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ICJ Submission to the Universal Periodic Review of Saudi Arabia

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Introduction

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's Universal Periodic Review of Saudi Arabia, which is of key importance given the blatant failure of Saudi authorities to respect the rule of law principles and observe human rights.

The Saudi Basic Law of Government infringes the basic principles of the rule of law and separation of powers, as it maintains control of the ruling family over the judicial and administrative institutions, and appropriates the legislative authority to the King and the Council of Ministers. It also limits the Consultative Council's competences to propose, discuss and interpret laws.

Widespread human rights violations persist in Saudi Arabia. Individuals are often arbitrarily arrested, detained or punished when subjected to the criminal and often secret justice procedures that contravene the fundamental principles of the right to a fair trial. Women face systematic discrimination and are increasingly exposed to executions and amputations. Torture and other ill-treatment are still widespread.

The ICJ wishes to draw the Working Group's and the Council's attention to the fact that Saudi Arabia, as a member of the Human Rights Council, is required to uphold the highest standards in the promotion and protection of human rights, and fully cooperate with the Council.¹ In this respect, the Council should urge the authorities of Saudi Arabia to abide by the principles of the rule of law and human rights and end immediately the practice of arbitrary and incommunicado detention, widespread use of

¹ See the General Assembly resolution A/RES/60/251 of 3 April 2008, para. 9.

the death penalty and other cruel, inhuman or degrading punishment, and the ongoing discrimination against women.

1. Rule of Law and Human Rights in Saudi Arabia

Despite the adoption of the Basic Law of Government, ² and the existence of the Government, Saudi Arabia remains an absolute monarchy without elected and representative institutions. The Basic Law emphasizes in its Article 1 the religious as well as the monarchical nature of the state and identifies Saudi Arabia as an Arab Islamic State, while Article 7 states: *"God's Holy Book and His Prophet's traditions are the source of authority of the government. They are the arbiters of this Law and all other laws"*. It reinforces the King's absolute authority, as Article 55 affirms that the king *"shall rule the nation according to the Sharia. He shall also supervise the implementation of the Sharia, the general policy of the State and the defence and protection of the country."*

Although the Consultative Council, as established by the Basic Law, is granted powers to discuss, interpret and to a limited extent, to propose laws, the authority of enacting laws is reserved to the Council of Ministers and the King. The Consultative Council is meant to express views, in an advisory capacity, on policies submitted to it by the King, as well as on international treaties and economic plans. It also has the power to interpret laws and examine annual reports referred to it by ministers and government agencies. The membership of the assembly is restricted to men over the age of thirty, who must pledge allegiance to *"the faith, the King, and the country"*. However, this Council is falling short of a true Assembly or Parliament nature as the King appoints all its members. According to Article 3 of the Consultative Council Law, *"the Council shall consist of a Speaker and one hundred and fifty members chosen by the King from amongst scholars, those of knowledge, expertise and specialists."*³

This maintains the absolute nature of the Saudi Monarchy and therefore violates the rights of Saudi citizens to participate in the conduct of public affairs and to vote. The Universal Declaration of Human Rights (UDHR) ⁴ stipulates in its Article 21 that *"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives,"* and that *"the will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."*

In addition, although the Basic Law in Saudi Arabia recognizes the principle of the independence of the judiciary, it also subordinates the judiciary to the authority of the

² The Basic Law of Government of Saudi Arabia No: A/90 of 1st of March 1992, available at: <http://www.shura.gov.sa/englishsite/Elaw/BASLW.htm>.

³ The Shura Council Law, Royal Decree No. A/91 of 1st March 1992, available at: <http://www.shura.gov.sa/englishsite/Elaw/law1.htm>.

⁴ Universal Declaration of Human Rights (UDHR), adopted on December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), UDHR, Article 21.

executive organs, in particular the Minister of Justice, Minister of the Interior and regional governors. The independence of the judiciary is further undermined by powers vested in the Ministry of the Interior, which is responsible for the entire process of arrest and detention and for taking the decision as to whether a detainee is released, sent to trial or detained indefinitely without trial.

