153]</sup> and Saudi gender apartheid in education is therefore unlawful.

Despite recent progress in women's political participation,<sup>[154]</sup> women were neither allowed to vote or run for office during the last municipal elections held in Saudi Arabia.<sup>[155]</sup> While there have been government promises that this will change during the next municipal elections,<sup>[156]</sup> whether this promise will be kept remains to be seen. CEDAW<sup>[157]</sup> and the ICCPR<sup>[158]</sup> demand full and equal suffrage among all people, and that the equal right to hold public office is never denied. The Convention on the Political Rights of Women specifically ensures a

woman's right to vote, run for and hold public office,<sup>[159]</sup> and the UDHR holds that "Everyone has the right to take part in the government of his country . . ." <sup>[160]</sup> Customary law thus demands women be given equal access to vote and to run for and hold public office in Saudi elections.

Forced marriage of adult women by their male guardians is banned in the Kingdom <sup>[161]</sup> but still occurs as a result of the few protections women have against domestic violence. <sup>[162]</sup> The Kingdom's failure to change the law and legal status of women therefore acts as a facilitation of domestic violence and forced marriage. On July 5<sup>th</sup>, 1973, Saudi Arabia agreed to be "legally bound", without reservations, to the Supplemental Convention on the Abolition of Slavery (hereafter, the Convention on Slavery). <sup>[163]</sup> That Convention defines the act of forced marriage as an act "similar to slavery." <sup>[164][165]</sup> Saudi Arabia is thus legally bound under this Convention to prevent forced marriage, and its failure to provide women with equal status to men is not compatible with this obligation.

### The Impact of the Saudi Legal Code Upon Religious Minorities.

The Shia minority who are concentrated in the Eastern Province of the country, and the Ismaili minority concentrated in Najran are usually free to practice their religion without being accosted by the state. <sup>[166]</sup> However, because these groups receive no explicit protection under Saudi law to practice their religion freely, they receive no protection in Sunni majority areas of the country.

Despite efforts by the Custodian of the Two Holy Mosques, King Abdullah, to improve inter-faith relations, <sup>[167]</sup> in Sunni-majority areas the typical government response to Shia and Ismaili public sermons and worship is harassment, arrest and detention. <sup>[168]</sup> These actions first and foremost violate fundamental freedoms of religion and the right to practice one's faith openly without interference. This main tenant of international customary human rights law is protected under the UDHR, which specifies the right to "manifest his belief in teaching, practice, worship and observance." <sup>[169]</sup> In addition the legally binding Arab Charter <sup>[170]</sup> protects this right, as does the UIDHR, <sup>[171][172]</sup> the ICCPR, <sup>[173]</sup> and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereafter, the Declaration on Minorities). <sup>[174]</sup> Detention and unfair trial practices for Shia infringe upon rights to a fair and speedy trial discussed above in Part I. It also infringes upon their right under customary law to be treated "equal[ly] before the courts and tribunals." <sup>[175][176]</sup>

In Saudi cities where the Shia population is less than fifty percent, Shia mosques are forcibly shut down, <sup>[177]</sup> with few exceptions. <sup>[178]</sup> This is an attack upon aforementioned freedoms of association and peaceful assembly, but also upon their right to religious association. Saudi Arabia is bound by the Arab Charter which protects these rights for "all citizens." <sup>[179]</sup> Also, the Declaration on Intolerance protects a group's right to "worship or assemble in

connection with a religion or belief, and to establish and maintain places for these purposes.”<sup>[180]</sup> International law therefore protects against the forcible closure of a mosque as a “place” established for the purpose of worship. Similarly, the Declaration on Minorities stipulates that “persons belonging to minorities have the right to establish and maintain their own associations.”<sup>[181]</sup> These tenants of customary law protect the associations maintained by Shia and Ismailis from government interference.

Shia and Ismaili Muslims are also typically kept out of executive and managerial positions within government.<sup>[182]</sup> The Arab Charter forbids such discrimination “without any distinction on the grounds . . . of religion.”<sup>[183]</sup> The principle in customary law that a government may not discriminate on the basis of religion is established by the CDHRI,<sup>[184]</sup> the ICCPR,<sup>[185]</sup> the Declaration on Minorities,<sup>[186]</sup> and Declaration on Intolerance which describes this discrimination as a “disavowal of the principles of the Charter of the United Nations.”<sup>[187]</sup><sup>[188]</sup> On this basis, international law also protects everyone’s equal access to employment opportunities. The UIDHR prohibits discrimination in employment “in *any* manner (emphasis added) for reasons of religious belief,<sup>[189]</sup> and the Discrimination Convention forbids *anything* that “has the effect of nullifying or impairing equality of opportunity . . . in employment or occupation.”<sup>[190]</sup> The ICESCR protects promotions in employment “subject to no considerations other than those of seniority and competence.”<sup>[191]</sup> The Saudi government is further legally bound under its ratification of the Discrimination Convention to “repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent” with this law.<sup>[192]</sup>

Across the Kingdom, children of Shia and Ismaili families are indoctrinated in their schools with the tenants of Sunni Islam.<sup>[193]</sup> However, a state may never intervene to subject children to religious ideology against their will. A parent’s right to choose the religious education of their child is protected under the UDHR<sup>[194]</sup> and the Declaration on Intolerance.<sup>[195]</sup> A child is similarly afforded the right to freedom of religion generally under the Convention on Rights of the Child (CRC).<sup>[196]</sup><sup>[197]</sup> Thus any forced religious education upon a child is both a violation of the parents’ rights and the child’s right to choose the child’s religious path.

### The Impact of the Saudi Legal Code Upon Children’s Rights.

In neither law nor action does the Saudi government provide protection to its children. When a child is physically or sexually abused, and this is not infrequent,<sup>[198]</sup> there is no child protective proceeding to punish the abuser of that child.<sup>[199]</sup><sup>[200]</sup>

On January 26<sup>th</sup>, 1996, Saudi Arabia ratified the International Convention on the Rights of the Child (CRC),<sup>[201]</sup> and as a member of the OIC,<sup>[202]</sup> in 2005 Saudi Arabia adopted the Convention on the Rights of the Child in Islam (CRCI).<sup>[203]</sup> Both the legally binding CRC and

the legally binding CRCI<sup>[204]</sup> explicitly protect a child from abuse of any kind and recognize a child's right to life,<sup>[205] [206]</sup> and the CDHRI entitles a child to "proper moral care."<sup>[207] [208]</sup> Additionally, the CRC commands a state to take all "legislative, administrative, social and educational measures," including investigation, to protect children from all forms of physical violence, sexual abuse, neglect or injury,<sup>[209] [210]</sup> as does customary law. The United Nations Guidelines for the Prevention of Juvenile Delinquency requires states to take legislative action to prevent abuse<sup>[211]</sup> and the World Declaration on the Survival, Protection and Development of Children agree that "the well-being of children requires political action at the highest level,<sup>[212]</sup> to make children's rights the highest priority,<sup>[213] [214]</sup> and to "ameliorate the plight of the abused and the exploited."<sup>[215]</sup> Without a protective proceeding to punish child abusers, Saudi Arabia is failing its obligations to enact pro-active protections of children.

One of the more outrageous forms of sexual abuse in Saudi Arabia is the marriage of an adult male to a child, who may be as young as 8 years of age.<sup>[216]</sup> Saudi Arabia has recently required marriage certificates to include the parties' age,<sup>[217]</sup> but it is unclear how this will help without establishing a minimum age below which a person may not marry, something Saudi Arabia has not yet done.<sup>[218]</sup> The CEDAW states that "The betrothal and the marriage of a child shall have no legal effect."<sup>[219]</sup> This protection of children from forced marriage is rooted in the protection entitled to a child from sexual abuse and exploitation, which is given the highest priority in the CRC,<sup>[220]</sup> the CRCI,<sup>[221]</sup> and the ICCPR.<sup>[222]</sup> Additionally, a child's right to self-determination and their choice over their own lives is preserved in the CRC.<sup>[223]</sup> Marrying a girl to an adult male makes her the victim of sexual abuse within an illegal marriage and is thus prohibited under international law. The Convention on the Age of Consent in Marriage further requires states to legislate a minimum age of marriage to ensure these protections.<sup>[224]</sup>

The Saudi government also arrests and detains children<sup>[225]</sup> for reasons that are equally arbitrary and lacking in due process<sup>[226]</sup> as those of adult arrest and detained. For example, despite a new law in Saudi Arabia criminalizing human trafficking,<sup>[227]</sup> child victims of trafficking<sup>[228]</sup> may be arrested and detained by the Saudi government for such "crimes" as begging, and are sometimes deported into dangerous conditions in their home country.<sup>[229] [230]</sup> This violates the Protocol to Prevent, Suppress and Punish Trafficking in Persons which requires Saudi Arabia to "protect and assist" victims of human trafficking.<sup>[231]</sup> Child victims of abuse are also entitled to "justice . . . restitution, compensation and social assistance,"<sup>[232] [233]</sup> pursuant to the Guidelines for Action on Children in the Criminal Justice System. Furthermore, detention of children may only be employed as an absolute last resort, pursuant to the CRC.<sup>[234]</sup>

Saudi Arabia has been known to execute adults who committed crimes as children.<sup>[235]</sup><sup>[236]</sup> Saudi Arabia recently promised to place a moratorium on death sentences for crimes committed below the age of 18,<sup>[237]</sup> and international law demands that it uphold this promise. The legally binding CRC and the Arab Charter declare that a child may never be sentenced to

capital punishment.<sup>[238] [239]</sup> International customary law also prohibits this under the ICCPR,<sup>[240]</sup> the United Nations Standard Minimum Rules for the Administration of Juvenile Justice,<sup>[241]</sup> and the Safeguards on the Death Penalty.<sup>[242]</sup>

Sometimes the Saudi government even mixes children with adults in detention,<sup>[243]</sup> which is also a forbidden practice under the CRCI<sup>[244]</sup> and the ICCPR.<sup>[245]</sup> The Kingdom has also failed to set a minimum age below which a person may not be prosecuted for criminal offenses,<sup>[246]</sup> but is required to do so under the CRC<sup>[247]</sup> and customary law<sup>[248] [249]</sup> which further requires that it “shall not be fixed at too low an age.”<sup>[250]</sup>

### The Impact of Saudi Labor Law upon Domestic and Agricultural Workers

There are approximately 1.5 million domestic helpers in the Kingdom and perhaps as many agricultural workers.<sup>[251]</sup> Saudi labor law specifically refuses any protection to these domestic and agricultural workers.<sup>[252] [253]</sup> Every person migrating to Saudi Arabia must be “sponsored” by a Saudi citizen,<sup>[254]</sup> and in this instance the sponsor is usually the employer. The worker’s dependence upon the employer for sponsorship coupled with their complete lack of protection under the law, exposes them to horrible abuse.

Most domestic workers are women, who can be subject to sexual abuse and rape by employers,<sup>[255]</sup> and even torture is not unheard of.<sup>[256]</sup> International customary law requires that the state intervene to protect these people from violence, both as women,<sup>[257]</sup> and as migrant workers. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter, Convention on Migrant Workers), signed by 43 countries,<sup>[258]</sup> protects workers from intimidation and bodily harm,<sup>[259]</sup> the CDHRI<sup>[260]</sup> and the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (hereafter, Declaration on Non-Nationals) also protects this right.<sup>[261]</sup> The Convention on Migrant Workers also protects their right to be free from cruel or degrading treatment or punishment, which sexual abuse and rape constitute.<sup>[262]</sup> The lack of protection for domestic workers under the labor law is therefore an unlawful failure to protect women from violence *and* migrant workers from exploitation and violence.

Domestic workers are sometimes locked in rooms or houses by their employers and not allowed to leave for days or months at a time.<sup>[263]</sup> All people are protected from the attempts to violate their aforementioned basic customary legal right to freedom of movement. Moreover, women are specifically protected from becoming victims of control under The Declaration for the Elimination of Violence against Women,<sup>[264]</sup> and CEDAW which prohibit infringements on a woman’s right to freedom of movement and liberty.<sup>[265]</sup>

Agricultural and Domestic workers are typically subjected to excessively long work hours and harsh living conditions.<sup>[266]</sup> International customary law protects rights to suitable

working conditions. “Just and favorable” working conditions are ensured by the UIDHR,<sup>[267]</sup> and “safe and healthy” working conditions are protected under the CDHRI,<sup>[268]</sup> and the Declaration on Non-Nationals.<sup>[269]</sup> Under the Convention on Migrant Workers, employees must possess a treatment in housing equal to that of nationals, including protection against exploitative rent.<sup>[270]</sup> The right to rest and leisure time within the context of limited work hours is guaranteed under the UDHR,<sup>[271]</sup> the ICESCR,<sup>[272]</sup> the UIDHR,<sup>[273]</sup> and the Declaration on Non-Nationals.<sup>[274]</sup> States are obliged to take measures to ensure working equal to those of nationals.<sup>[275] [276]</sup>

Agricultural and Domestic workers are often paid late or sometimes not for all of their work.<sup>[277]</sup> They may also be given very meager compensation for their work,<sup>[278]</sup> since there is no minimum wage in the Kingdom.<sup>[279]</sup> The right to fair pay for labor rendered is inviolable under international customary law. The CDHRI mandates “a decent living that may enable him to meet his requirements . . . including food, clothing, housing, education, medical care and all other basic needs,”<sup>[280]</sup> and “fair wages without delay.”<sup>[281]</sup> The ICESCR similarly mandates remuneration that provides, “all workers, as a minimum with fair wages . . . a decent living for themselves and their families.”<sup>[282]</sup> The Declaration on Non-nationals ensures the same,<sup>[283]</sup> and the UIDHR instructs, “not only to treat the worker justly but generously . . . to be paid his earned wages promptly.”<sup>[284]</sup>

All workers in Saudi Arabia, non-citizen and citizen alike, lack the capacity to advocate for better working conditions because Saudi labor law does not empower any workers to organize or form labor unions.<sup>[285] [286]</sup> Indeed the Basic Law of Governance’ prohibition on “whatever leads to . . . division,” likely forbids unionization.<sup>[287]</sup> The right to establish, join and participate in trade unions and organized labor associations is protected under such international customary law as the Freedom of Association and Protection of the Right to Organize Convention (hereafter the Freedom to Organize Convention),<sup>[288]</sup> the UDHR,<sup>[289]</sup> the ICCPR,<sup>[290]</sup> the ICRSCR,<sup>[291]</sup> the Convention on Migrant Workers,<sup>[292] [293]</sup> and the Convention on Non-nationals.<sup>[294]</sup> The ICESCR additionally protects the right to strike.<sup>[295]</sup> Moreover, “any interference which would restrict this right or impede” this right, is prohibited by public authorities under the Convention on Migrant Workers,<sup>[296]</sup> and the Right to Organize and Collective Bargaining Convention.<sup>[297]</sup> The latter of which also protects workers from “acts of anti-union discrimination.”<sup>[298]</sup> Saudi Arabia is required to protect these rights, and its failure to legally empower workers to organize is an illegal violation of that duty.<sup>[299]</sup>

### The Saudi Laws Fail to Protect People from Detention and Execution based Upon Their Sexual Orientation

Individuals have sometimes been imprisoned or executed in the past by the state for their perceived or real sexual orientation.<sup>[300]</sup> Execution of someone because of their perceived or real

sexual orientation is a violation of The Safeguards for the Death Penalty which instructs that the death penalty “may be imposed only for the most serious crimes,” meaning those crimes that have “lethal or other extremely grave consequences.”<sup>[301]</sup> It is also a violation of the Yogyakarta Principles,<sup>[302]</sup> a document of international customary law<sup>[303]</sup> which protects the human rights of all people, regardless of their sexual orientation. These principles declare that any arrest or detention of someone based upon their real or perceived sexual orientation is always arbitrary.<sup>[304]</sup> Saudi Arabia’s arrest, detention and punishment of people because of their sexual orientation is thus arbitrary and contrary to these principles.



### III. The Government of Saudi Arabia Violates its Own Laws.

The Basic law of Governance states that “The state shall protect human rights in accordance with Islamic Shari’ah.”<sup>[305]</sup> The first two parts of this document demonstrate that the laws of Saudi Arabia not only violate human rights themselves, but also facilitate further violations through the manner in which they are written or not written. Additionally, Saudi Arabia fails to follow several laws on its books which would protect certain fundamental rights of its citizens, were they followed in practice.

#### The Saudi Laws of Arrest, Detention and Trial are Often Broken in Practice

The Law of Criminal Procedure stipulates that “he shall also be advised of the reasons of his detention.”<sup>[306]</sup> This law is very inconsistent with the findings of HRFS that many individuals are not told the reason for their arrest, even after years in detention.<sup>[307]</sup> This is often the case when arrests without charge are performed by ‘Al-Mabaheth’, the secret police of Saudi Arabia, who typically claim that the law does not apply to them.<sup>[308]</sup> The ICCPR and the Principles on Any Form of Detention require that anyone arrested shall be promptly informed at the time of his arrest of the reason for his arrest,<sup>[309] [310] [311]</sup> and the UN Standard Minimum Rules for Prisoners require that no one may be punished without first knowing the charges against them.<sup>[312] [313]</sup> Arbitrary arrest and detention are also strictly prohibited under international law, as discussed above in Part II. It is thus illegal for the Saudi government to arrest individuals without promptly informing them of the charges on which they are being detained.

