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Communication transmitted by the Working Group on Communications to the Working Group on Situations

Saudi Arabia (224, 228, 234 and 235)

Reply received from the Government of Saudi Arabia, dated 20 July 2018, to communications No. 224, 228, 234 and No. 235 contained in documents A/HRC/CCR/2015/iii/2, A/HRC/CCR/2016/ii/1, A/HRC/CCR/2016/ix/2 and A/HRC/CCR/2016/xii/1.**

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Geneva, 20 July 2018

The Permanent Mission of the Kingdom of Saudi Arabia to the United Nations and other International Organizations in Geneva presents its compliments to the Secretariat of the Complaint procedures and has the honour to refer to its note verbale No. G/SO 215/1 SAU 224, 228, 234, and SAU 235 and SAU 236 dated 13/7/2018 regarding communications 224, 228, 234, 235 and 236, following the decision taken by the Working Group on Situations of the complaint procedures of the Human Rights Council at its twenty-first session held from 29 January to 2 February 2018. The Government of the Kingdom of Saudi Arabia would like to inform you of the following points:

- The Permanent Mission would like to draw the attention of the Working Group to the fact that the Kingdom of Saudi Arabia is still awaiting comments from the Working Group regarding the admissibility of complaints. As stated in our previous notes verbales, the complaints did not meet the criteria set out in resolution 5/1 of the Human Rights Council, dated 18 June 2007.
- The decision of the Working Group on Communications to transmit both complaints to the Working Group on Situations is unjustifiable, as it stated that “*the allegations contained in both complaints are of a dangerous nature and might reveal a consistent pattern of confirmed violations in a reliable way*”. These allegations are not based on real facts or credible evidence, as is required under the mandate of the Working Group on Communications and its competences, according to articles 89 and 95 of resolution 5/1 of the Human Rights Council dated 18 June 2007, which stresses that the Working Group on Communications should issue all its decisions after the strict application of the admissibility criteria, which should also be justified. The Working Group also did not discuss the objection submitted by the Kingdom nor has it replied to it, which clearly reveals that both complaints do not meet the admissibility criteria.
- With regard to the ALKARAMA organization for human rights, this organization has no advisory capacity, so that any complaint submitted by it should be considered as null and void.
- It should be noted that there is a royal amnesty, ordered annually for the benefit of those who meet its conditions and provisions.

Despite the fact that the two complaints do not meet clearly the admissibility criteria for communications, the Kingdom always shows a full, constructive and ongoing engagement and cooperation with all Working Groups, which reiterates the Kingdom’s commitment towards greater protection and promotion of all human rights.

Please find enclosed the updated reply of the Kingdom to the above-mentioned complaints. We will provide additional information whenever we receive them from the competent authorities regarding all cases presented to the Working Group.

The Permanent Mission avails itself of this opportunity to renew to the secretariat of the Complaints Procedure of the Human Rights Council its highest consideration.

Reply to note verbale G/SO 215/1 SAU 224, 228, 234 and SAU 235 dated 23 May 2018

I. Criminal proceedings instituted against persons arrested on charges of committing serious offences entailing detention or acts criminalized under the Kingdom's legislation are conducted in accordance with the law and lead to a fair and public trial before an independent court, during which accused persons can defend themselves, seek the assistance of legal counsel, and challenge judicial rulings handed down against them. Judgments are subject to judicial review before higher courts, in accordance with international human rights standards.

The Kingdom's legislation guarantees the right of all accused persons to a fair trial by providing numerous statutory safeguards based on the provisions of the Islamic sharia, which require a Muslim judge to adjudicate fairly in accordance with the words of Almighty God: "When you judge between people, adjudicate with justice." Many of these principles are enshrined in the Basic Law of Governance, which requires the State to protect human rights in accordance with the Islamic sharia (art. 26) and to ensure the security of all its citizens and persons residing in its territory, in which no persons may be arrested, detained or have their freedom of action restricted except as provided for by law (art. 36). Article 38 affirms the principle of the personal nature of punishment and the illegality of criminalizing acts with retroactive effect: "No one shall be punished for another's acts. There shall be no crime or punishment except as prescribed by sharia law or a statutory provision, and no penalty shall be imposed ex post facto."

Article 3 of the Code of Criminal Procedure stipulates that no one may be sentenced to a criminal penalty save in respect of an act that is prohibited under sharia or statutory law and after being convicted in a trial conducted in accordance with due process of law. The Code provides for numerous procedural safeguards, which regulate criminal proceedings, guarantee the rights of defendants and ensure that they are presumed innocent until found guilty under the terms of a final court judgment handed down in conformity with the sharia and statutory requirements enshrined in the Code and the legislation applicable to the proceedings.