The Basic Law lacks safeguards of enjoyment of: freedom of religion or belief, freedom of expression and opinion, equality and equal protection of the law, freedom from torture, other cruel, inhuman or degrading treatment or punishment, freedom of association and assembly, the right to a fair trial and the freedom of thought. In addition, Saudi Arabia has failed to ratify the principle international human rights instruments such as the International Covenant on Civil and Political Rights and its protocols. Saudi Authorities argued that these instruments by granting, amongst other things, the freedom of thought, conscience, and religion, particularly the right to change one's religion or belief, violate the precepts of Islam.⁵ Thus, in January 1996 Saudi Arabia ratified the Convention on the Rights of the Child (CRC), with a general reservation to "*all such articles as are in conflict with the provisions of Islamic law*". Saudi Arabia made a similar reservation in September 1997 when it ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Saudi Arabia also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) with three partial reservations.⁶

The *wahabist* interpretation of the Shari'a law is the cornerstone of the Saudi legal system. On the basis of this interpretation, the Saudi Government has failed to codify laws and has give unlimited powers to judges to decide on what constitutes a crime under the Shari'a law. Such lack of a codified penal law continues to endanger the rights of citizens and residents, often implicating arbitrary arrest or detention, and unfair trials. The lack of codified penal law is also in contravention of the principle of legality of offences, *nullum crimen sine lege*, which is one of the cornerstones of the contemporary criminal law, as well as a principle of the international human rights law. The *nullum crimen sine lege* principle requires that, in order to be considered a criminal offence, a specific type of conduct be established in law as a crime and the definition of any criminal offence should be precise and free of ambiguity.⁷ Moreover, Article 11 of the UDHR also elaborates on this principle as it stipulates non-retroactivity of offences: "No

⁵ See the report of the International Commission of Jurists, *Saudi Arabia: Attacks on Justice*, 2002, available at: <http://www.icj.org/IMG/pdf/saudiarabia.pdf>.

⁶ The Saudi reservations have related to Article 3 (1), which prohibits the expulsion, return or extradition of anyone to another State where there are substantial grounds for believing that such person would be in danger of being subjected to torture. The other two reservations concern Article 20 which mandates the Committee against Torture to investigate allegations of systematic torture, and Article 30 (1) on the submission of disputes concerning the interpretation or application of the Convention to the International Court of Justice, if they have not been solved by negotiation and arbitration.

⁷ Human Rights Committee, General Comment N° 29, *States of Emergency (Article 4)*, UN document CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 7.

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.”⁸

Although Saudi Arabia adopted in 2001 the Law of Criminal Procedure (LCP),⁹ the LCP did not meet most of the international safeguards of basic rights of defendants. For example, Article 34 of the LCP reverses the principle of presumption of innocence, requiring the suspect in effect to demonstrate his innocence. Article 11 of the UDHR guarantees everyone charged with a criminal offence *“the right to be presumed innocent until proved guilty according to law.”*

The ICJ therefore calls on the Working Group and the Council to urge the Government of Saudi Arabia to:

- i) Amend the Basic Law to guarantee the enjoyment of human rights and freedoms and bring it in line with the principles of the rule of law, including on the independence of judiciary free from intrusions by the executive;**
- ii) Hold free, transparent and fair elections with the participation of all political actors and parties, which would reflect the free will of the Saudi People. To this end, the Government must reform the statute of the Consultative Council and make sure that its members are elected. For the Consultative Council to be genuine, it must have real powers to initiate, discuss and adopt laws and control the executive branch of the Government;**
- iii) Accede to the International Covenant on Civil and Political Rights and its Protocols, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention Against Torture; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and to the International Convention for the Protection of All Persons from Enforced Disappearance;**
- iv) Enact an amendment to the criminal law prohibiting imprisonment merely on the grounds of indebtedness and make sure that no one is held guilty for an act which did not constitute a penal offence under national or international law at the time when it was committed;**
- v) Bring the Law of Criminal Procedure in compliance with the international human rights standards, particularly by allowing detainees to challenge the lawfulness of their detention with competent, independent and impartial court and by protecting their right to be presumed innocent;**

⁸ Universal Declaration of Human Rights (UDHR), adopted on December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), UDHR, art. 11.

⁹ Law of Criminal Procedure (LCP), Umm al-Qura Newspaper, issue 3867, November 3, 2001.

- vi) **Take all necessary steps to guarantee the independence and impartiality of the judiciary and ensure that judges act with deference for human rights.**

2. Arbitrary, Secret and Incommunicado Detention

The practice of arbitrary and secret detention is widespread in Saudi Arabia. In 2007, The ICJ called on the Saudi authorities to release immediately or legally charge ten Saudis, most of them human rights defenders and advocates who have been arbitrarily arrested in Jeddah and Madinah on 2 February 2007. Although the Interior Ministry official told local newspapers that the arrested men had been involved in collecting money to finance terrorism, the ICJ continues to believe that there is sufficient evidence to prove that they may have been arrested for their peaceful activities in defence of human rights and their continued calls for more constitutional reforms and separation of powers in Saudi Arabia. Two of them, Sulieman al-Rushudi and Al-Sharif Saif Al-Ghalib, were detained in March 2004 because they signed a petition calling for changes to the system of government. Yet, the detainees have not been legally charged with criminal offence and are reportedly being held incommunicado in the offices of the General Intelligence Service (*Mabahith*). The *Mabahith* carries out arrests and detention without legal basis and judicial oversight. Detainees held by the *Mabahith* do not have effective access to legal counsel or representative, to the courts, and are not allowed to communicate with their families. In most of the cases the detainees have been subjected to torture and other ill-treatment.