The Law of Criminal Procedure mandates that a person’s detention may not exceed six months before being “referred to a court.”<sup>[314]</sup> However, HRFS has supported many individuals who have been detained in Saudi prisons for periods sometimes years beyond that time, without ever seeing a judge.<sup>[315]</sup> To detain an individual indefinitely violates their due process rights to a speedy trial, which the Law of Criminal Procedure is attempting to protect by limiting that detention. The right to trial without undue delay is upheld by the CDHRI which demands a “fast trial”,<sup>[316]</sup> and the ICCPR which requires the accused be “brought promptly before a judge” because the accused is “entitled to a trial within a reasonable time.”<sup>[317] [318]</sup> The Principles of Detention proscribe an “effective opportunity to be heard promptly by a judicial or other authority,”<sup>[319] [320]</sup> and entitle everyone “to trial within a reasonable time.”<sup>[321]</sup> When an individual is detained beyond the statutory period of six months, it can be assumed their right to be brought before a judicial authority promptly has been violated under Saudi law.

On February 22, 2006, *al-Riyadh Newspaper*, which many Saudis regard as representing government views, published an article about excessive delays in bringing suspects to trial and bringing trials to conclusion. <sup>[322]</sup>

The right to a speedy trial is meant to ensure that the individual will actually go to trial. The right to a trial for the accused is the most basic insurance against abuse of power by the state, and it is strictly protected under the UDHR, <sup>[323]</sup> the UIDHR, <sup>[324]</sup> and the ICCPR. <sup>[325]</sup> <sup>[326]</sup> Once the individual reaches trial, the Law of Criminal Procedure provides a right to “seek the assistance” of an attorney. <sup>[327]</sup> <sup>[328]</sup> However in practice, individuals who are detained and brought to trial are not always afforded a lawyer or the lawyer is dismissed for arbitrary reasons. <sup>[329]</sup> <sup>[330]</sup> In addition to violating its own Law of Criminal Procedure, this violates basic international law which recognizes everyone’s right to be represented by an attorney during a criminal procedure. This right is enshrined in the ICCPR, <sup>[331]</sup> the Principles for all People in Detention, <sup>[332]</sup> and the Basic Principles on the Role of Lawyers. <sup>[333]</sup> It is thus unlawful for the government to interfere with an individual’s efforts to acquire legal counsel.

#### Saudi Laws Protecting Citizens from Undue Suffering and Torture are Broken in Practice

The Law of Criminal Procedure provides that “an arrested person shall not be subjected to any bodily or moral harm,” and “shall not be subjected to any torture or degrading treatment.” <sup>[334]</sup> And an “interrogation shall be conducted in a manner that does not affect the will of the accused in making his statements.” This law adds that the accused “shall not be subjected to any coercive measures.” <sup>[335]</sup> While many individuals arrested for political reasons are no longer subjected to torture, drug traffickers or those accused of murder or other serious crimes are consistently subjected to coercive measures that include extreme physical and mental suffering which would constitute torture. <sup>[336]</sup> Moreover, the practices of flogging <sup>[337]</sup> and other proscribed violent punishments <sup>[338]</sup> constitute “bodily harm” and torture as both the Saudi law and binding international law define them.

“On June 5, [2009] the NGO Yemeni Network for Human Rights claimed that a Saudi investigator tortured a noncitizen, allegedly interrogating him for 18 hours, after his leg had been broken. The investigator reportedly deprived [the man] of sleep and kicked him in the testicles.” <sup>[339]</sup>

When Saudi Arabia subjects interrogated individuals to coercive measures like extreme pain and suffering with the purpose of procuring a confession it is in violation of the CAT, which

the Kingdom has ratified.<sup>[340]</sup> The CAT is clear that criminal jurisdiction is not an exception to this rule.<sup>[341]</sup> This is based upon the principle that all people deprived of their liberty shall be treated with respect for their human dignity.<sup>[342] [343] [344]</sup> Saudi Arabia therefore has no right to subject anyone to extreme pain or suffering, least of all for interrogations, and those confessions acquired through this process are inadmissible in its courts.<sup>[345]</sup>

HRFS has received many reports of people being placed in solitary confinement for punitive reasons, or to extract confessions.<sup>[346]</sup> Restriction is placed upon the general conduct of law enforcement personnel and their actions towards individuals who are detained, to apply “no more restriction than is necessary.”<sup>[347]</sup> Customary international law also forbids them to use solitary confinement<sup>[348]</sup> or restraints<sup>[349]</sup> punitively. Saudi Arabia’s use of solitary confinement is thus contrary to international standards of prisoner treatment.

“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 . . . . One of them said, “They bent my right hand backwards, almost all the way, I was chained to the cell bars for three days”<sup>[350]</sup>

Capital punishment, generally condemned by international customary law,<sup>[351]</sup> is not merely being used for serious crimes in Saudi Arabia, but is also being applied for non-violent “crimes,” such as adultery,<sup>[352]</sup> homosexuality<sup>[353]</sup> and “sorcery.”<sup>[354]</sup> This violates international customary law on the applicability of the death penalty. The Safeguards for the Death Penalty instruct that the death penalty “may be imposed only for the most serious crimes,” meaning those crimes that have “lethal or other extremely grave consequences.”<sup>[355]</sup> Moreover there is no consistency or limitations in the law guiding when capital punishment may, or may not be employed.

The Basic Law of Governance explains that every Saudi citizen has a right to health care, and that the state shall provide it to them.<sup>[356]</sup> In practice however, the Saudi government sometimes denies healthcare to activists and social critics,<sup>[357]</sup> and migrant workers.<sup>[358]</sup> The CDHRI<sup>[359]</sup> and UDHR<sup>[360] [361] [362]</sup> are clear in their protection of the highest available standard of healthcare for all people. Other international legal instruments like the ICESCR and the CDHRI, more generally recognize the overarching right of all people to social security, public resources, and an adequate standard of living that come with universal healthcare,<sup>[363] [364] [365]</sup> while migrant workers and non-nationals enjoy their own specific protections to healthcare under international law.<sup>[366]</sup> The state’s interference with the healthcare rights of political and social critics is both a human rights violation and an illegal act under Saudi law.<sup>[367]</sup>

## The Saudi Government Fails to Stop Flagrant Violations of its Labor Law

Approximately one-third of Saudi Arabia's entire population is made up of non-citizen migrant workers.<sup>[368]</sup> HRFS is most concerned about those migrant workers who are employed in low-income and industrial jobs. These individuals typically suffer great abuse of their labor rights at the hands of their employers.

Under Saudi labor law, migrant workers who are not agricultural workers or domestic helpers, and who stay in the Kingdom for more than two months are protected under all of the same labor laws as Saudi citizens.<sup>[369]</sup> Saudi Arabia also possesses labor courts and systems in which migrant workers may advocate for their rights.<sup>[370]</sup><sup>[371]</sup> However, these labor court proceedings are infamously slow and end in the employers favor 99% of the time,<sup>[372]</sup> especially for those migrant workers who are not provided with lawyers.<sup>[373]</sup> Also, most migrant workers have incurred enormous personal debt to migrate to the kingdom for work.<sup>[374]</sup> This debt makes them so dependent upon their wages from the Kingdom, that to challenge their employer in court would mean financial destruction for their families back home.<sup>[375]</sup> Many are not even aware of their rights under Saudi law.<sup>[376]</sup> As a result, countless migrant workers whose rights are abused will never make it to labor court. This economic vulnerability combined with their aforementioned complete lack of unionization rights means migrant workers in Saudi Arabia lack the capacity to advocate legally for themselves under Saudi law.

Migrant workers have been known to suffer beatings and other physical abuse by their employers.<sup>[377]</sup> Such abuse is in violation of Saudi Labor law, which requires the employer to “treat his workers with due respect” and refrain from any act that would, “infringe upon their dignity.”<sup>[378]</sup> Saudi labor law also permits employees to quit a job suddenly and unconditionally if the employer assaults them physically.<sup>[379]</sup><sup>[380]</sup> The Saudi government's failure to prohibit this abuse violates all of the international customary human rights law which similarly protects domestic and agricultural workers from violence.

Saudi Labor law provides detailed standards for working conditions limiting work to eight hours a day,<sup>[381]</sup> six days per week,<sup>[382]</sup> including daily rest period,<sup>[383]</sup> workers compensation,<sup>[384]</sup> paid sick leave<sup>[385]</sup> and vacation.<sup>[386]</sup> Working conditions are further required to protect workers from hazards<sup>[387]</sup> and be “clean and hygienic.”<sup>[388]</sup> On June 15, 1978, Saudi Arabia ratified both the Weekly Rest Convention and the Hours of Work Conventions regarding industrial labor.<sup>[389]</sup> These conventions legally bind Saudi Arabia to protect one day of weekly rest and an eight hour work day for all industrial workers.<sup>[390]</sup> However, migrant workers such as construction workers, are often forced to work ten or twelve hours a day, or are subjected to horrendous living or working conditions.<sup>[391]</sup> Migrant workers are sometimes assigned jobs they are not skilled to perform,<sup>[392]</sup> which violates both the Saudi law prohibiting this practice<sup>[393]</sup> and the CDHRI's rule that no worker may be assigned work “beyond his capacity.”<sup>[394]</sup> The

ubiquity of these abuses and the ineffective court system in place to address them casts doubt on the Saudi government's ability or willingness to abide by its own labor laws and ratified international labor conventions.

Saudi Labor law does not set a minimum wage, but it does ensure that employees receive pay for all work rendered<sup>[395]</sup> on at least a monthly basis,<sup>[396]</sup> plus overtime pay.<sup>[397]</sup> Nonetheless, one of the more common complaints of migrant workers in Saudi Arabia is that wages are too meager to live off or are even withheld all together.<sup>[398]</sup> The right to fair and full pay is also protected under the aforementioned international law.

One of the more outrageous forms of migrant worker abuse is the practice of “free visas.”<sup>[399]</sup> In this practice, a Saudi citizen will obtain a large number of work visas – sell them to individuals abroad who wish to migrate to the Kingdom for work, and then seek a monthly “sponsorship fee” from each of the workers during their stay in Saudi Arabia.<sup>[400]</sup> The migrant worker is charged with finding their own employment; the Saudi citizen merely takes their monthly fee in exchange for being their sponsor (recall that each migrant is required by Saudi law to have a sponsor).<sup>[401]</sup> This system of “free visas” in and of itself likely constitutes slavery, pursuant to the Convention on Slavery, which Saudi Arabia has ratified.<sup>[402]</sup> In that Convention, “debt bondage” is listed under the Institutions and Practices which are similar to slavery, and which that Convention seeks to abolish.<sup>[403]</sup> Slavery of course has the longest history of prohibition of any crime under international law, save piracy.<sup>[404]</sup> It was prohibited “in all its forms” in the Slavery Convention of 1926,<sup>[405]</sup> which also requires states to “take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.”<sup>[406]</sup> Its absolute illegality has since been re-affirmed by the UDHR,<sup>[407]</sup> the ICCPR,<sup>[408]</sup> the Convention on Migrant Workers,<sup>[409]</sup> and the CDHRI.<sup>[410]</sup> The Convention on Slavery proscribes that it shall be “a criminal offense under the laws of the States parties,”<sup>[411]</sup> making its perpetrators liable for punishment.<sup>[412][413]</sup>

The government has demonstrated a failure to honor unionization rights, to inform migrant worker of their labor rights, to improve labor courts and access to legal representation, and to enforce its own labor laws generally. This failure constitutes a violation of Saudi obligations under the labor conventions to which it is a party and the international customary law protecting the rights of these workers. The Saudi government therefore shares in the blame of migrant worker abuse, and bears the responsibility to correct it.

## **Conclusion & Recommendations**

Article 23(a) of the Cairo Declaration on Human Rights in Islam states that, “Authority is a trust; and abuse or malicious exploitation thereof is explicitly prohibited, in order to guarantee fundamental human rights.”<sup>[414]</sup> The Saudi government has authored its written laws in such a way as to allow and facilitate human rights abuses upon its citizens and non-citizens within its jurisdiction, and as such has abused its authority. Its failure to follow its own laws is most offensive to the sanctity of the rule of law. To alleviate the desperate situation HRFS petitions the government of the Kingdom of Saudi Arabia to adhere without delay to the following twelve recommendations:

1. **Saudi Arabia should pass, amend, or rescind laws and decrees as necessary to bring the country into compliance with international human rights law. No person in Saudi Arabia should be above the law and the law should apply to each person equally.** The law should apply to the Mabahith, to all law enforcement officials, to judges and to women and men equally. Standardized and uniform sentences, punishments, lengths of detention and detention conditions should be codified for all offenses and crimes, which should themselves be codified immediately.
2. **The Law should protect the right of every person in Saudi Arabia to privacy from the government pursuant to international customary law.** Only an independent judiciary should be able to issue a warrant, never a government officer, and only after that judiciary is presented with sufficient evidence from law enforcement officials. Only with such a warrant and due process of law should law enforcement officials be allowed to enter the home, arrest, interrogate or monitor the communication of people.
3. **HRFS applauds the Custodian of the Two Holy Mosques, King Abdullah’s new reforms for the judicial system.** They must be accompanied by a new generation of judges in addition to training current judges in the new law. New judicial posts should be open to all qualified Saudis – to females and males, and to all schools of thought in Islam.
4. **All individuals who have been deprived of their liberty by the state shall be afforded due process and access to prompt, fair and public hearings before the law.** They shall have a right to have their attorney present for all proceedings, their argument, their witnesses and their evidence heard before a court of law. They should have access to Saudi and Shari’ah law, their court files and adequate notice before their hearing. The submission of a confession should never bar these rights and no one should be punished for challenging a confession. Everyone accused of a crime by the state should have an attorney. HRFS applauds the Shura Council’s recent approval of a public defender system.<sup>[415]</sup> This should be implemented immediately, so that those who cannot afford an attorney will be provided with one by the state.

5. **Saudi Arabia should adhere to the CAT immediately.** Punishments should be proportional to their crime, and no one should be subjected to extreme pain or suffering – during interrogation, during punishment or at any other time. All interrogations should be taped, dated and serialized. Before interrogation, inform the suspects of their right not to incriminate themselves. The death penalty should never be proscribed for non-violent offenses, and no one should be jailed or executed for their real or perceived sexual orientation.
6. **The Saudi government should remove the prosecutorial offices from the control of the MOI and remove the power to arrest, detain and release suspects from prosecution.** The prosecution should not have quasi-judicial powers, such as the power to dismiss witnesses. The BIP should be split into a Bureau of Investigation and an Office of Prosecution. The Office of Prosecution should be directly under the Custodian of the Two Holy Mosques, King Abdullah.
7. **Anyone who is arrested shall be made aware of the reason for their arrest during their arrest and no one should be subjected to prolonged detention or deprived of a fair trial.** All current detainees should be informed of the reason for their arrest and tried or released immediately. The law should state clearly that each person shall *see a judge* (not “be referred to a court”) or be released promptly. A maximum amount of time for detention should be articulated for each offense and it should be enforced. Codified law should provide all detained persons with regular access to their families and attorneys.
8. **Saudi Arabia should accede immediately to the ICCPR. Complete, unconditional, uninterrupted freedom of association and speech,** should not be denied by the government to any person, pursuant to legal norms of international law. Political opposition to the government should never be a crime. The government should afford and encourage freedom of the press.
9. **Saudi Arabia should rescind its reservations to CEDAW, and adhere immediately to its ratifications of CADE and the Discrimination Convention to abolish discrimination against women.** Laws prohibiting discrimination on the basis of sex or religion by the government or by private entities should be codified and enforced with punishment for those who break them. These laws should provide adult women with a full legal identity equal to that of adult men and independent of men’s influence. These laws should protect women’s equal status before the courts, equal access to the police, their property, their children and their right under international law to vote, run and hold every available elected and government office. Safe Houses should be provided to women who are being physically or sexually abused.
10. **HRFS demands that Saudi Arabia comply with the CRC and the CRCI immediately and protect children from abuse.** Laws which punish those who would physically or sexually abuse children should be codified and enforced. There should be a working hotline and safe houses for children who are being abused. There should be a specialized

agency of the state which investigates allegations of abuse and protects children from that abuse. A specially trained juvenile law enforcement agency should also be created. The curriculum in schools should include the teachings of every school of Islam to be taught to every child.

11. **HRFS joins the UN High Commissioner for Human Rights<sup>[416]</sup> in condemning the sponsorship system and calling for its immediate and complete abolition in Saudi Arabia.** Saudi Arabia should also adhere to its obligations under the respective labor conventions to which it is a party, and should sign and ratify the Convention on the Protection of Migrant Workers and Their Families. The government must immediately implement a livable minimum wage, a law protecting the right of labor to unionize and punishment for those who would obstruct that right. The practice of “free visas” should be made illegal, and access to labor courts should be improved and should include translation services. Migrant workers and their employers should receive mandatory orientations in the law and their respective rights under that law. All the rights advocated for in these recommendations should apply equally to all migrant workers, including domestic and agricultural workers.
  