The Kingdom's judiciary is an independent authority. Article 46 of the Basic Law of Governance stipulates that: "The judiciary is an independent authority and judges shall be subject to no authority other than the Islamic sharia in their administration of justice." Article 1 of the Judiciary Act stipulates that: "Judges are independent and are subject to no authority other than the provisions of the Islamic sharia and the legislation in force in their administration of justice. No one may interfere in judicial affairs."

Safeguards are provided for accused persons under article 36 of the Code of Criminal Procedure, which stipulates that they must be informed of the grounds for their detention and be permitted to contact persons of their choice to inform them of their arrest. Further details are contained in the implementing regulations, article 22 of which stipulates that accused persons must be informed at the time of their arrest or detention of the grounds therefor, of their right to seek the assistance of a lawyer or representative during the investigation and trial stages, and of their right to contact persons of their choice to inform them of their arrest or detention. They must also sign a form to the effect that they have been informed of the aforementioned rights.

The law also specifies the period during which suspects may be lawfully detained. Article 34 of the Code of Criminal Procedure stipulates that: "The criminal investigation officer shall immediately hear the statement of an arrested suspect. If there is sufficient evidence for filing charges, the officer shall, within 24 hours, hand him over and refer the suspect, together with the report, to the investigator, who shall question him within 24 hours and thereafter order his detention or release." Article 37 stipulates that: "No person may be detained or imprisoned save in places legally designated for the purpose. The administrators of a prison or detention centre may not admit any person save pursuant to an order specifying the grounds therefor and the period of imprisonment or detention and duly

signed by the competent authority. The said person may not remain in custody following the expiry of the period specified in the order.”

Article 109 of the Code of Criminal Procedure requires investigators to interrogate suspects immediately after their arrest. If this is not possible, they are held in custody pending interrogation for a period that may not exceed 24 hours. If the period expires without interrogation, the warden of the detention centre must notify the head of the relevant department. The department must then either interrogate the suspect forthwith or order his release. Article 113 of the Code stipulates that: “If it appears, following the interrogation of the suspect, or in the event of his flight, that there is sufficient evidence that he committed a serious offence, or if his detention is required in the interest of the investigation, the investigator shall issue a warrant for his detention for a period not exceeding five days from the date of his arrest.”

Article 114 of the Code requires the detention, once it has been authorized by the competent authority, to be conducted in accordance with specific procedures and for specified periods, following which the accused must either be referred forthwith to the competent court or released. In exceptional cases requiring detention for longer periods, the court is required to issue a reasoned judicial order.

The Code also guarantees the right of the accused to request provisional release. Article 120 of the Code of Criminal Procedure stipulates that: “The investigator in charge of the case may, at any time, on his own motion or pursuant to a request by the accused, order the release of the accused if he finds that his detention is groundless, his release would not undermine the investigation, or he is unlikely to flee or disappear, provided that the accused undertakes to appear when summoned.”

Article 119 of the Code of Criminal Procedure prescribes time limits for incommunicado detention and permits such detention if the interest of the investigation so requires, without prejudice to the right of the accused to contact his representative or defence counsel.

Article 115 of the Code authorizes detainees to appeal against detention orders or the extension thereof.

If the investigating authority finds, on completion of the investigation, that there is sufficient evidence against the accused, the case is referred by the Public Prosecution Service to the competent court, and the accused is summoned to appear before it, in accordance with articles 15 and 126 of the Code of Criminal Procedure and article 3 of the Public Prosecution Act.

Article 160 of the Code of Criminal Procedure requires the court to read the indictment to the accused and explain it to him, and to provide him with a copy thereof. Article 19 of the Legal Profession Act requires all judicial bodies and investigating authorities to facilitate lawyers’ performance of their duties, to grant them access to the case file and to permit them to attend the investigations. None of their requests may be rejected without legitimate justifications. Article 157 of the Code of Criminal Procedure stipulates that defendants must be present, without restraints or shackles but with the requisite surveillance, during the court hearings. They may not be removed from the courtroom during a hearing unless their behaviour so requires, and their attendance may be resumed when the grounds for their removal have ceased to exist. The court must then acquaint them with the proceedings that took place in their absence. Article 163 of the Code entitles the litigants to request the court to call witnesses, to consider any evidence that they submit and to conduct a specific investigation procedure. Articles 4 and 65 of the Code entitle the accused to seek the assistance of a representative or defence counsel to defend him during the investigation and trial stages.