This violates the provisions of the Saudi LCP, which specifically stipulates in its Article 2 that: *“No person shall be arrested, searched, detained, or imprisoned except in cases provided by law”* and that *“an arrested person shall not be subjected to any bodily or moral harm. Similarly, such person shall not be subjected to any torture or degrading treatment.”* In addition, Article 4 states: *“Any accused person shall have the right to seek the assistance of a lawyer or a representative to defend him during the investigation and trial stages.”*

Such practices are also in breach of international law, which absolutely proscribes engaging in the practice of secret or unacknowledged detention, which when prolonged may constitute a form of torture or other ill-treatment. Following his visit to Saudi Arabia in 2002, the UN Special Rapporteur on the independence of judges and lawyers referred to incommunicado detention in his report. *“Experience has shown in other countries that prolonged detention, particularly where it is incommunicado, provides the conditions for the violation of a detained individual’s rights,”* he wrote. *“Even with access to a lawyer, other individuals, particularly family or consular officials, are an important safeguard for the well-being and the rights of the accused.”*¹⁰ The United Nations Human Rights Committee has also pointed out that *“the absolute nature of these prohibitions, even in times*

¹⁰ United Nations Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumaraswamy, E/CN.4/2003/65/Add.3, para. 99.

of emergency, is justified by their status as norms of general international law,"¹¹ and called on States to "*immediately cease [the] practice of secret detention and close all secret detention facilities*".¹²

In addition, a 1980 law empowers the religious police, known as *Al-Mutawaeen* or *Hay'at al-amr bilmaruf wan nahi an al-munkar*, (the Committee for the Propagation of Virtue and Prevention of Vice), which is responsible only to the King, to arrest, detain and interrogate persons for undefined criminal offences to ensure strict adherence to Islamic Principles. *Al-Mutawaeen* does not observe the LCP when arresting, detaining and interrogating suspects and during the last years, cases alleging torture and deaths in custody were brought against the religious police. Officials alleged to be responsible for such human rights violations have still enjoyed impunity.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Saudi Arabia to:

- i) End immediately the practice of arbitrary, secret and incommunicado detention and ensure that the apprehension of suspects comply with the international standards, in particular with the absolute nature of the prohibition of torture and other cruel, inhuman or degrading treatment;**
- ii) Repeal the sweeping powers of arrest and detention by Al-Mabahith and Al-Mutawaeen;**
- iii) Provide for independent judicial oversight over the grounds for detention and ensure the protection of detainees from abusive treatment during criminal investigations;**
- iv) Strengthen the rights of defendants including by ensuring that they can benefit of a fair trial guarantees, including by providing for legal counsel or representatives and allowing them to effectively challenge the evidence against them;**
- v) Investigate in a prompt, effective and independent manner the allegations of the involvement of Al-Mabahith and Al-Mutawaeen officers and officials in torture and other cruel, inhuman or degrading treatment, and hold criminally accountable those responsible for such human rights violations;**
- vi) Guarantee the rights of victims of such practices to remedy and reparation;**

¹¹ Human Rights Committee, *General Comment N° 29, States of Emergency (Article 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 13 (b).

¹² See the *Concluding Observations of the Human Rights Committee on the United States of America*, CCPR/C/USA/CO/3/ Rev.1, 18 December 2006, para. 12.

3. Death Penalty and other Cruel, Inhuman or Degrading Punishment

By failing to codify the penal law and by giving judges an unlimited power to decide what constitutes a crime and what is the adequate sentence to be applied to the crime, Saudi authorities have steadily increased the number of executions. In 2007, the authorities executed at least 158 people, 82 Saudi Arabians and 76 foreign nationals, including three women and at least one child offender aged 15 at the time of the commission of alleged murder for which he was sentenced to death.¹³

According to the *Wahabist* interpretation of the Shari'a law, the death penalty is applied for a wide range of offences, including offences with no lethal consequences. The difficulty here is that some verses of the Koran and many principles alleged to be included in the Shari'a are subject to different interpretations even among renowned scholars. However, punishments for criminal acts under the Saudi conception of the Shari'a law include, among others, amputation of the hand for robbery, death for adultery and apostasy and flogging for drinking alcohol, all of which violate Saudi Arabia obligations under the CAT. Indeed, corporal punishment involving blows to the body or mutilation is inherently cruel and degrading and therefore prohibited by the international standards as it violates the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Similar proscriptions are contained in Article 5 of the UDHR, which states that: "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*"