12. **Each seat on the Shura council<sup>[417]</sup> and 100% of seats in the municipal elections should be open to free and fair public election by both adult women and adult men equally.** Elections should be open to Saudis in the military and the universal age of suffrage should be 18. This will improve oversight in government and the rule of law, and improve the Kingdom’s ability to enforce its own laws.





<sup>[1]</sup>Lassa Oppenheim, *International law: A Treatise*, Nabu Press, Volume 1, (Feb. 10, 2010) page 676

"The effect of ratification by the parties is to make a treaty binding."

<sup>[2]</sup> The 1969 Vienna Convention on the Law of Treaties, Article 18, S. Announces intent Not to Ratify International Criminal Court Treaty, *American Society of International Law*, 2002-05-01; Vienna Convention on the Law of Treaties, adopted May 29, 1969, UN Doc. A/Conf.39/27, 1155 UNTS 331, entered into force January 27, 1980, art. 18(1).

<sup>[3]</sup>Shabtai Rosenne, *Practice and Methods of International Law*, p.55 (1984). (Customary international law "... consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way."); Report of the International Law Commission to the General Assembly (Part II): Ways and Means of Making the Evidence of Customary International Law More Readily Available," [1950] 2 *Y.B. Int'l L. Comm'n* 367, ILC Doc. A/1316. (In 1950, the International Law Commission listed as evidence of customary international law: treaties, decisions of national courts and international tribunals, national legislation, diplomatic correspondence, opinions of national legal advisors, and the practice of international organizations).

<sup>[4]</sup> Statute of the International Court of Justice, Article 38(1)(a)(b) and (c), available at: <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0> (Article 38(1) states, "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations," thus identifying customary international law and general principles of law as two of the sources of international law)

<sup>[5]</sup> Mary Carter Duncan, *Playing by Their Rules: The Death Penalty and Foreigners in Saudi Arabia*, Georgia Journal of International and Comparative Law, 27 Ga. J. Int'l & Comp. L. 231 (1998), at 243 ("However, Saudi Arabia's failure to sign on to [international human rights conventions] does not necessarily relieve the nation of responsibility for abiding by the rules set forth in the documents. International law in the field of human rights has been so pervasive as to make it customary international law - law by which all nations are bound. Therefore, even though Saudi Arabia is not bound to follow international law on human rights as a signatory, the nation is bound to follow the international laws because of their status as customary international law.")

<sup>[6]</sup> Antonio Augusto Cancado Tindade, Former President of the Inter-American Court of Human Rights, *Introduction to the Audiovisual Library of International Law*, United Nations, available at <http://untreaty.un.org/cod/avl/ha/udhr/udhr.html>; Questions and Answers on the Universal Declaration of Human Rights National Coordinating Committee for UDHR/50, Franklin and Eleanor Roosevelt Institute, (Revised: August 27, 1998) available at <http://www.udhr.org/history/question.htm> ("the Universal Declaration has become a cornerstone of customary international law and all governments are now bound to apply its principles").

<sup>[7]</sup> Carlyle Murphy, *Saudi Arabia: Slowly Opening Dialog About Human Rights*, Christian Science Monitor (March 26, 2008), available at: <http://www.csmonitor.com/World/Middle-East/2008/0326/p06s01-wome.html>

<sup>[8]</sup> Ghazanfar Ali Khan, *GCC to set up Human Rights Panel*, Arab News, (July 16, 2010), available at: <http://www.arabnews.com/saudiArabia/article85036.ece>

<sup>[9]</sup> Jafar Alshayeb, *Women's Rights Gain Focus in Saudi Arabia*, Carnegie Endowment News Brief, (May 12, 2010) available: <http://www.carnegieendowment.org/arb/?fa=show&article=40786> ("The King appointed a woman to be deputy minister of education, the highest public office in the country to be held by a woman so far, in February 2009. . . In December 2009, Lama Alsulaiman was the first woman to win a seat in the Chamber of Commerce and Industry (CCI) in Jeddah . . . the Ministry of Commerce appointed four women board members" . . . Women no longer require a male guardian's approval to get or leave a job); 2009 *Human Rights Report: Saudi Arabia*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, (March 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm>, ("After her February 2008 visit, the UN special rapporteur on violence against women, while acknowledging progress in the status of women and particularly women's access to education, noted the lack of women's autonomy, freedom of movement, and economic independence"); Lulwa Shalhoub, *Rocky Road Ahead for Saudi Women Studying Abroad*, Arab News, (June 15, 2010), available at: [http://arabnews.com/saudiArabia/top\\_20\\_supplement/article66314.ece](http://arabnews.com/saudiArabia/top_20_supplement/article66314.ece), (Women can now start their own business without a male guardian . . . "and can trade in real estate, construction, contracting and public services, which used to be forbidden to women.")

<sup>[10]</sup> Tariq Alhomayed, *Saudi Arabia . . . One of the Most Important Decisions*, Asharq Alawsat, (Jan. 23, 2010), available at: <http://www.asharq-e.com/news.asp?section=2&id=19621>; Ministry of Higher Education Portal, King

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Abdullah Scholarships Program, (MOHE 1996-2010) available at: <http://www.mohe.gov.sa/en/studyboard/King-Abdulla-hstages/Pages/default.aspx>; *King Extends Scholarship Program for Five Years*, Saudi Gazette, (Sept. 6, 2010), available at: <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentID=2010012160846>

<sup>[11]</sup> *Saudi Arabia: 2005 Report*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, (March 8, 2006), available at: <http://www.state.gov/g/drl/rls/hrrpt/2005/61698.htm> (On September 12, [2005] the Council of Ministers approved the establishment of the Human Rights Commission, a specialized governmental entity, aimed at protecting and enhancing human rights as well as raising public awareness and ensuring the implementation of human rights in line with Shari'a rule)

<sup>[12]</sup> *Precarious Justice: Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia*, Human Rights Watch, Vol. 20, No. 3(E), (March 2008), available at <http://www.hrw.org/en/node/62304/section/1> (“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,” in addition to a new supreme court.)

<sup>[13]</sup> *Two Women Win in Saudi Election*, BBC, (November 2005), available at: [http://news.bbc.co.uk/2/hi/middle\\_east/4485308.stm](http://news.bbc.co.uk/2/hi/middle_east/4485308.stm), (two women were elected to the Jeddah board of Chamber of Commerce); Jafar Alshayeb, *Women's Rights Gain Focus in Saudi Arabia*, *Carnegie Endowment News Brief*, (May 12, 2010) available: <http://www.carnegieendowment.org/arb/?fa=show&article=40786> (“The King appointed a woman to be deputy minister of education, the highest public office in the country to be held by a woman so far, in February 2009. . . . In December 2009, Lama Alsulaiman was the first woman to win a seat in the Chamber of Commerce and Industry (CCI) in Jeddah . . . the Ministry of Commerce appointed four women board members” . . . Women no longer require a male guardian’s approval to get or leave a job); *2009 Human Rights Report: Saudi Arabia*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, (March 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm>, (“After her February 2008 visit, the UN special rapporteur on violence against women, while acknowledging progress in the status of women and particularly women’s access to education, noted the lack of women’s autonomy, freedom of movement, and economic independence”)

<sup>[14]</sup> The Basic Laws of Governance, Royal Order No. A/91, 27 Sha’ban 1412 / 1 March 1992, Published in Umm-al-Qura Gazette, No. 3397, 2 Ramadan 1412 / 5 March 1992, Part Two: System of Governance at Article 6 (“Citizens Shall pledge allegiance to the King . . .”)

<sup>[15]</sup> The Basic Laws of Governance, Part Two: System of Governance at Article 5(a)

<sup>[16]</sup> The Law of Criminal Procedure, Royal Decree No. M/39, 28 Rajab 1422 / 15 OCT. 2001, Published in *Umm Al-Qura* Gazette No. 3867, 17 Sha’ban 1422/3 Nov. 2001, Part Three: Procedure Relating To Evidence, Chapter IV: Search of Persons and Dwellings at Article 41

<sup>[17]</sup> See The Law of Criminal Procedure, generally.

<sup>[18]</sup> Article 80 does add that the Bureau may only issue a warrant pursuant to “an accusation against a person residing in the relevant dwelling that he either committed a crime or participated therein.” (The Law of Criminal Procedure, Part Four: Investigation Procedure, Chapter III: Movement to the Scene, Inspection, Search, and Seizure of Items Connected with the Crime at Article 80) But again, because it is not specified who has the authority to make this accusation, and it is not required to be based upon any evidence (See the Law of Criminal Procedure, generally), this likewise gives the government agency license to make an accusation of a crime arbitrarily.

<sup>[19]</sup> Article 41 goes on to say that “other dwellings” may be searched pursuant to a warrant issued by the “investigator”. Who is the investigator? The Law of Criminal Procedure states that proceedings related to criminal investigation shall be conducted by such persons as “directors of police and their assistants”, and also passport officers, civil defense officers, border guard officers, heads of counties, and any “entity, commission or other persons who have been assigned to conduct an investigation pursuant to the regulations.” (The Law of Criminal Procedure, Part III, Chapter I at Article 26). Ultimately, any government agent may search a home as they wish.

<sup>[20]</sup> The Law of Criminal Procedure, Part Three: Procedure Relating to Evidence, Chapter V: Seizure of mail and Surveillance of Conversations at Article 56. “The Director of the Bureau of Investigation and Prosecution may issue an order authorizing seizure of mail, publications, parcels and surveillance and recording of telephone conversations.”

<sup>[21]</sup> The only criteria in Article 56 are that such “investigations” must be “deemed useful in determining the truth related to a crime that has actually been committed.” (The Law of Criminal Procedure, Article 56) However, because Saudi law has no penal code to speak of, this means the “crime” referred to may be anything committed

which the Saudi government finds objectionable on that particular day – again, providing free reign to surveillance or seizure at the government’s discretion.

<sup>[22]</sup> Member States, Organization of the Islamic Conference (OIC), (last updated, 2009) available at: [http://www.oic-oci.org/member\\_states.asp](http://www.oic-oci.org/member_states.asp) (Saudi Arabia has been a member state of the OIC since 1969)

<sup>[23]</sup> Written Statement submitted to the Secretary-General and circulated in accordance with Economic and Social Council Resolution 1996/31 (Feb. 24, 2008), available at: <http://www.iheu.org/node/3162> (“On 5 August 1990, the then 45 member states of the OIC adopted The Cairo Declaration of Human Rights in Islam. In this document all rights are seen as derived from God. The preamble states that “no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments.”)

<sup>[24]</sup> Cairo Declaration on Human Rights in Islam (CDHRI), Adopted at the Islamic Conference of Foreign Ministers, Cairo, (Aug. 5, 1990), available at: <http://www.unhcr.org/refworld/docid/3ae6b3822c.html> [accessed 28 August 2010], Article 18(b); See also Article 18(c) of the CDHRI, “A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.” See also Article 22(c) of the CDHRI, “Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.”

<sup>[25]</sup> Cairo Declaration on Human Rights in Islam, Article 15(b) Aug. 5, 1990, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993)

<sup>[26]</sup> The CDHRI also states in its Article 15 that confiscation and seizure of property are prohibited except for a “necessity dictated by law (Cairo Declaration on Human Rights in Islam at Article 15(b)). This demonstrates a more serious standard which contrasts to the lower standard for government seizure in Article 56 of the Saudi Law of Criminal Procedure which merely requires that seizure be “useful” to the investigation. “Useful” allows for broader seizure powers than “necessary.” (The Law of Criminal Procedure, Part Three: Procedure Relating to Evidence, Chapter V: Seizure of mail and Surveillance of Conversations at Article 56)

<sup>[27]</sup> Universal Declaration of Human Rights at Article 12

<sup>[28]</sup> International Convention on Civil and Political Rights, 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 Mar. 23, 1976, at Article 25(b)

<sup>[29]</sup> International Covenant on Civil and Political Rights, Entry into force March 23, 1976, Registration: March 23, 1976, No. 14668, available at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (166 countries are parties to this convention)

<sup>[30]</sup> International Convention on Civil and Political Rights at Article 17

<sup>[31]</sup> Universal Islamic Declaration of Human Rights, adopted by the *Islamic Council of Europe* on 19 September 1981/21 Dhul Qaidah 1401, available at [http://www1.umn.edu/humanrts/instree/islamic\\_declaration\\_HR.html](http://www1.umn.edu/humanrts/instree/islamic_declaration_HR.html), (Article XXII: Right to Privacy, “Every person is entitled to the protection of his privacy”, and Article XVI: Right to Protection of Property, “No property may be expropriated except in the public interest and on payment of fair and adequate compensation.”).

<sup>[32]</sup> The Basic Law of Governance, Part Five: Rights and Duties, Article 39

<sup>[33]</sup> Universal Declaration of Human Rights, at Article 19

<sup>[34]</sup> International Convention on Civil and Political Rights, at Article 19

<sup>[35]</sup> League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008, Article 18 (All citizens have the right to freedom of peaceful assembly and association); *Human Rights Organization and Arab Human Rights Committee Engage in Constructive Dialogue*, International Federation of Human Rights, (Oct. 21, 2009), available at: <http://www.fidh.org/-League-of-Arab-States-> (As of end of September 2009 ten Arab states ratified the Arab Charter on Human Rights. These are: Algeria, Bahrain, Jordan, Libya, Palestine, Qatar, Saudi Arabia, Syria, United Arab Emirates (UAE), and Yemen);

<sup>[36]</sup> Universal Declaration of Human Rights, at Article 20(1)

<sup>[37]</sup> International Convention on Civil and Political Rights, at Article 22

<sup>[38]</sup> Universal Islamic Declaration of Human Rights, Article XIV Right to Free Association, at part (a)

<sup>[39]</sup> The right to peaceful assembly and association is so fundamental and so widely protected under international customary law, that it has been written into many other conventions covering specific subsets of the population (Such as the Convention on Elimination of Discrimination against Women at Article 7,(c) (See endnote 95 for full treaty citation), the Convention on the Elimination of all forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969., Article 5(d)(ix), the Declaration on the Rights of Groups and Organs, Article 5(a) (See endnote 63 for full treaty citation).

<sup>[40]</sup>2009 Country Reports on Human Rights Practices: Saudi Arabia, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm>, (Shari'a, as interpreted in the country, rather than a penal code is the basis of the penal system.); See also The law of Criminal Procedure, generally; See also Saudi law generally;

<sup>[41]</sup> Universal Declaration of Human Rights, at Article 11

<sup>[42]</sup> International Convention on Civil and Political Rights, at Article 15

<sup>[43]</sup> Universal Islamic Declaration of Human Rights, Part V: Right to Fair Trial at part (d)

<sup>[44]</sup> The Law of Criminal Procedure, Part Four: Investigation Procedure, Chapter VIII: Detention Warrant at Article 112

<sup>[45]</sup> The Law of Criminal Procedure, Part One: General Provisions at Article 2

<sup>[46]</sup> The Law of Criminal Procedure does not define the term “competent authority,” though it is presumably referring to a judge

<sup>[47]</sup> Curiously, the Law of Criminal Procedure also states that the Bureau of Investigation and Prosecution shall visit places of detention and order the release of any imprisoned person who is in detention “unlawfully.” (The Law of Criminal Procedure, Part Three: Procedure Relating to Evidence, Chapter III: Arrest of the Accused at Article 37 and 39) However, because there are no standards placed on the amount of time a person can be placed in detention by a judge or court - it is unclear just how a person *ever could be* in a Saudi prison “unlawfully.”

<sup>[48]</sup> The Law of Criminal Procedure limits the maximum time between arrest of the accused and their referral to a court to six months. (The Law of Criminal Procedure, Part IV, Chapter VIII at Article 114)

<sup>[49]</sup> Nevertheless, The Law of criminal procedure adds that once referred to a court “his release if detained or detention . . . shall be within the jurisdiction of the court to which he has been referred.” (The Law of criminal procedure, Part IV, Chapter IX at Article 123) Again, this opens the individual up to indefinite detention at the court’s discretion.

<sup>[50]</sup> Arab Charter on Human Rights, at Article 14

<sup>[51]</sup> UN Working Group on Arbitrary Detention, "Individual Complaints, Urgent Appeals, Deliberations," available at: <http://www.ohchr.org/english/issues/detention/complaints.htm>, (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.")

<sup>[52]</sup> Universal Declaration of Human Rights at Article 9

<sup>[53]</sup> Cairo Declaration of Human Rights in Islam at Article 18(b)

<sup>[54]</sup> International Convention on Civil and Political Rights at Article 9(1) and (5)

<sup>[55]</sup> United Nations, Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, Professional Training Series No. 9, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Chapter 9, "The Use of Non-Custodial Measures in the Administration of Justice," 2. Terminology, 2.1, (2003), page 374, (“non-custodial measures” means any decision made by a competent authority to submit a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment;”)

<sup>[56]</sup> United Nations Standard Minimum Rules of Non-Custodial Measures (The Tokyo Rules), G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990). Article 2: The scope of non-custodial measures, Section 2.3

<sup>[57]</sup> United Nations Standard Minimum Rules of Non-Custodial Measures at Article 6: Avoidance of pre-trial detention at Section 6.1

<sup>[58]</sup> Universal Islamic Declaration of Human Rights, II Right to Freedom at part (a)

<sup>[59]</sup> The Law of Criminal Procedure, Part Four: Investigation Procedure, Chapter V: Hearing of Witnesses, Article 95

<sup>[60]</sup> Guidelines on the Role of Prosecutors, 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

<sup>[61]</sup> International Convention on Civil and Political Rights, Article 14(1) ( . . . everyone shall be entitled to . . . independent and impartial tribunal. . . )

<sup>[62]</sup> Vienna Declaration, World Conference on Human Rights, Vienna, 14 - 25 June 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), Article 27, (“Every State should provide an effective framework of remedies to redress human rights grievances or violations. . . especially an independent judiciary . . . are essential to the full

and non-discriminatory realization of human rights. . ."); See also Convention Against Enforced Disappearance, International Convention for the Protection of All Persons from Enforced Disappearance, G.A. res. 61/177, U.N. Doc. A/RES/61/177 (2006), adopted Dec. 20, 2006. Article 11(3) (. . . independent and impartial court or tribunal . . .)

<sup>[63]</sup> The Law of the Judiciary, Royal Decree No. M/64, 14 Rajab 1395/22 July 1975, Published in Umm Al-Qura Gazette No. 2592, 29 Sha'ban 1395 – 5 Setp. 1975, Part Two: Courts, Chapter III: Hearings and Judgments, Article 33

<sup>[64]</sup> The Law of Criminal Procedure, Part Six: Trial Proceedings, Chapter VI: Order and Procedures of Hearings, Article 155

<sup>[65]</sup> The Law of Procedure Before Shari'ah Courts, Part Eleven: Methods of Objecting to Judgments, Chapter II: Appeals, Article 179

<sup>[66]</sup> The Law of Procedure Before Shari'ah Courts, Part Eleven: Methods of Objecting to Judgments, Chapter II: Appeals, Article 179

<sup>[67]</sup> The Law of the Judiciary, Part Two: The Courts, Chapter I: Hierarchy of Courts, Article 5 (The highest court in Saudi Arabia is referred to as the "Supreme Judicial Council" in this law, but this court has since been renamed "The Supreme Court").

<sup>[68]</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. res.53/144, annex, 53 U.N. GAOR Supp., U.N. Doc. U.N. Doc. A/RES/53/144 (1999). Article 9(3)(b)

<sup>[69]</sup> Universal Declaration of Human Rights at Article 10, ("the UDHR and the ICCPR guarantee to everyone "a fair and public hearing by an independent and impartial tribunal" (emphasis added)")

<sup>[70]</sup> International Convention on Civil and Political Rights at Article 14(1) (Article 14 does add that "The press and the public may be excluded from all or part of a trial for reasons of morals, 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." The Problem of course with comparing this to the Saudi law is that Saudi Arabia is not a "democratic society" and thus the language on exceptions in Article 14 of the ICCPR is likely not intended in the same way the language in the Saudi law is.)

<sup>[71]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), Principle 36 (ensure access to ". . . a public trial at which he has had all the guarantees necessary for his defense. (emphasis added)")

<sup>[72]</sup> The Law of Criminal Procedure, Part Four: Investigation Procedure, Chapter V: Hearing of Witnesses, Article 95

<sup>[73]</sup> Arab Charter on Human Rights, at Article 16(e)

<sup>[74]</sup> International Convention on Civil and Political rights at Article 14(3)(e), (protects the right "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (emphasis added))

<sup>[75]</sup> The Law of Criminal Procedure, Part Six: Trial Proceedings, Chapter VI: Order and Procedure of Hearings, Article 162

<sup>[76]</sup> The Law of Criminal Procedure, Part Six, Trial Proceedings, Chapter VII: Forgery as Subsidiary Action, Article 178

<sup>[77]</sup> Universal Declaration of Human Rights at Article 11

<sup>[78]</sup> International Convention on Civil and Political Rights at Article 14(2)

<sup>[79]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 36(1)

<sup>[80]</sup> Cairo Declaration on Human Rights in Islam at Article 19(e)

<sup>[81]</sup> Arab Charter for Human Rights, at Article 16(f)

<sup>[82]</sup> International Convention on Civil and Political Rights at Article 14(3)(g)

<sup>[83]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 21(1)

<sup>[84]</sup> Universal Islamic Declaration of Human Rights, Article V: Right to Fair Trial, parts (a) and (b).

<sup>[85]</sup> Universal Declaration of Human Rights, at Article 11

<sup>[86]</sup> International Convention on Civil and Political Rights, See Article 14 generally

<sup>[87]</sup> International Convention for the Protection of All Persons from Enforced Disappearance, at Article 11(3)

- <sup>[88]</sup> See Also Guidelines on the Role of Prosecutors, at Guideline 12 (**Guideline 12 charges all prosecutors with the responsibility to uphold due process**); See also Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985). Principle 6 (**Principle 6, “entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”**)
- <sup>[89]</sup> Universal Islamic Declaration of Human Rights, Article IV: Right to Justice
- <sup>[90]</sup> The Law of Criminal Procedure, Part I: General Provisions, at Article 10 and 11; The Law of Criminal Procedure, Part Five: Courts., Chapter I: Criminal Jurisdiction, at Article 128
- <sup>[91]</sup> World Briefing; Middle East: Saudi Arabia: Thief's Hand Amputated (July 24, 2002), available at: <http://www.nytimes.com/2002/07/24/world/world-briefing-middle-east-saudi-arabia-thief-s-hand-amputated.html> (**Afghan man convicted of pick pocketing has his right hand amputated**)
- <sup>[92]</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Entry into force: June 26, 1987, Registration: June 26, 1987, No. 24841, available at: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en) (**Saudi Arabia ratified the this convention on September 23, 1997**).
- <sup>[93]</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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. Article 1(1) and Article 2
- <sup>[94]</sup> Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984). Article 9
- <sup>[95]</sup> Harold Hillman, Unity Laboratory of Applied Neurobiology, University of Surrey, Guilford GUA 5XH, Surrey, UK, *The Possible Pain Experienced During Execution by Different Methods*, Perception (1993) volume 22, pages 745-753 (“**The skin, muscles, and vertebrae of the neck are tough, so that beheading does not always result from a single blow. It may be presumed that the prisoner becomes unconscious within a few seconds, but not immediately after the spinal cord is severed. . . It has been calculated that the human brain has enough oxygen stored for metabolism to persist about 7 s after the supply is cut off . . . during which time the person experiences "burning, sharp pain."**”).
- <sup>[96]</sup> Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment, Article 16 (1), (“**Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official . . .**”)
- <sup>[97]</sup> *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia*, Human Rights Watch Report, April 19, 2008, p. 3 (“**Officials may ask women for their guardian’s consent even where no law or guideline requires such consent because current practice assumes women have no power to make their own decisions**”).
- <sup>[98]</sup> *Letter to the Saudi Human Rights Commission on Behalf of Aisha Ali End System of Male Guardianship*, Human Rights Watch, (Aug. 12, 2010) available at: <http://www.hrw.org/en/news/2010/08/12/letter-saudi-human-rights-commission-behalf-aisha-ali> (“**In 2009, the Kingdom of Saudi Arabia promised to end the male guardianship system during the Universal Periodic Review at the UN Human Rights Council . . .**”); *UN: Saudi Arabia Pledges End of Men's Control Over Women: Commitments Also Made to UN on Juvenile Death Penalty, Domestic Workers*, Human Rights Watch (June 12, 2009), available at <http://www.hrw.org/en/news/2009/06/12/un-saudi-arabia-pledges-end-men-s-control-over-women> (“**The government also clarified that the Shari'a concept of male guardianship over women is not a legal requirement, and that "Islam guarantees a woman's right to conduct her affairs and enjoy her legal capacity."**”).
- <sup>[99]</sup> The Law of Procedure Before the Shari’ah Courts, The Law of Procedure Before the Shari’ah Courts, Royal Decree No. M/21, 20 Jumada I 1421 / 20 August 2000, Published in *Umm Al-Qura* Gazette No. 3811, 17 Jumada II 1421 / 16, September 2000. Part Twelve: Attachment and Execution, Chapter 1: Rendering Judgment, at Article 199 (b)
- <sup>[100]</sup> Convention on the Elimination of All Forms of Discrimination against Women, Entry into force: September 3, 1981, No. 20378, available at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

<sup>[101]</sup> Convention on the Elimination of All Forms of Discrimination against Women, Entry into force: September 3, 1981, No. 20378, available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec)

<sup>[102]</sup> Vienna Convention on the Law of Treaties, adopted May 23, 1969, entered into force on January 27, 1980. United Nations, Treaty Series, vol. 1155, p. 331, Article 19(c), (“A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:(c) in cases not failing under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty”); Saudi Arabia ratified this treaty in, and is therefore legally bound to follow these treaty rules; Saudi Arabia ratified, April 14, 2003, available at: [http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en](http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en)

<sup>[103]</sup> League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008. Article 2 (forbids discrimination on grounds of sex), and Article 9 (all people are equal before the law)

<sup>[104]</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. at Article 7, 9, 10, 11, etc. (States are required to take measures to ensure "equal rights with men" in government (Article 7), nationality (Article 9), education (Article 10), employment (Article 11), etc.)

<sup>[105]</sup> Convention on the Elimination of All Forms of Discrimination against Women, Entry into force: September 3, 1981, No. 20378, available at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (The 186 ratifications represent Every United Nations member in the world, save 7, one of which, the United States, has signed the treaty).

<sup>[106]</sup> International Convention on Economic, Social, and Cultural Rights, G.A. res. 63/117 (2008). Article 3; The International Convention on Social, Cultural and Economic Rights, entry into force: January 3, 1976, Registration: January 3, 1976, No. 14531, available at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (160 states are a party to this convention)

<sup>[107]</sup> International Convention on Civil and Political Rights, at Articles 2, 4, 14, 16 and 26

<sup>[108]</sup> Universal Declaration of Human Rights, at Articles 1,2 and 7

<sup>[109]</sup> Universal Islamic Declaration of Human Rights, at Article III: Right to Equality and Prohibition against Impermissible Discrimination, Part (a) (“All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.”)

<sup>[110]</sup> Cairo Declaration of Human Rights in Islam, Article 1 and Article 6

<sup>[111]</sup> This rule of international customary law is reinforced by the Vienna Declaration on Human Rights (Vienna Declaration of 1993, at Articles 18 and 39) and the Declaration of the Elimination of all form of Discrimination Against Women (Declaration of the Elimination of all form of Discrimination Against Women, United Nations, A/RES/48/104, Distr. General (Dec. 20, 1993) 85th Plenary Meeting, Article 3(b)) which both prohibit discrimination against and unequal treatment of women.

<sup>[112]</sup> The Labor Law of Saudi Arabia, Royal Decree No. M/51, 23 Shaban 1426/27 Sept. 2005, Part IX: Employment of Women, Article 149

<sup>[113]</sup> The Labor Law of Saudi Arabia, Part IX: Employment of Women, at Article 150

<sup>[114]</sup> The Labor Law of Saudi Arabia, Part IX: Employment of Women, at Article 149, (The Minister of Labor is empowered in this article to "determine the professions and jobs that are deemed detrimental to the health and are likely to expose women to specific risks", making a government official the arbiter of which employment women may and may not seek.)

<sup>[115]</sup> The Labor Law of Saudi Arabia, Part X: Employment of Minors, at Article 161 (minors may not be employed in "hazardous jobs or harmful industries"); Article 163 ("minors may not work during a period of night the duration of which is not less than twelve consecutive hours,")

<sup>[116]</sup> Discrimination in Employment and Occupation Convention of 1958, date of adoption, June 25, 1958, available at <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C111> (Saudi Arabia ratified the treaty June 15, 1978)

<sup>[117]</sup> Discrimination (Employment and Occupation) Convention (ILO No. 111), 362 U.N.T.S. 31, entered into force June 15, 1960., Article 1(a) and Article 2

<sup>[118]</sup> Discrimination (Employment and Occupation) Convention, at Article 3(b) and (c)

<sup>[119]</sup> Political dissidents here are defined as those groups who have political goals, such as alternative political parties which are banned in the Kingdom, Saudi Arabia Country Profile, BBC (June 16, 2010) available at:

[http://news.bbc.co.uk/2/hi/middle\\_east/country\\_profiles/791936.stm](http://news.bbc.co.uk/2/hi/middle_east/country_profiles/791936.stm). Human Rights activists however, are meant to connote those individuals who would push for increased liberties and rights for individuals without any political agenda, such as HRFS or the Saudi Civil and Political Rights Association (ACPRA). Social critics are anyone, not necessarily a member of any formal organization, who is critical of a government policy or religious practice.

<sup>[120]</sup> *Court to Announce verdict on the Legality of Detaining Human Rights Defender Judge Suliman Ibrahim Al-Reshoudi*, Frontline Defenders, (Aug. 26, 2010) available at:

<http://www.frontlinedefenders.org/node/13197> (Judge Suliman Al-Reshoudi, a member of the Saudi Civil and Political Rights Association (ACPRA), was detained for over three years for his actions); *Saudi Arabia: Travel Ban Against Blogger Mr. Raif Badawi for Criticizing Religious Police*, Frontline Defenders (August 12, 2009), available at <http://www.frontlinedefenders.org/node/2281> (Mr. Badawi was subjected to travel bans, interrogation and detention for criticizing the religious police in his blog); Joe Stork and Christoph Wilcke, *Saudi Reforms Five Years On: Looser Rein, Slight Gain*, The Huffington Post (July 1, 2010), available at <http://www.hrw.org/en/news/2010/07/01/saudi-reforms-five-years-looser-rein-slight-gain?print> (Activists like professors Matrook al-Faleh and Abdullah al-Hamid, the poet Ali al-Dumaini, and former judge, Sulaiman al-Rashudi, continue to pay a heavy price -- harassment in their jobs, arbitrary arrest, jail time, and foreign travel bans . . . The government blocks the websites of organizations such as Saudi Woman's Voice, the Saudi Society for Civil and Political Rights, and the Rights Activists Network, and none have been able to register as civic societies); Sarah Leah Whitson, *Blogging About Quest to Treat Comatose Brother Could Land Man in Jail* (March 10, 2010), available at: <http://www.hrw.org/en/news/2010/03/10/saudi-arabia-drop-charges-publicizing-bureaucratic-failures?print> (He was detained for criticizing the efficiency with which the Saudi government reimburses medical expenses for its citizens).

<sup>[121]</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, at Article 6(b) and Article 9(a), respectively.

<sup>[122]</sup> Universal Islamic Declaration of Human Rights, IV Right to Justice, at part (b)

<sup>[123]</sup> Universal Islamic Declaration of Human Rights, VI Right to Protection Against Abuse of Power

<sup>[124]</sup> Moreover, the UIDHR instructs that "It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state." (Universal Islamic Declaration of Human Rights, XII Right to Freedom of Belief, Thought and Speech, Part (c))

<sup>[125]</sup> Joe Stork and Christoph Wilcke, *Saudi Reforms Five Years On: Looser Rein, Slight Gain*, The Huffington Post (July 1, 2010), available at <http://www.hrw.org/en/news/2010/07/01/saudi-reforms-five-years-looser-rein-slight-gain?print> ("When veteran reformers pondered establishing a political party at a meeting in Jeddah in February 2007, the intelligence service stormed the house commando-style, arresting the professors, lawyers, and intellectuals there, most of whom remain detained without charge or trial . . ."); *Saudi Arabia Must Release or Charge Activist*, Amnesty International, (June 18, 2010), available at: <http://www.amnesty.org/en/appeals-for-action/saudi-arabia-must-release-or-charge-activist-critical-authorities> ("[the activist] was arrested on the morning of 8 November, 2009 . . . security police searched his home, confiscated two laptop computers, a digital camera and hard disc.")