In addition, Saudi criminal justice system imposes the death penalty after manifestly unfair trials which invariably fall short of the most basic international standards of due process. Hearings are often held in secret, and defendants are permitted barely any formal legal representation. Under international human rights standards and jurisprudence, capital punishment can only be imposed for the most serious crimes and, in all circumstances, any trial leading to the imposition of the death penalty must conform to fundamental guarantees of a fair trial by a competent, independent and impartial tribunal established by law. The relevant jurisprudence and doctrine underline that in cases involving the death penalty, it is axiomatic that a lawyer must effectively assist the accused at all stages of the proceedings, and have recourse to appeal. Imposition of capital punishment as a result of a trial which does not conform to these standards constitutes in itself a summary execution. In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of a fair trial is particularly important, as the imposition of a sentence of death upon conclusion of an unfair trial constitutes a violation of the right to life.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Saudi Arabia to:

¹³ See the Amnesty International annual report of 2008: *State of the world's human rights*, available at: <http://thereport.amnesty.org/eng/Regions/Middle-East-and-North-Africa/Saudi-Arabia>.

- i) **Abolish the death penalty and all other forms of cruel, inhuman or degrading punishment, including amputations and flogging;**
- ii) **Accede to the human rights treaties providing for the abolition of the death penalty, including the Second Optional Protocol to the International Covenant on Civil and Political Rights;**
- iii) **Ensure that in all judicial trials leading to the death penalty, all guarantees of a fair trial are scrupulously respected;**
- iv) **Abide by its obligations under the Convention on the Rights of the Child and refrain from imposing the death penalty against child offenders.**

V. Discrimination against Women

In September 2000, Saudi Arabia acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), but made the reservation that *"in the case of contradiction between any terms of the Convention and the norms of Islamic law, the Kingdom is not under any obligation to observe the contradictory terms of the Convention"*. This reservation, which is so vague that it is contrary to the object and purpose of the Convention, was made by Saudi authorities to protect a blatant discriminatory system that institutionalizes traditions, rules and fatwa's against the emancipation of Saudi women. Within this system, women must obtain permission from a *Waliy*, a male relative, normally a father or husband, to work, study, or marry. In clear violation of Article 13 of the UDHR, which provides that *"everyone has the right to freedom of movement and residence within the borders of each state,"* Saudi women are not allowed to leave the country without the written permission of the *Waliy*. This system also violates Saudi Arabia obligations under the CEDAW as it denies Saudi women *"a legal capacity identical to that of men and the same opportunities to exercise that capacity."*¹⁴ Similar concerns have been expressed by the Committee on the Elimination of Discrimination against Women, based on Articles 2 and 5 of the Convention.¹⁵

The Saudi legal framework institutionalizes discrimination against women. Although articles 8 and 26 of the Saudi Basic Law guarantee the principle of equality, neither the Constitution nor other legislation embodies the principle of equality between women and men. Also the Saudi interpretation of the Shari'a law provides for additional discrimination against women. For example, women are severely constrained in their ability to access and engage with the courts and their testimonies are not generally

¹⁴ See Article 15 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted on December 18, 1979, GA res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981.

¹⁵ See the Concluding comments of the Committee on the Elimination of Discrimination against Women on Saudi Arabia, (CEDAW/C/SAU/CO/2), 40th Session, 8 April 2008, paras. 15 and 16.

accepted in criminal cases. In 2005, this interpretation of the Shari'a law was also used to exclude women from the country's first-ever municipal elections.

Saudi Arabia, as a member of the United Nations and its Human Rights Council, is required to act in compliance with the UDHR and other UN instruments. The preamble of the UDHR reaffirms the faith of the UN Member States "*in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women*". Article 2 of the UDHR also provides that: "*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*"

The ICJ therefore calls on the Working Group and the Council to urge the Government of Saudi Arabia to:

- i) Amend the Basic Law of Government to ensure effective prevalence of international human rights treaties over domestic legislation;**
- ii) Incorporate into the domestic legislation the principle of equality between men and women and the definition of the discrimination on the basis of sex, in accordance with Article 1 of the CEDAW;**
- iii) Dismantle the legal system of *al Wally* and end the system of male guardianship over women;**
- iv) Allow women to work, travel, study, marry, access any public service, have equal standing before the courts, participate in public affairs and vote without any discrimination;**
- v) Sign and ratify the Optional Protocol to CEDAW;**
- vi) Lift the general reservation made upon accession to the CEDAW as it violates the object and purpose of the Convention.**