<sup>[126]</sup> *Fear of Torture/incommunicado Detention/Prisoners of conscience*, Amnesty International, Action Alert, (July 9, 2009), available at: <http://www.amnestyusa.org/actioncenter/actions/uaa01409.pdf?rss=iar>

<sup>[127]</sup> *Court to Announce verdict on the Legality of Detaining Human Rights Defender Judge Suliman Ibrahim Al-Reshoudi*, Frontline Defenders, (Aug. 26, 2010) available at:

<http://www.frontlinedefenders.org/node/13197> (Judge Suliman Al-Reshoudi has been detained for over three years without charge); *Saudi Arabia: Human Rights Defender, Dr. Matrouk Al-Faleh released after 235 days in Prison*, Frontline Defenders, (Jan. 15, 2009) available at:

<http://www.frontlinedefenders.org/node/1765> (Mr. Al-Faleh was held for 235 days and never officially charged); *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at:

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (According to the ACPRA, the following activists were among those detained without official indictment or court ruling at year's end: Professor Abdulrahman Al-Shomairi, Ali Khosifan Al-Qarni, attorney Mousa Al-Qarni, Professor Saud Al-Hashemi, Fahd Alskaree Al-Qurashi, Abdulrahman bin Sadiq, Saifaldeen Faisal Al-Sherif, Mansour Al-Otha, Abdulrahman Khan, Abdulaziz Al-Khirayji, and Suleiman Al-Reshoudi)



<sup>[128]</sup> *Human Rights Defender held since mid-June on charge of "annoying others"*, Reporter Without Borders (July 22, 2010), available at: <http://en.rsf.org/saudi-arabia-human-rights-defender-held-since-22-07-2010,38000.html> (**Human Rights Activist Sheikh Mekhleef bin Dham al-Shammari arrested and detained for "annoying others"**)

<sup>[129]</sup> *Precarious Justice: Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia*, Human Rights Watch, (March 24, 2008), page 125, available at: <http://www.hrw.org/en/node/62304/section/16>

<sup>[130]</sup> *Saudi Arabia: Counterterrorism Efforts Violate Rights: Indefinite Detention, Inappropriate Reeducation, and Flawed Trials*, Human Rights Watch, (August 10, 2009), available at: <http://www.hrw.org/en/news/2009/08/04/saudi-arabia-counterterrorism-efforts-violate-rights> (“**Saudi Arabia has detained indefinitely more than 9,000 people under its counterterrorism program since 2003, offering many religious "reeducation" instead of judicial review to attain their freedom . . .**”)

<sup>[131]</sup> *Is It Reshoudi's Trial or the Grievances Court's Trial?* Saudi Civil and Political Rights Association, Press Release, (August 8, 2010), available at: [http://www.acpra9.org/news\\_view\\_77.html](http://www.acpra9.org/news_view_77.html)

<sup>[132]</sup> *Is It Reshoudi's Trial or the Grievances Court's Trial?* Saudi Civil and Political Rights Association, Press Release, (August 8, 2010), available at: [http://www.acpra9.org/news\\_view\\_77.html](http://www.acpra9.org/news_view_77.html)

<sup>[133]</sup> **Whether or not a prisoner is allowed to visit with their family appears to HRFS to be “completely arbitrary.”** “Some individuals are given a great deal of access, others are denied it completely”, interview with HRFS director, Ibrahim AL-Mugaiteeb (August 25, 2010); *Activist Seized by Secret Police, Wife Says*, CNN International, (May 23, 2008), available at:

<http://edition.cnn.com/2008/WORLD/meast/05/23/saudi.arrest/index.html> (**Wife of arrested political science professor/social critic says she keeps calling the police that detained her husband, but they keep denying they're holding him at their facility. She is unable to visit him as a result.**); *Counterterrorism Response: Religious Counseling, Indefinite Detention, and Flawed Trials*, Human Rights Watch Report 1-56432-526-1, (August, 2009) available at: <http://www.hrw.org/en/reports/2009/08/10/human-rights-and-saudi-arabia-s-counterterrorism-response-0>, (“A non-saudi who had been arrested; The family was not able to speak to him until eight months after his arrest, and not again for five months after that first communication, although they have been in regular communication every two weeks since November”)

<sup>[134]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 19

<sup>[135]</sup> *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia*, Human Rights Watch Report, (April 19, 2008), p. 18 (**employers must establish separate facilities for women**); Joe Stork and Christoph Wilcke, The Huffington Post, *Saudi Reforms Five Years On: Looser Rein, Slight Gain*, (July 1, 2010), available at [http://www.huffingtonpost.com/joe-stork/saudi-reforms-five-years\\_b\\_632384.html](http://www.huffingtonpost.com/joe-stork/saudi-reforms-five-years_b_632384.html); **A select few courses are off-limits to women at every level of education, such as geology and athletics.** (Interview with Wajeha Al-Huwaider, Saudi writer and activist, September 4<sup>th</sup>, 2010).

<sup>[136]</sup> Mohammed Jamjoon and Saad Abedine, *Saudis Order 40 Lashes for Elderly Women for Mingling*, CNN, (march 9, 2009), available at <http://edition.cnn.com/2009/WORLD/meast/03/09/saudi.arabia.lashes/index.html> (**75-year old women sentenced to 40 lashes for having two men in her home that she was not related to**); Fahad Faruqui, "Saudi Reform is on agenda at last," The Gaurdian (April 20, 2010), available at: <http://www.guardian.co.uk/commentisfree/belief/2010/apr/20/saudi-arabia-reform-religious-police> (“**Thus, they can hold a woman accountable for anything, [such as] . . . sitting with a male colleague at a coffee shop.**”).

<sup>[137]</sup> Babea Abu Al-Naja, *Judge Refuses to See Women Without 'Mahram'*, Arab News, (July 12, 2010)

<sup>[138]</sup> Sabria S. Jawhar, *Rules Restrict Saudi Women's Studies Abroad*, Saudi Gazette (July 29, 2008)

<sup>[139]</sup> *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department (March 11, 2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (“**In 2007 [the Association for the Protection and Defense of Women's Rights in Saudi Arabia] had transmitted to the king a petition with 1,100 signatures asking for a repeal of the ban on women driving. The government did not reply**”); Mohammed Jamjoon, *Women Arrested in Saudi Arabia for Driving*, CNN (March, 5, 2009), available at: <http://edition.cnn.com/2009/WORLD/meast/03/09/saudi.arabia.lashes/index.html>

<sup>[140]</sup> Mariam Karouny, *Some Arab states failed to promote rights in 2009* - HRW, Reuters News Service, Beirut (Jan 16, 2010), available at: <http://in.reuters.com/article/idINIndia-45698620100126>, (“**Women in . . . Saudi Arabia cannot confer their nationality either on foreign spouses or their children.**”)

- <sup>[141]</sup> Universal Declaration of Human Rights, at Article 1, (“All Human beings are born free . . .”)
- <sup>[142]</sup> International Convention on Civil and Political Rights, at Article 12, (“right to liberty and freedom of movement . . .”)
- <sup>[143]</sup> Declaration for the Elimination of Violence Against Women, at Article 3(c), (“Women are entitled to . . . The right to liberty . . .”)
- <sup>[144]</sup> P.K. Abdul Gharfour, *One-Third of Government Jobs for Women: Sulatan*, Arab News (May 27, 2007), available at: <http://archive.arabnews.com/?page=1&section=0&article=96703&d=27&m=5&y=2007> (Crown Prince Sultan announces one third of government jobs to be allocated to women . . . Women graduates currently outnumber their male counterparts . . . the Kingdom’s 8th Five-Year Development Plan (2005-2009) aims at increasing the percentage of women in the Saudi work force from 5.4 percent to 14.2 percent); Rima Abdelkader, *Saudi Lawyers May No Longer Need Male Guardian*, Womens News, (April 14, 2010) available at: <http://www.womensenews.org/story/in-the-courts/100413/saudi-lawyers-may-no-longer-need-male-guardian?page=0,1> (government to allow female lawyers to try family law cases in court without a male guardian)
- <sup>[145]</sup> *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia*, Human Rights Watch Report, (April 19, 2008), p. 18 (The kingdom has one of the lowest rates of working women in the world. . . Saudi women account for only 4 percent of the total workforce and 10.7 percent of the Saudi labor force (excluding migrant workers). . . There are also no female judges, prosecutors . . .)
- <sup>[146]</sup> Convention on the Elimination of All Forms of Discrimination against Women, at Article 7(b), (“to participate in the formulation of government policy . . . perform all public functions at all levels of government.”)
- <sup>[147]</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 11(1)(b), (“The right to the same employment opportunities.”)
- <sup>[148]</sup> Convention against Discrimination in Education, adoption: Paris 15 December 1960, available at <http://portal.unesco.org/la/convention.asp?KO=12949&language=E> (Saudi Arabia ratified the Convention on August 17, 1973)
- <sup>[149]</sup> Convention against Discrimination in Education, 429 U.N.T.S. 93, entered into force May 22, 1962., Article 1(a)
- <sup>[150]</sup> Convention against Discrimination in Education, at Article 3(b), Article 4(a)
- <sup>[151]</sup> *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia*, Human Rights Watch Report, (April 19, 2008), page 14-16 (elementary and secondary school curriculum is different from that of men’s.); Segregation in the secondary and university education curriculum discriminates against women as well as men. Women are not yet allowed to study geology or athletics, and men are not yet allowed to study Al-tarbiah Al-nasaweeah, a home economics course featuring cooking and sewing skills, among others. (Interview with Wajeha Al-Huwaider, Saudi writer and activist, September 4<sup>th</sup>, 2010).
- <sup>[152]</sup> Women are not yet allowed to study geology or athletics, and men are not yet allowed to study Al-tarbiah Al-nasaweeah, a home economics course featuring cooking and sewing skills, among others. (Interview with Wajeha Al-Huwaider, Saudi writer and activist, September 4<sup>th</sup>, 2010).
- <sup>[153]</sup> Convention against Discrimination in Education, Article 1(1)(b), “Of limiting any person or group of persons to education of an inferior standard,”
- <sup>[154]</sup> Jafar Alshayeb, *Women’s Rights Gain Focus in Saudi Arabia*, Carnegie Endowment News Article, (May 12, 2010), available at: <http://www.carnegieendowment.org/arb/?fa=show&article=40786> (King Abdullah has appointed a women as deputy minister of education in Feb. 2009, and in Dec. 2009, the first women won a seat in the Chamber of Commerce and Industry of Jeddah).
- <sup>[155]</sup> *Saudi Arabia Delays Municipal Polls*, Al-Jazeera, (May 19, 2009), available at <HTTP://ENGLISH.ALJAZEERA.NET/NEWS/MIDDLEEAST/2009/05/200951972951818983.HTML> (Women were barred from voting or standing for office, but officials said then they would be allowed to stand in the next vote. . .)
- <sup>[156]</sup> *Saudi Arabia Delays Municipal Polls*, Al-Jazeera, (May 19, 2009), available at <HTTP://ENGLISH.ALJAZEERA.NET/NEWS/MIDDLEEAST/2009/05/200951972951818983.HTML> (Women were barred from voting or standing for office, but officials said then they would be allowed to stand in the next vote. . .)
- <sup>[157]</sup> International Convention on the Elimination of all forms of Discrimination against Women, at Article 7(a) and (b), and Article 8
- <sup>[158]</sup> International Convention on Civil and Political Rights, at Article 25(b)

<sup>[159]</sup> Convention on the Political Rights of Women, 193 U.N.T.S. 135, entered into force July 7, 1954., at Article 1, 2 and 3, respectively.

<sup>[160]</sup> Universal Declaration of Human Rights, at Article 21(1)

<sup>[161]</sup> *Saudi Arabia bans forced marriage*, BBC (April 12, 2005), available at [http://news.bbc.co.uk/2/hi/middle\\_east/4437667.stm](http://news.bbc.co.uk/2/hi/middle_east/4437667.stm)

<sup>[162]</sup> *Letter to the Saudi Human Rights Commission on Behalf of Aisha Ali End System of Male Guardianship*, Human Rights Watch, (Aug. 12, 2010) available at: <http://www.hrw.org/en/news/2010/08/12/letter-saudi-human-rights-commission-behalf-aisha-ali> (Ms. Ali has been forced into multiple marriages by her male guardian and brothers;)

<sup>[163]</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956, entry into force: April 30, 1957, available at <http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-4.en.pdf> (There are 123 nations party to this treaty; Saudi Arabia ratified the treaty on July 5, 1973)

<sup>[164]</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, entered into force April 30, 1957. Article 1 (c)(i) (This Supplement to the 1926 Slavery Convention, pledged in its Article 1(c) to “bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices . . . Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group . . .”(emphasis added))

<sup>[165]</sup> Additionally, the United Nations working group of experts on the rights of migrant workers has recognized that the employment conditions of domestic workers may be “comparable to slavery”: Commission on Human Rights, Report of the working group of intergovernmental experts on the human rights of migrants, E/CN.4/1999/80, March 9, 1999.

<sup>[166]</sup> *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (“[In 2009] the government allowed large public and private celebrations of Shia holidays in the Eastern Province”)

<sup>[167]</sup> *Saudi King Calls for Interfaith Talks*, The Sunday Times (March 25, 2008), available at <http://www.timesonline.co.uk/tol/comment/faith/article3620897.ece>

Abdul Aziz V.K, *Interfaith dialogue: King Abdullah' Mission Spreads Faster* (March, 20, 2010), available at <http://arabnews.com/opinion/columns/article55889.ece>

<sup>[168]</sup> Joe Stork and Christoph Wilcke, *Saudi Reforms Five Years On: Looser Rein, Slight Gain*, The Huffington Post (July 1, 2010), available at <http://www.hrw.org/en/news/2010/07/01/saudi-reforms-five-years-looser-rein-slight-gain?print> (“Street protests and organized meetings remain firmly off limits,” . . . “Security forces in March 2009 arrested dozens of Shi’a in the Eastern Province demanding equal rights of religious worship”)

<sup>[169]</sup> Universal Declaration of Human Rights, at Article 18

<sup>[170]</sup> Arab Charter for Human Rights, at Article 26 (“Everyone has a guaranteed right to freedom of belief, thought and opinion,”), Article 27, (“Adherent of every religion have the right to practice their religious observances and to manifest their views through expression.”), and Article 37 (“Minorities shall not be deprived of their right to enjoy their culture or to follow the teachings of their religions.”)

<sup>[171]</sup> Universal Islamic Declaration of Human Rights, Part XIII: Right to Freedom of Religion, (“freedom of conscience and worship”)

<sup>[172]</sup> Universal Islamic Declaration of Human Rights, Part X: Rights of Minorities, part (a) and (b) (The UIDHR gives religious minorities the right to live by their own laws pursuant to “the Quar’anic principle that ‘there is no compulsion in religion’”)

<sup>[173]</sup> International Convention on Civil and Political Rights, at Article 18(1), (“the right to freedom of thought, conscience and religion,”)

<sup>[174]</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993). Article 2(1), (“right to . . . profess and practice their own religion”)

<sup>[175]</sup> International Convention on Civil and Political Rights, at Article 14

<sup>[176]</sup> These principles on non-coercion of religion have been re-affirmed by the Universal Declaration on Cultural Diversity (UNESCO Universal Declaration on Cultural Diversity, Nov. 2, 2001, UNESCO Doc. 31C/Res 25, Annex 1 (2001). Article 2) the United Nations Millennium Declaration (Millennium Declaration, G.A. Res. 55/2, U.N.

GAOR, 55th Sess., Supp. No. 49, at 4, U.N. Doc. A/55/49 (2000), at Article 6, (“protecting cultural diversity is inseparable from protecting human dignity”)) and the **Vienna Declaration** (Vienna Declaration at Article 22)

<sup>[177]</sup> *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at:

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (On November 9, [2009] authorities in the Eastern Province (Ras Tanura and Abqaiia) closed two Shia mosques that had operated for years, justifying the closures on the grounds of improper zoning and lack of mandated permits. Other Shia mosques reportedly were closed in the Eastern Province in the past year, including two in Al Khobar in August.)

<sup>[178]</sup> HRFS notes that there is one lone Shia mosque standing in Dammam, a predominately Sunni city.

<sup>[179]</sup> Arab Charter for Human Rights, at Article 28 (“All citizens have the right to freedom of peaceful assembly and association.”)

<sup>[180]</sup> A Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/684 (1981). at Article 6(a)

<sup>[181]</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, at Article 2(4) and (5)

<sup>[182]</sup> *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at:

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (The government of Saudi Arabia “condoned societal abuses and discrimination against adherents of Shia Islam, including limited employment and educational opportunities and underrepresentation in official institutions . . . the local government in Narjan area subjected members of the Ismaili minority to officially sanctioned discrimination in employment”); Christopher Wilcke, *Discrimination against Muslims in Saudi Arabia*, Human Rights Watch, (September 22, 2008), available at: <http://www.hrw.org/en/news/2008/09/22/discrimination-against-muslims-saudi-arabia?print> (Where previously seven of the 35 heads of local government departments were local Ismailis, now only one remains.)

<sup>[183]</sup> Arab Charter for Human Rights, at Article 2, (“without any distinction on grounds of . . . religion.”)

<sup>[184]</sup> Cairo Declaration on Human Rights in Islam, at Article 1(a), (“All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of . . . belief, . . . religion . . . The true religion is the guarantee for enhancing such dignity along the path to human integrity.”)

<sup>[185]</sup> International Convention on Civil and Political Rights, Article 26

<sup>[186]</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 3(2)

<sup>[187]</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 3

<sup>[188]</sup> Vienna Convention (1993), at Article 19 (The Vienna Convention re-affirmed the mainstay of international customary human rights law that no one shall be discriminated against by their government on the basis of their religion).

<sup>[189]</sup> Universal Islamic Declaration of Human Rights, Part III: Right to Equality and Prohibition Against Impermissible Discrimination, at part (c)

<sup>[190]</sup> Discrimination (Employment and Occupation) Convention, Article (1)(a)

<sup>[191]</sup> International Convention on Social, Cultural and Economic Rights, at Article 7(c)

<sup>[192]</sup> Discrimination (Employment and Occupation) Convention, at Article 3(c)

<sup>[193]</sup> *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at:

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (“ . . . education conforming to the conservative Hanbali tradition of Sunni Islam was mandatory in public schools at all levels.” ); Christopher Wilcke, *Discrimination against Muslims in Saudi Arabia*, Human Rights Watch, (September 22, 2008), available at: <http://www.hrw.org/en/news/2008/09/22/discrimination-against-muslims-saudi-arabia?print> (“School textbooks teach Saudi students that adhering to the Ismaili faith constitutes the sin of “major polytheism”. . .”)

<sup>[194]</sup> Universal Declaration of Human Rights, at Article 26(3)

<sup>[195]</sup> A Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 5(1) and (2)

<sup>[196]</sup> Convention on the Rights of the Child, Article 14(1)

<sup>[197]</sup> Convention on the Rights of the Child, Article 30

<sup>[198]</sup> G. Karthikeyan, et al., *Child Abuse: Report of Three Cases From Khamis Mushayt*, 20 ANNALS OF SAUDI MED. 430 (2000) available [http://www.kfshrc.edu.sa/annals/205\\_206/00-092.PDF](http://www.kfshrc.edu.sa/annals/205_206/00-092.PDF), and also as [.pdf Document](#) (hereinafter *Three Cases*); Ashraf A. F. Elkerdany et al., *Fatal Physical Child Abuse In Two Children of a Family*, 19 ANNALS OF SAUDI MED. 120 (1999) available <http://www.kfshrc.edu.sa/annals/192/98-203.pdf>, and also as [.pdf Document](#) (hereinafter *Two Children*); *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 37; U.S. DEPT. OF STATE, *Country Reports on Human Rights Practices - 2004: Saudi Arabia*, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41731.htm> (just as women can be prosecuted for being sexually abused, so can girls . . . In a 2003 report, the Ministry of Interior's Center for Crime Prevention and Research stated that 21% of male children had been abused, roughly one third having suffered psychological abuse and one fourth physical abuse, although there is concern that abuse is more prevalent than reported. The Ministry would not release information about female children or sexual abuse, calling those issues "too sensitive for public discussion.")

<sup>[199]</sup> UNICEF, *At a Glance: Saudi Arabia*, available <http://www.unicef.org/infobycountry/saudiarabia.html> ("There is no way to address or reference abused children" in Saudi Arabia); Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Saudi Arabia*, 26th Sess., 697th mtg. ¶ 35-36, U.N. Doc. CRC/C/15/Add.148 (Feb. 22, 2001), available [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/83d5295595532530c12569ed00585df4?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/83d5295595532530c12569ed00585df4?Opendocument); ("[T]he Committee is concerned at the incidence of ill-treatment of children . . . within the family. The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence . . . against children in the family . . . . Moreover, adequate procedures and mechanisms need to be established to receive complaints; monitor, investigate and prosecute instances of ill-treatment; and ensure that the abused child is not victimized in legal proceedings"); *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), p. 23

<sup>[200]</sup> "On the rare occasions where a parent or guardian who has abused a child is prosecuted and punished for that crime by the government, it has been the result of tremendous grass-roots organizing by human rights activists and the media supplying pressure upon the government to do so." Interview with HRFS director Ibrahim Al-Mugaiteeb (August 25, 2010).

<sup>[201]</sup> Convention on the Rights of the Child, Entry into force: September 2, 1990; Registration September 2, 1990, available at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (193 Parties to this treaty; Saudi Arabia ratified the treaty on Jan. 26, 1996)

<sup>[202]</sup> Member States, Organization of the Islamic Conference (OIC), (last updated, 2009) available at:

[http://www.oic-oci.org/member\\_states.asp](http://www.oic-oci.org/member_states.asp) (Saudi Arabia has been a member state of the OIC since 1969)

<sup>[203]</sup> Organization of the Islamic Conference, *Covenant on the Rights of the Child in Islam*, June 2005, OIC/9-IGGE/HRI/2004/Rep.Final, available at: <http://www.unhcr.org/refworld/docid/44eaf0e4a.html>; Statement of Prof. Ekmeleddin Ihsanoglu, *There is no Segment in Our Societies that Requires more Attention and Priority than Our Children*, Sudan Vision Daily, (February 11, 2010), available at:

<http://www.sudanvisiondaily.com/modules.php?name=News&file=article&sid=43441> (The Covenant on the Rights of the Child in Islam was adopted by every member of the OIC during the 32nd Islamic Conference of Foreign Ministers held in 2005).

<sup>[204]</sup> Frans Vileon, *International Human Rights Law: A Short History*, United Nations Chronicle,

<http://www.un.org/wcm/content/site/chronicle/home/archive/Issues2009/internationalhumanrightslawashorthistory?print=1> (The CRCI was adopted as a legally binding instrument)

<sup>[205]</sup> Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990. Article 6(1)

<sup>[206]</sup> Convention on the Rights of the Child in Islam, at Article 6(2), ("State parties to the Covenant shall guarantee the basics necessary for the survival and development of the child and for his/her protection from violence, abuse, exploitation, and deterioration of his/her living and health conditions.")

<sup>[207]</sup> Cairo Declaration on Human Rights, at Article 7

<sup>[208]</sup> The high authority of the CRC and these fundamental protections of children from harm were re-affirmed by the Vienna, (Vienna Convention, 1993 at Articles 45-53) and Millennium Declarations (Millennium Declaration, at Article 26).

<sup>[209]</sup> Convention on the Rights of the Child, at Article 19 (1) and (2)

<sup>[210]</sup> Convention on the Rights of the Child, at Article 3(1)

<sup>[211]</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency, (The Riyadh Guidelines), G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990). Article 53 (Ironically,

these are referred to as the “Riyadh Guidelines” because they were drafted in Riyadh which hosted the International Meeting of Experts on the Development of the United Nations Draft Guidelines for the Prevention of Juvenile Delinquency, from Feb. 28 to March 1, 1988 in co-operation with the United Nations Office at Vienna); See also United Nations General Assembly, A/RES/45/112, 68<sup>th</sup> plenary meeting (Dec. 14, 1990), available at <http://www.un.org/documents/ga/res/45/a45r112.htm>

<sup>[212]</sup> World Declaration on the Survival, Protection and Development of Children, Agreed to at the World Summit for Children, New York (Sept. 30, 1990), available at <http://www.un-documents.net/wsc-dec.htm>, Article 18 and 19

<sup>[213]</sup> World Declaration on the Survival, Protection and Development of Children, at Article 20(2)

<sup>[214]</sup> Not coincidentally, the Covenant on the Rights of the Child in Islam uses this same language, demanding the state “**Attach high priority to the rights, interest, protection, and development of children.**” (Covenant on the Rights of the Child in Islam, at Article 3(2))

<sup>[215]</sup> World Declaration on the Survival, Protection and Development of Children, at Article 20(7)

<sup>[216]</sup> *Saudi Arabia Bans Forced Marriage*, BBC (April 12, 2005), available at [http://news.bbc.co.uk/2/hi/middle\\_east/4437667.stm](http://news.bbc.co.uk/2/hi/middle_east/4437667.stm) (**Forced marriage has been banned in Saudi Arabia.**); *Girl 12, drops divorce request from 80-year Old Husband*, Sydney Morning Herald, (Feb. 3, 2010), available at <http://www.smh.com.au/world/girl-12-drops-divorce-request-from-80yearold-husband-20100203-nbf1.html> ( . . . **The practice of marriage of children to adults continues; 12 year old girl to be married to 80 year old man**); CNN Arabia, (April 24, 2009); *Saudi Child Marriages Under Scrutiny, Rights Groups Says Unions Violate Intentional Agreements*, MSNBC, (Aug. 5, 2008), available at: <http://www.msnbc.msn.com/id/26042107/> (**11 year old boy married to an 10 year old girl**)

<sup>[217]</sup> زواج لمنع محاولة في العقود إيد راق بل المرأة سن ت حديد على ت نص جديد زوج عقود اسه تخدام في ال سعودية بدأت ل لزواج بها المسموح القانونية السن ي بلغن لم ال لواتي ال ف تيات

<sup>[218]</sup> *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 19

<sup>[219]</sup> Convention on the Elimination of Discrimination against Women, at Article 16(h)(2)

<sup>[220]</sup> Convention on the Rights of the Child, at Article 19 (1)

<sup>[221]</sup> Convention on the Rights of the Child in Islam, at Article 17 (3) (“**State Parties shall take necessary measures to protect the child from: All forms of abuse, particularly sexual abuse.** (emphasis added)”)

<sup>[222]</sup> International Convention on Economic, Social and Cultural Rights, at Article 10(3)

<sup>[223]</sup> Convention on the Rights of the Child, at Article 12(1)

<sup>[224]</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 U.N.T.S. 231, entered into force Dec. 9, 1964, at Article 2

<sup>[225]</sup> *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 33 and 35

<sup>[226]</sup> *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 33-35 (**children are arrested for “mingling” with the opposite sex, or being alone in their own home**)

<sup>[227]</sup> *2009 Human Rights Report: Saudi Arabia*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, (March 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm>, (“**The passage of a new Law to Combat Trafficking in Persons has led to training of law enforcement officials on the application of the law; A comprehensive law to combat trafficking in persons, signed July 13, prohibits trafficking for purposes of holding a person for sexual abuse, forced labor, involuntary begging, slavery or slavery-like practices, or enforced organ removal or medical experimentation**”).

<sup>[228]</sup> *Saudi Arabia and Yemen Meet to Tackle Trafficking of Thousands of Yemeni Children*, Yemen Times, (June 7, 2006) available at <http://www.yementimes.com/DefaultDET.aspx?i=955&p=front&a=5>; *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 61-70

<sup>[229]</sup> *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 66 and 70

<sup>[230]</sup> *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (“**Due to a lack of victim identification procedures in deportation centers and police stations, authorities reportedly arrested and deported many victims of trafficking**”); *2009 Human Rights Report: Saudi Arabia*, U.S. Department of

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State, Bureau of Democracy, Human Rights and Labor, (March 11, 2010), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm>, (There were continued reports that trafficking in persons was a prevalent and serious problem to, from, through, and within the country for involuntary servitude, low-skilled labor, and commercial sexual exploitation).

<sup>[231]</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, supplementing the United Nations Convention against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol.I) (2001). Article 2(b), “to protect and assist the victims of such trafficking,”

<sup>[232]</sup> Guidelines for Action on Children in the Criminal Justice System, (E/CN.15/1998/8) adopted by Economic and Social Council Resolution 1997/30 of 21 July 1997 (annex), Article 43

<sup>[233]</sup> Guidelines for Action on Children in the Criminal Justice System, at Article 48

<sup>[234]</sup> Convention on the Rights of the Child, at Article 37(b).

<sup>[235]</sup> *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 28-32

<sup>[236]</sup> Convention on the Rights of the Child, at Article 1, (defines a child as any person younger than 18 years of age).

<sup>[237]</sup> *UN: Saudi Arabia Pledges End of Men's Control Over Women: Commitments Also Made to UN on Juvenile Death Penalty, Domestic Workers*, Human Rights Watch (June 12, 2009), *available at* <http://www.hrw.org/en/news/2009/06/12/un-saudi-arabia-pledges-end-men-s-control-over-women> (“[Saudi Arabia] accepted the recommendation that only persons over 18 should be tried as adults and that there should be a moratorium on the death penalty for people who committed crimes under the age of 18.”)

<sup>[238]</sup> Convention on the Rights of the Child, at Article 37(a)

<sup>[239]</sup> Arab Charter on Human Rights, at Article 12

<sup>[240]</sup> International Convention on Civil and Political Rights, at Article 6(5)

<sup>[241]</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985), Article 17, 17.2

<sup>[242]</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Article 3

<sup>[243]</sup> *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 21 and 23

<sup>[244]</sup> Convention on the Rights of the Child in Islam, at Article 19 (3)(a) (“a child deprived of his/her freedom shall be separated from adults in special places for delinquent children”)

<sup>[245]</sup> International Convention on Civil and Political Rights, at Article 10(2)(b)

<sup>[246]</sup> *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, Human Rights Watch report, (March 2008) Vol. 20, No. 4(e), pg. 14 and 25 (Instead of an age below which the state may not prosecute, whether or not a child may be tried is based upon whether or not they are presenting with signs of “puberty”).

<sup>[247]</sup> Convention on the Rights of the Child, at Article 40(3)(a)

<sup>[248]</sup> Guidelines for Action on Children in the Criminal Justice System, at Article 14(c)

<sup>[249]</sup> Convention on the Rights of the Child in Islam, Article 19(3)(g), (“A minimum age under which the child may not be tried shall be determined.”)

<sup>[250]</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, at Article 4, 4.1

<sup>[251]</sup> *As if I am not Human: Abuses against Asian Domestic Workers in Saudi Arabia*, Human Rights Watch 1-56432-351-X, (July 2008), *available at* <http://www.hrw.org/en/node/11999/section/2>, page 2 (1.5 million domestic workers); *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, *available at* <http://www.hrw.org/en/node/11999/section/2>, page 28 (these [agricultural] workers number in the millions);

<sup>[252]</sup> The Labor Law of Saudi Arabia, at Article (7), parts (2) and (4) (The following shall be exempted from the implementation of the provisions of this Law: (2) Domestic helpers and the like,(4) Agricultural workers other than the categories stated in Article (5) of this Law.”)

<sup>[253]</sup> *Saudi Arabia: Shura Council Passes Domestic Worker Protections: Cabinet Should Strengthen Bill before Enacting into Law*, Human Rights Watch (July 10, 2009), *available at* <http://www.hrw.org/en/news/2009/07/10/saudi-arabia-shura-council-passes-domestic-worker-protections> (the bill would limit work days to 9 hours, but requires workers to “obey” their employers and does not permit employees to leave their place of work without a “legitimate reason”); *Saudi Arabia: Domestic Worker Brutalized*, Thompson Reuters Foundation, (September 2, 2010), *available at*: <http://www.alertnet.org/thenews/newsdesk/HRW/eb0af32eb4a76cc21689f9aff2a2dd64.htm> (“In 2005, the

government drafted an annex to the labor law specifying rights and duties of domestic workers, including limits to working hours and annual leave. The consultative Shura Council approved the annex in 2009, but the Council of Ministers has not yet passed this legislation. As a result, domestic workers, unlike other migrant workers in the kingdom, are not protected by any legal provisions specifying their working hours, weekly rest or annual leave, payment of salaries, health insurance, freedom of movement and abode, or responsibility for costs of repatriation outside of contractual agreements.”)

<sup>[254]</sup> The Labor Law of Saudi Arabia, at Article 49(c) (requires foreign workers to be under contract with a sponsor who is a Saudi citizen)

<sup>[255]</sup> *As if I am Not Human: Abuses against Asian Domestic Workers in Saudi Arabia*, Human Rights Watch Report, (July 2008) available at: <http://www.hrw.org/en/reports/2008/07/07/if-i-am-not-human-0>, page 67, (28 of the 86 domestic workers interviewed for this report reported sexual harassment or assault by their employers or agents)

<sup>[256]</sup> Iqbal Athas, *Arrests Made in Maid's Nail Torture, Sri Lanka Official Say*, CNN (August 30, 2010), available at <http://edition.cnn.com/2010/WORLD/asiapcf/08/30/sri.lanka.maid.assault/?hpt=T2#fbid=ukMrCUErOPN&wom=fa>

<sup>[257]</sup> See Declaration on the Elimination of Violence against Women G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993). See Article 4, generally

<sup>[258]</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Entry into force: July 1, 2003, Registration: July 1, 2003, No. 39481, available at:

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en) (43 countries are a party to this treaty).

<sup>[259]</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003. Article 16(2)

<sup>[260]</sup> Cairo Declaration of Human Rights in Islam, at Article 3(d) (“Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari’ah-prescribed reason.”)

<sup>[261]</sup> Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, G.A. res. 40/144, annex, 40 U.N. GAOR Supp. (No. 53) at 252, U.N. Doc. A/40/53 (1985), Article 6

<sup>[262]</sup> Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, at Article 10

<sup>[263]</sup> *As if I am not Human: Abuses against Asian Domestic Workers in Saudi Arabia*, Human Rights Watch 1-56432-351-X, (July 2008), available at <http://www.hrw.org/en/node/11999/section/2>, page 56 (At least 24 of the 86 domestic workers interviewed for this report had employers who locked them in the workplace from the outside.)

<sup>[264]</sup> Declaration for the Elimination of Violence Against Women, at Article 3(c) (“Women are entitled to . . . The right to liberty . . .”)

<sup>[265]</sup> Convention on the Elimination of All Forms of Discrimination against Women, at Article 15, (4)

<sup>[266]</sup> *As if I am not Human: Abuses against Asian Domestic Workers in Saudi Arabia*, Human Rights Watch 1-56432-351-X, (July 2008), available at <http://www.hrw.org/en/node/11999/section/2>, at pg. 73 (Several domestic workers stated that these wages were not sufficient to meet family expenses . . .) pg. 79 (Most domestic workers reported long working hours around the clock, without adequate rest breaks or time to sleep), pg. 82 (“ . . . other domestic workers reported they had to sleep . . . on the kitchen or bathroom floor.”); *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, pg. 23, 100 (HRW interviewed agricultural workers who worked from 5am to late at night, or from 6:30am to 7 or 8pm, in slave-like conditions); *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (Kenyan citizen Esha Noor entered the country to work as a domestic employee. She was abused, required to work 18-hour days, and denied proper nutrition.)

<sup>[267]</sup> Universal Declaration of Human Rights, at Article 23(1)

<sup>[268]</sup> International Convention on Economic, Civil and Social Rights, at Article 7(b)

<sup>[269]</sup> Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, at Article 8(a)



- <sup>[270]</sup> Convention on the Protection of the Rights of all Migrant Workers and members of Their Families, at Article 43(1)(d)
- <sup>[271]</sup> Universal Declaration of Human Rights, at Article 24
- <sup>[272]</sup> International Convention on Economic, Civil and Social Rights, at Article 7(d)
- <sup>[273]</sup> Universal Islamic Declaration of Human Rights, Part XVII: Status and Dignity of Workers (“Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure.”)
- <sup>[274]</sup> Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, at Article 8(c)
- <sup>[275]</sup> Convention on the Protection of the Rights of all Migrant Workers and members of Their Families, at Article 70
- <sup>[276]</sup> International consensus in customary law on the right of workers to good conditions and treatment has been generally re-affirmed in the Vienna (Vienna Declaration (1993), at Article 24), and the Millennium Declarations (Millennium Declaration, at Article 25).
- <sup>[277]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, pg. 36-41 (“Many reported employers withholding salaries, not fully reimbursing workers, or denied vacation leave.”); *As if I am not Human: Abuses against Asian Domestic Workers in Saudi Arabia*, Human Rights Watch 1-56432-351-X, (July 2008), available at <http://www.hrw.org/en/node/11999/section/2>, pg. 72, 74 (“Unpaid wages lead the list of most frequent complaints by domestic workers in Saudi Arabia...”)
- <sup>[278]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, pg. 36-41 (Every worker interviewed said their pay was exceptionally lower, sometimes half of what they were promised when they agreed to migrate to the Kingdom for work.); *As if I am not Human: Abuses against Asian Domestic Workers in Saudi Arabia*, Human Rights Watch 1-56432-351-X, (July 2008), available at <http://www.hrw.org/en/node/11999/section/2>, pg. 72, 74 (several domestic workers report their wages were not sufficient to meet family expenses)
- <sup>[279]</sup> *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (“there is no national minimum wage”).
- <sup>[280]</sup> Cairo Declaration on Human Rights in Islam, at Article 17(c)
- <sup>[281]</sup> Cairo Declaration on Human Rights in Islam, at Article 13
- <sup>[282]</sup> International Convention on Economic, Social and Cultural Rights, Article 7(a)(i) and (ii)
- <sup>[283]</sup> Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, at Article 8(a)
- <sup>[284]</sup> Universal Islamic Declaration of Human Rights, at Part XVII: Status and Dignity of Workers
- <sup>[285]</sup> See The Labor Law of Saudi Arabia, generally. No protection for the organizing of labor of any kind is made in this law.
- <sup>[286]</sup> *2009 Country Reports on Human Rights Practices: Saudi Arabia*, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (On January 15, [2009] the Chinese online *People's Daily* reported authorities deported 23 of a group of 200 Chinese workers for striking to protest low pay).
- <sup>[287]</sup> The Basic Law of Governance, Part Five: Rights and Duties, Article 39
- <sup>[288]</sup> Freedom of Association and Protection of the Right to Organise Convention (ILO No. 87), 68 U.N.T.S. 17, entered into force July 4, 1950., Article 2
- <sup>[289]</sup> Universal Declaration of Human Rights, at Article 23(4)
- <sup>[290]</sup> International Convention on Civil and Political Rights, at Article 22(1)
- <sup>[291]</sup> International Convention on Economic, Social and Cultural Rights, at Article 8(1)(a)
- <sup>[292]</sup> Convention on the Rights of Migrant Workers and Their Families, at Article 26(1)(a)
- <sup>[293]</sup> Convention on the Rights of Migrant Workers and Their Families, at Article 40(1)
- <sup>[294]</sup> Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, at Article 8(b)
- <sup>[295]</sup> International Convention on Economic, Social and Cultural Rights, at Article 8(1)(d)
- <sup>[296]</sup> Freedom of Association and Protection of the Right to Organize Convention at Article 3(2)

<sup>[297]</sup> Right to Organise and Collective Bargaining Convention (ILO No. 98), 96 U.N.T.S. 257, entered into force July 18, 1951. Article 2(1)

<sup>[298]</sup> Right to Organize and Collective Bargaining Convention (1949), at Article 1(1)

<sup>[299]</sup> Freedom of Association and Protection of the Right to Organize Convention, at Article 11 (The state is required to “take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.”)

<sup>[300]</sup> *Saudi Arabia: ‘Sexual Orientation’ Executions Condemned*. Amnesty International (Jan. 9, 2002), available at: [http://www.amnesty.org.uk/news\\_details.asp?NewsID=13855](http://www.amnesty.org.uk/news_details.asp?NewsID=13855) [Accessed ]; (Three men were beheaded for committing “homosexual acts”, and “In April 2000 it was reported that a Saudi court had sentenced nine young men to prison sentences and up to 2,600 lashes each for ‘deviant sexual behaviour’”)

<sup>[301]</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, at Article 1

<sup>[302]</sup> International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity, Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (Yogyakarta Principles) (2006). Annex, Signatories, available at: <http://www1.umn.edu/humanrts/instree/YogyakartaPrinciples.html> (These Principles were signed by legal experts in international human rights law and several UN Special Rapporteurs and UN Committee Chairs on related human rights issues from 27 countries).

<sup>[303]</sup> Statute of the International Court of Justice, Article 38(1)(d), available at: <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0> (“The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: . . . (d). subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”) (The Yogyakarta Principles constitute the teachings of the “most highly qualified publicists”, specifically “experts in international human rights law and on sexual orientation” from 27 nations. Their document therefore constitutes the only standard available for international human rights law on this subject).

<sup>[304]</sup> International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity, Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (Yogyakarta Principles), at Principles 4 (protects a person’s right to life, regardless of their sexual orientation), Principle 5, (protects a person against violence or bodily harm by the state on the basis of their sexual orientation), and Principle 7 (Prohibits “Arrest or detention on the basis of sexual orientation,” explaining that such an arrest is always arbitrary).

<sup>[305]</sup> The Basic Law of Governance, Part Four: Economic Principles, at Article 26;

<sup>[306]</sup> The Law of Criminal Procedure, Part Three: Procedure Relating to Evidence, Chapter III: Arrest of the Accused, at Article 35

<sup>[307]</sup> Joe Stork and Christoph Wilcke, Saudi Reforms Five Years On: Looser Rein, Slight Gain, The Huffington Post (July 1, 2010), available at <http://www.hrw.org/en/news/2010/07/01/saudi-reforms-five-years-looser-rein-slight-gain?print> (“When veteran reformers pondered establishing a political party at a meeting in Jeddah in February 2007, the intelligence service stormed the house commando-style, arresting the professors, lawyers, and intellectuals there, most of whom remain detained without charge or trial . . .”). *Court to Announce verdict on the Legality of Detaining Human Rights Defender Judge Suliman Ibrahim Al-Reshoudi*, Frontline Defenders, (Aug. 26, 2010) available at: <http://www.frontlinedefenders.org/node/13197> (Judge Suliman Al-Reshoudi has been detained for over three years without charge); *Saudi Arabia: Human Rights Defender, Dr. Matrouk Al-Faleh released after 235 days in Prison*, Frontline Defenders, (Jan. 15, 2009) available at: <http://www.frontlinedefenders.org/node/1765> (Mr. Al-Faleh was held for 235 days and never officially charged)

<sup>[308]</sup> “Al-Mabahith typically tell activists and critics whom they arrest that the law “does not apply to them””, interview with Ibrahim Al-Mugaiteeb, president of HRFS (August 25, 2010); *Human Rights and Saudi Arabia’s Counterterrorism Response: Religious Counseling, Indefinite Detention, and Flawed Trials*, Human Rights Watch Report I-56432-526-1, (August, 2009) available at: <http://www.hrw.org/en/reports/2009/08/10/human-rights-and-saudi-arabia-s-counterterrorism-response-0>, pages 10 and 11 (“Human Rights Watch spoke to over two dozen families of mabahith detainees in 2006 and 2007, only two of whom reported that their relatives had received trials. According to the families, these two men had completed their sentences but remained in detention”; However, the men . . . are all individuals whom the mabahith is detaining without formal charges and without any recourse to challenge their detention. . . .); Michael Scott Doran, *The Saudi Paradox*, Foreign Affairs (January-February 2004),

available at: <http://www.foreignaffairs.com/articles/59530/michael-scott-doran/the-saudi-paradox> ("... Prince Nayef, who controls the secret police. . .");

<sup>[309]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 10

<sup>[310]</sup> International Convention on Civil and Political Rights, at Article 9 (2)

<sup>[311]</sup> International Convention on Civil and Political Rights, at Article 14(3)(a)

<sup>[312]</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977). at Article 29(2)

<sup>[313]</sup> Cairo Declaration on Human Rights in Islam at Article 20 (Echoing the spirit of this standard, Article 20 of the CDHRI does not permit arrest without "legitimate reason.")

<sup>[314]</sup> The Law of Criminal Procedure, Part Four: Investigation Procedure, Chapter VIII: The Detention Warrant, Article 114

<sup>[315]</sup> *Prisoners of Faith: The Egyptian Shia Crackdown*, The Islam Times, (July 28, 2009), available at:

<http://www.islamtimes.org/vdcd.f0j2yt0jsme6y.html>

<sup>[316]</sup> Cairo Declaration of Human Rights in Islam, at Article 19(e)

<sup>[317]</sup> International Convention on Civil and Political Rights, at Article 9(3)

<sup>[318]</sup> International Convention on Civil and Political Rights, at Article 14(3)(c)

<sup>[319]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 11(1)

<sup>[320]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 37

<sup>[321]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 38

<sup>[322]</sup> *Precarious Justice: Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia*, Human Rights Watch, Vol. 20, No. 3(E), (March 2008), available at <http://www.hrw.org/en/node/62304/section/1>, page 40

<sup>[323]</sup> Universal Declaration of Human Rights, at Article 10

<sup>[324]</sup> Universal Islamic Declaration of Human Rights, Part IV: Right to Justice, Part (b) and Part V: Right to Fair Trial

<sup>[325]</sup> International Convention on Civil and Political Rights, at Article 9(4)

<sup>[326]</sup> International Convention on Civil and Political Rights, at Article 9(5) (In fact, this article of the ICCPR states that where an individual has been arrested or detained unlawfully, that individual has an enforceable right to compensation by the state. Therefore there are innumerable individuals out there, likely thousands, who have an enforceable right to compensation by the Saudi state for having been held without charge, or held longer than was permissible without being seen by a judge).

<sup>[327]</sup> The Law of Criminal Procedure, Part One: General Provisions, Article 4,

<sup>[328]</sup> The other problem with this law is that it does not require the authorities to notify the individual of their right to an attorney, and it does not require that the government provide someone with an attorney if they cannot afford one.

<sup>[329]</sup> Tim Butcher, Saudi Prepare to Behead Teenage Maid, The Telegraph, (July 16, 2007) available at <http://www.telegraph.co.uk/news/worldnews/1557628/Saudis-prepare-to-behead-teenage-maid.html> (Nafeek was denied a lawyer at her trial; "It is an absolute scandal that Saudi Arabia is preparing to behead a teenage girl who didn't even have a lawyer at her trial."); *Saudi Arabia: Heavy Price of Unfair Justice System: Instead of Protection, Children are Exposed to Danger*, (March 23, 2008), available at <http://www.hrw.org/en/news/2008/03/23/saudi-arabia-heavy-price-unfair-justice-system> (Once arrested, suspects often face prolonged solitary confinement, ill-treatment, forced confessions, and are denied a lawyer at crucial stages of interrogation and trial.)

<sup>[330]</sup> The law of Procedure before the Shari'ah Courts does allow a court to deprive the accused of their attorney whenever the court decides the attorney has been "dilatatory" or is "intending to procrastinate." How someone can possibly be "intending" to procrastinate is unclear and no definition is given for "dilatatory", therefore, if authorities are invoking this part of the law when they deprive the accused of their counsel, it is evident from the way this law is written that they are doing so arbitrarily, and thus are doing so in violation of the relevant international law. (The Law of Procedure Before the Shari'ah Courts, Part Four: Appearance and Absence of Litigants, Chapter I: Appearance and Representation in Litigation, at Article 51)

<sup>[331]</sup> International Convention on Civil and Political Rights, at Article 14(3)(b)(d)

<sup>[332]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 17(1), and Principle 18(3)

<sup>[333]</sup> Basic Principles on the Role of Lawyers, 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), at Principle 1

<sup>[334]</sup> The Law of Criminal Procedure, Part One: General Provisions, at Article 2

<sup>[335]</sup> The Law of Criminal Procedure, Part Four: Investigation Procedure, Chapter VI: Interrogation and Confrontation, at Article 102

<sup>[336]</sup> 2009 Country Reports on Human Rights Practices: Saudi Arabia, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (According to the governmental Human Rights Commission (HRC), torture did not occur in prisons or detention centers . . . Nevertheless, during the year there continued to be reports that authorities systematically subjected prisoners and detainees to torture and other physical abuse . . . to garner information from detainees, including "severe beating with sticks, punching, and suspension from the ceiling, use of electric shocks and sleep deprivation); *Religious Police Accused of Torture by Saudi Society for Human Rights*, Asia News, (3/24/2009), available at <http://www.asianews.it/news-en/Religious-police-accused-of-torture-by-Saudi-Society-for-Human-Rights-14810.html> (A report by "the kingdom's highest advisory body" confirms cases of torture by the Commission for Promotion of Virtue and Prevention of Vice; Despite several cases of "interrogation and torture", the government tells the Commission in the report to "issue precise guidelines and repair the damage done.")

<sup>[337]</sup> *Women Journalist to get 60 Lashes for Link to TV Programme About Sex*, Reporters Without Borders, (Oct. 15, 2009), available at [http://en.rsf.org/saudi-arabia-king-abdallah-pardons-woman-26-10-2009\\_34829.html](http://en.rsf.org/saudi-arabia-king-abdallah-pardons-woman-26-10-2009_34829.html) (Female Journalist sentenced to 60 lashes for being associated with an interview in which a man discussed his sex life); *Saudi Arabia must prevent flogging of teenage girl*, Amnesty International News Brief, (Jan. 22, 2010), available at <http://www.amnesty.org/en/news-and-updates/saudi-arabia-must-prevent-flogging-teenage-girl-20100122> (13-year-old girl to receive 90 lashes for assaulting a teacher; the report also mentions two men sentenced to 60 lashes and 40 lashes for the offense of Khilwa, or being alone in private with a member of the opposite sex who is not an immediate family member. It also recalls a man found guilty of murder who was sentenced to 40,000 lashes); 2009 Country Reports on Human Rights Practices: Saudi Arabia, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (On August 21, [2009] the daily *Saudi Gazette* reported that four Asian men were sentenced to prison terms and lashes for alcohol production and distribution. One was sentenced to five years in prison and 1,200 lashes, two others to four years and 1,000 lashes, and the fourth to two and a half years in prison and 400 lashes.)

<sup>[338]</sup> *Saudi Arabia Urged not to Deliberately Paralyze man as Retribution Punishment*, Amnesty International News Brief, (Aug. 20, 2010), available at: <http://www.amnesty.org/en/news-and-updates/saudi-arabia-urged-not-deliberately-paralyze-man-retribution-punishment-2010-08-20> (man to be sentenced to paralysis in retribution for similiar injuries he allegedly caused during a fight two years ago)

<sup>[339]</sup> 2009 Country Reports on Human Rights Practices: Saudi Arabia, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm>

<sup>[340]</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at Article 1

<sup>[341]</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at Article 5(3)

<sup>[342]</sup> International Convention on Civil and Political Rights, at Article 10

<sup>[343]</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, at Principle 1

<sup>[344]</sup> Basic Principles for the Treatment of Prisoners, at Principle 1

<sup>[345]</sup> The CAT further specifics that "rules, instructions, methods and practices," be spelled out in the law to prevent torture from occurring during interrogation. (CAT at Article 11) However the Law of Criminal Procedure clearly does not provide this level of detail or instruction, and even if it did, current treatment of the Saudi law indicates it may not be followed anyway. The state also bears the responsibility to ensure "in its legal system that the victim of an act of torture obtains redress," and compensation for the harm done to them. (CAT at Article 14(1))The state must also investigate any reports of torture, (Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (the Istanbul Protocol), adopted by General Assembly resolution 55/89 Annex, 4 December 2000, Article 2) and to providing training and education to law

enforcement personnel to prevent it. (CAT, Article 10(1)) It is clear to HRFS that none of this is happening in Saudi Arabia, but that the state is clearly obligated to investigate any complaints of harm done to someone during interrogation.

<sup>[346]</sup> *Saudi Arabia: Human Rights Defender, Dr. Matrouk Al-Faleh released after 235 days in Prison*, Frontline Defenders, (Jan. 15, 2009) available at: <http://www.frontlinedefenders.org/node/1765> (Mr. Al-Faleh was held for 235 days in detention, all of which was spent in solitary confinement)

<sup>[347]</sup> Standard Minimum Rules for the Treatment of Prisoners, at Rule 27

<sup>[348]</sup> Standard Minimum Rules for the Treatment of Prisoners, at Rule 31

<sup>[349]</sup> Standard Minimum Rules for the Treatment of Prisoners, at Rule 33

<sup>[350]</sup> *Precarious Justice: Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia*, Human Rights Watch, Vol. 20, No. 3(E), (March 2008), available at <http://www.hrw.org/en/node/62304/section/1>, page 112

<sup>[351]</sup> See Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/44/49 (1989), entered into force July 11, 1991.

<sup>[352]</sup> *Adulterous Saudi Princes Granted British Asylum for Fears of Death Penalty*, Huffington Post (July 20, 2009) available at [http://www.huffingtonpost.com/2009/07/20/adulterous-saudi-princess\\_n\\_240996.html](http://www.huffingtonpost.com/2009/07/20/adulterous-saudi-princess_n_240996.html) (Adulterers face public stonings and floggings and, in the most serious cases, beheadings and hangings.)

<sup>[353]</sup> *Saudi Arabia: 'Sexual Orientation' Executions Condemned*, Amnesty International (Jan. 9, 2002), available at: [http://www.amnesty.org.uk/news\\_details.asp?NewsID=13855](http://www.amnesty.org.uk/news_details.asp?NewsID=13855) [Accessed ]; (Three men were beheaded for committing "homosexual acts")

<sup>[354]</sup> *Urgent Action: Saudi Arabian King Should Pardon "Sorcerer"*, Amnesty International Alert, available at: <http://www.amnesty.org/en/library/asset/MDE23/009/2010/en/a52bbace-cd85-4d90-bc22-d9a8589953e3/mde230092010en.pdf> (Man sentenced to death for being hired to cast a "spell")

<sup>[355]</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, at Article 1

<sup>[356]</sup> In the Basic Law of Governance, Part Five: Rights and Duties, Article 27 and 31

<sup>[357]</sup> *Saudi Arabia: Human Rights Defender, Dr. Matrouk Al-Faleh released after 235 days in Prison*, Frontline Defenders, (Jan. 15, 2009) available at: <http://www.frontlinedefenders.org/node/1765> (Mr. Al-Faleh was denied medical care while detained for 235 days – despite his diabetes, high blood pressure and rheumatism)

<sup>[358]</sup> *Saudi Arabia: Free Trapped Migrant Workers; Restrictive Residency Laws Keep Sick Workers From Leaving Compound*, Human Rights Watch, (April 23, 2010) available at: <http://www.hrw.org/en/news/2010/04/23/saudi-arabia-free-trapped-migrant-workers> (Employers failing to renew residency permits as required by law makes it impossible for migrant workers to seek needed medical attention without being arrested)

<sup>[359]</sup> Cairo Declaration of Human Rights in Islam, at Article 17(b)

<sup>[360]</sup> Universal Declaration of Human Rights, at Article 21(2)

<sup>[361]</sup> Universal Declaration of Human Rights, at Article 25(1)

<sup>[362]</sup> Universal Declaration of Human Rights, at Article 22

<sup>[363]</sup> International Convention on Economic, Social and Cultural Rights, at Article 9

<sup>[364]</sup> Cairo Declaration on Human Rights in Islam, at Article 17(b)

<sup>[365]</sup> International Convention on Economic, Social and Cultural Rights, at Article 11(1) and (2)

<sup>[366]</sup> International Convention on Economic, Social and Cultural Rights, at Article 12(1)

<sup>[367]</sup> The Convention on Migrant Workers states that migrant workers and members of their family “shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm” (Convention on the Protection of Migrant Workers and All members of the Families, at Article 28), and the Declaration on Non-Nationals echoes this right “to health protection, medical care, social security . . .” (Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, at Article 8(c)) The failure of the Saudi government to enforce their healthcare rights in the face of employers’ refusal to provide them constitutes an illegal act both under international law, and the Saudi Basic Law of Governance.

<sup>[368]</sup> *Saudi Arabia: International Religious Freedom Report 2008*, U.S. State Department, available at <http://www.state.gov/g/drl/rls/irf/2008/108492.htm> (With a total population of 28 million people in Saudi Arabia, the foreign born population is approximately 8 million).

<sup>[369]</sup> The Labor Law of Saudi Arabia, at Article 7(5) Article (7), “The following shall be exempted from the implementation of the provisions of this Law: (5) Non-Saudi workers entering the Kingdom to perform a specific task for a period not exceeding two months.”

<sup>[370]</sup> The Labor Law of Saudi Arabia, at Article 214 (1) (1.1) (“The Preliminary Commission shall have jurisdiction to:(1) Render final decisions on . . . (1.1) Labor disputes, irrespective of their type.”)

<sup>[371]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, page 73, (Saudi Arabia’s 1969 labor law created special bodies to adjudicate disputes between workers and employers: Primary Commissions for the Settlement of Labor Disputes and an appeals body, the Supreme Commission for the Settlement of Labor Disputes . . . ); 2009 Country Reports on Human Rights Practices: Saudi Arabia, U.S. State Department, Bureau of Democracy, Human Rights and Labor (March 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136079.htm> (“Domestic employees can contact the labor offices of their embassies for assistance as well as the NSHR and the MOL’s Civil Rights Centers, part of a new department responsible for the welfare of expatriate workers” )

<sup>[372]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, pages 74, 75, (“The Indian ambassador in Riyadh told us that of the Indian workers who filed cases in the labor courts, “99 percent were settled in their favor.” But, he emphasized, enforcement was “still a problem,” particularly with cases involving Saudi employers who enjoyed influence with authorities. . . critics of the commissions have complained about protracted proceedings, the non-appearances of Saudi employers, unfair rulings, and the inability or reluctance of Saudi authorities to enforce judgments against employers. The overwhelming majority of aggrieved migrant workers that Human Rights Watch interviewed for this report either had no knowledge of these bodies or no opportunity to access them.”)

<sup>[373]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, pages 85, 90 (“There is no legal aid system in Saudi Arabia to provide advice or representation to defendants who cannot afford to hire lawyers . . . Some complained about having no access to lawyers or legal assistance.”)

<sup>[374]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, page 21 (“All of these workers had assumed significant debt to finance their visas to Saudi Arabia, so they “just kept their mouths shut and did their work,” the engineer reported. . . It is often financial reality that leaves aggrieved workers reluctant to seek recourse from Saudi government entities. Heavily in debt, and desperate for their wages, these workers calculate that leaving their employers for legitimate contract violations and pursuing complaints is simply too costly a prospect.”)

<sup>[375]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, page 21

<sup>[376]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, page 21 (“Many migrant workers in the kingdom are uninformed about these rights or, if they are informed, are afraid to exercise them.”)

<sup>[377]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, pages 24, 34, 49 and 57, (This report spoke with several migrant workers who came to the Kingdom under the kafala system, who reported being harassed, insulted or beaten by their employers . . . Many are abused, verbally or physically, and some are also sexually molested);

<sup>[378]</sup> The Labor Law of Saudi Arabia, at Article 61(1) (“the employer shall be required to: (1) . . . The employer shall treat his workers with due respect and refrain from any action or utterances that may infringe upon their dignity and religion.”)

<sup>[379]</sup> The Labor Law of Saudi Arabia, at Article 81(4) (“Without prejudice to all of his statutory rights, a worker may leave his job without notice in any of the following cases: (4) If the employer, a family member or the manager in-charge commits a violent assault or an immoral act against the worker or any of his family members.”)

<sup>[380]</sup> Moreover, the only disciplinary acts available to an employer are those that involve demotion, fines, subtracting compensation from pay or firing – never physical violence. See The Labor Law of Saudi Arabia, at Article (66) (The disciplinary penalties that the employer may inflict on the worker:(1) Warning,(2) Fines,(3) Withholding allowance or postponing it (4) Postponement of promotion,(5) Suspension, or (6) Dismissal., Article 67 stipulates that (“An employer may not inflict on a worker a penalty not provided for in this Law . . .”)

<sup>[381]</sup> The Labor Law of Saudi Arabia, at Article 98 (“A worker may not actually work for more than eight hours a day.”)

<sup>[382]</sup> The Labor Law of Saudi Arabia, at Article 104 (1) (Friday shall be the weekly rest day for all workers, or any other one day)

<sup>[383]</sup> The Labor Law of Saudi Arabia, at Article 101 (“Working hours and rest periods during the day shall be scheduled so that no worker shall work for more than five consecutive hours without a break of no less than thirty minutes . . .”)

<sup>[384]</sup> The Labor Law of Saudi Arabia, at Article 133 (“If a worker sustains a work injury or an occupational disease, the employer shall be required to treat him and assume directly or indirectly all necessary expenses . . .”)

<sup>[385]</sup> The Labor Law of Saudi Arabia, at Article 117 (“A worker whose illness has been proven shall be eligible for a paid sick leave for the first thirty days.”)

<sup>[386]</sup> The Labor Law of Saudi Arabia, at Article 109 (1) (“A worker shall be entitled to a prepaid annual leave of not less than twenty one days . . .”)

<sup>[387]</sup> The Labor Law of Saudi Arabia, at Article 122, (“An employer shall take the necessary precautions to protect the workers against hazards,” and Article 123, “An employer shall inform the worker, prior to engaging in the work, of the hazards of his job.” See also Article 65, “do not expose him [the worker] to any undue hazards.”)

<sup>[388]</sup> The Labor Law of Saudi Arabia, at Article 121 (“An employer shall maintain the firm in a clean and hygienic condition. He shall provide lighting, supply potable and washing water and comply with other rules . . .”)

<sup>[389]</sup> Convention No. C001, Hours of Work (Industry) Convention, Document No. (ilolex) 191978SAU001, ratified by Saudi Arabia on June 15, 1978, available at: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C001> [accessed August 30, 2010]; C-14 ILO Weekly Rest (Industry) Convention, 1921, Convention No. 14, ratified by Saudi Arabia on June 15, 1978, available at: <http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byCtry.cfm?lang=en&CTYCHOICE=1860> [accessed August 30, 2010]

<sup>[390]</sup> C-1 ILO Hours of Work (Industry) Convention, 1919, Convention No. C001, Date of adoption: Nov. 28, 1919, Date of coming into force: June 6, 1921, International Labor Organization, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C001>; C-14 ILO Weekly Rest (Industry) Convention, 1921, Convention No. 14, date of entry into force, June 19, 1923, International Labor Organization, available at: <http://www.ilo.org/ilolex/english/convdisp1.htm>

<sup>[391]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, pg. 36-38 (Migrant workers are forced to work long hours with no breaks and no overtime pay, such as hotel workers, truck drivers, and a seamstresses who worked 10-12 hours a day)

<sup>[392]</sup> The Labor Law of Saudi Arabia, at Article 79 (“[E]xcept in cases of necessity and as dictated by the nature of the work, a workman may not be called upon to perform a work which is essentially different from the work agreed upon, unless he so agrees in writing and provided that this is done on a temporary basis.”)

<sup>[393]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, page 22, (“Sometimes the jobs promised to migrant workers do not exist, and once in the kingdom they are forced to accept alternative work that does not match their skills or the job description they believed was specified in their initial employment contract,” for example – a diesel mechanic given a job caring for camels)

<sup>[394]</sup> Cairo Declaration of Human Rights in Islam at Article 13

<sup>[395]</sup> The Labor Law of Saudi Arabia, at Article 61(1) (“the employer shall be required to:(1) Refrain from using the worker without pay and shall not, without a judicial instrument, withhold the worker’s wages or any part thereof . . .”)

<sup>[396]</sup> The Labor Law of Saudi Arabia, at Article 90(1) and (1.4) (“The worker’s wages and all other entitlements shall be paid in the Country’s official currency. Wages shall be paid during working hours and at the workplace in accordance with the following provisions: (1.4) In cases other than the above, the worker’s wages shall be paid at least once a week.”)

<sup>[397]</sup> Labor Law of Saudi Arabia, at Article 107(1) (“The employer shall pay the worker for overtime working hours an additional amount equal to the hourly wage plus 50% of his basic wage.”)

<sup>[398]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, Pages 36-38 (“Throughout this report, we document the low salaries that skilled and unskilled migrant workers are paid in Saudi Arabia. In view of these prevailing wages, it is unconscionable that some employers withhold salaries and force workers to leave the kingdom without full reimbursement of their earned wages.”)

<sup>[399]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, page 19, (“The labor law in Saudi Arabia, in effect since 1969, requires every foreign worker to be under contract with and guaranteed by a sponsor (*kafeel*, in Arabic). “We do not have immigrant workers, but workers by contract,” is the way Saudi Arabia’s then-minister of labor and social affairs, Dr. Ali al-Namlah, explained the system.”)

<sup>[400]</sup> “They purchase these people like they were sheep, then when the sheep arrive they become cows, and the sponsor just milks them for money,” Interview with HRFS founder Ibrahim Al-Maigteeb about his work with migrant workers (August 25, 2010); *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, page 25, (“Some migrant workers pay large sums of money to manpower agents in their home countries to secure what they believe are advantageous “free visas” that will allow them the flexibility to find their own jobs in the kingdom with only a nominal sponsor. . . . When the visas are secured, sponsors sell them to intermediaries who are linked to recruiters in sending countries. The migrants who arrive in the kingdom with “free visas” typically must find their own work with an employer and remit monthly payments to the Saudi sponsor named on their visas.”)

<sup>[401]</sup> The Labor Law of Saudi Arabia, at Article 49(c) (requires foreign workers to be under contract with a sponsor who is a Saudi citizen)

<sup>[402]</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956, entry into force: April 30, 1957, available at <http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-4.en.pdf> (There are 123 nations party to this treaty; Saudi Arabia ratified the treaty on July 5, 1973)

<sup>[403]</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Section 1: Institutions and Practices Similar to Slavery, at Article 1(a) (“Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;”)

<sup>[404]</sup> Bruce Broomhall, *International Justice & the International Criminal Court: Between Sovereignty and the Rule of Law*, Oxford Press (2003), pages 23, 24 (“Piracy and Slavery have both been identified as crimes under customary international law . . . Piracy . . . the oldest recognized crime under international law, has had that status since the seventeenth century . . . Slavery [since] the early nineteenth century.”).

<sup>[405]</sup> Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926 (Slavery Convention of 1926), 60 L.N.T.S. 253, entered into force March 9, 1927. (1926), Article 1(1)

<sup>[406]</sup> Slavery Convention (1926), at Article 5

<sup>[407]</sup> Universal Declaration of Human Rights, at Article 4

<sup>[408]</sup> International Convention of Civil and Political Rights, at Article 8(1) and (2)(a) and (2)(b)

<sup>[409]</sup> Convention on the Rights of Migrant Workers and Their Families, at Article 11(1) and (2)

<sup>[410]</sup> Cairo Declaration on Human Rights in Islam, at Article 11(a), (“Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty.”)

<sup>[411]</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, at Article 5,

<sup>[412]</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, at Article 6(1)

<sup>[413]</sup> *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, (July 2004) Vol. 16, No. 5(E), Human Rights Watch, available at <http://www.hrw.org/en/node/11999/section/2>, (The ILO recommends that governments enact legislation that would facilitate supervision of authorities responsible for protecting workers from the abuse of forced labor. It states that police officers, magistrates, and civil servants who encounter cases of forced labour should receive training.)

<sup>[414]</sup> Cairo Declaration of Human Rights in Islam, at Article 23(a)

<sup>[415]</sup> Christopher Wilcke, *Saudi Arabia: Criminal Justice Strengthened: Shura Council Approves Legal Aid Program*, Human Rights Watch, (Jan. 14, 2010), available at: <http://www.hrw.org/en/news/2010/01/14/saudi-arabia-criminal-justice-strengthened>

<sup>[416]</sup> *UN Chief Calls for an End to Sponsor System in GCC*, Arab News, (March, 20, 2010), available at <http://bahrainbusinessnetwork.com/news/10813/un-rights-chief-calls-for-end-to-sponsor-system-in-gcc>



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<sup>[417]</sup> Kingdom of Saudi Arabia, *Shura in the Kingdom of Saudi Arabia: A Historical Background*, Majlis Ash-Shura (2010), available at: <http://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Historical+BG/> (The Shura is a consultative council appointed by the Custodian of the Two Holy Mosques, King Abdullah bin Abdul Aziz).