Article 139 of the Code of Criminal Procedure entitles accused persons who cannot afford to seek the assistance of a lawyer to request the court to appoint a defence counsel at the State’s expense. Article 64 of the Code of Sharia Procedure requires the proceedings to be conducted in public unless the judge decides, on his own motion or at the request of any of the parties, to conduct them in camera in order to preserve public order or to protect public morals or family privacy. Article 154 of the Code of Criminal Procedure enshrines

the same principle. Article 164 of the Code of Sharia Procedure requires the judgment to be delivered at a public hearing. Article 181 (1) of the Code of Criminal Procedure enshrines the same principle. It requires the judgment, signed by the bench, to be read out at a public hearing, even if the proceedings were conducted in camera, and the said hearing must be attended by the parties to the proceedings and by all the judges who rendered the judgment. Article 32 of the Code of Sharia Procedure requires the court to hear the statements of non-Arabic-speaking parties, witnesses and other persons involved through an interpreter. Article 171 of the Code of Criminal Procedure guarantees the right of the parties, in the event that the court requests an expert to deliver an opinion on a technical matter concerning the case, to receive copies of the expert's report. It also requires the court to avail itself of the services of one or more interpreters if any of the parties or the witnesses do not understand the Arabic language.

Article 9 of the Code of Criminal Procedure stipulates that appeals may be filed against judgments in criminal cases in accordance with the provisions of the Code. Article 192 of the Code stipulates that convicted persons have the right to file an appeal, within the statutory time limit, against judgments handed down by courts of first instance, and the courts must inform them of that right when delivering the judgment. Article 193 of the Code stipulates that a copy of the judgment must be delivered within the prescribed time limit to prisoners or detainees in the prison or detention facility, and that the responsible authority must bring prisoners or detainees to the court to file an appeal against the judgment within the time limit prescribed for the filing of an appeal or submission of the convicted person's signed waiver thereof, which must be entered in the case file. On submission of the appeal, the chamber that rendered the judgment must examine the memorandum of appeal and amend or uphold the judgment as it sees fit. If it upholds the judgment, it must refer the case, together with copies of all its records and documents, including the memorandum of appeal, to an appellate court. If it amends the judgment, all the parties to the case must be informed thereof and the procedural rules laid down in article 196 of the Code are applied. If the court of appeal upholds the judgment, it becomes final and the judicial proceedings have been completed. The final judgment must be enforced in accordance with article 212 of the Code, and the order to enforce it is referred to the competent authority, pursuant to article 216 of the Code. In the event of a death sentence, the case file must, pursuant to article 194 of the Code, be submitted to an appellate court, even if none of the litigants has lodged an appeal. The chamber of the appellate court that is competent to hear such cases is composed of five judges, pursuant to article 15 (1) of the Judiciary Act, which requires appellate courts to operate through specialized chambers composed of three judges, with the exception of criminal chambers hearing cases involving the death penalty, which must be composed of five judges. If the appellate court upholds the judgment, it must refer the case to the Supreme Court in accordance with article 10 of the Code of Criminal Procedure, which stipulates that death sentences imposed or upheld by an appellate court shall not be final until they have been confirmed by the Supreme Court. Convicted persons may lodge an objection pursuant to article 198 of the Code, which stipulates that the convicted person, the public prosecutor or the civil claimant may lodge an objection in cassation with the Supreme Court against judgments or rulings delivered or upheld by an appellate court. Death sentences upheld by an appellate court are reviewed by five judges, pursuant to article 10 (4) of the Judiciary Act, which requires the Supreme Court to operate through specialized chambers composed of three judges, with the exception of the criminal chamber that looks into judgments involving the death penalty, which must be composed of five judges. Article 11 (1) of the same Act stipulates that judgments or rulings involving the death penalty that are delivered or upheld by an appellate court must be reviewed. Such judgments are not enforceable until they have become final pursuant to article 212 of the Code of Criminal Procedure, which stipulates that: "Criminal judgments shall not be enforced until they have become final." Article 210 of the Code defines final judgments as judgments that have not been challenged within the legally prescribed time limit or that have been upheld or delivered by the Supreme Court. The enforcement of a death penalty also requires an order from the King or his authorized representative pursuant to article 217 (1) of the Code of Criminal Procedure, which stipulates that death penalties shall be enforced only by order of the King or his authorized representative.

Convicted persons are entitled, pursuant to article 198, to file an objection in cassation before the Supreme Court against judgments or decisions delivered or upheld by appellate courts if the objection is substantiated on any of the following grounds:

1. Violation of the provisions of the Islamic sharia or of legislation consistent with the sharia promulgated by the Ruler;
2. Delivery of the judgment by a court that is not properly constituted in legal terms;
3. Delivery of the judgment by a court or chamber that lacks jurisdiction;
4. Erroneous categorization or improper description of the facts of the case.

In addition, the Code recognizes the right of any of the litigants to request a review of final judgments imposing penalties in the circumstances specified in article 204 of the Code.

II. With regard to the cases referred to in the above-mentioned complaints, and in addition to the information already provided in response No. 4 of A.H. 29 Rabi'al-Thani 1437 (9 February 2016) to the nineteenth meeting of A.H. 1437 (2016) concerning Amnesty International's complaint, and response No. 1 of A.H. 5 Muharram 1438 (7 October 2016) to the third meeting of A.H. 1438 (2016) concerning the complaint by Alkarama human rights foundation, the following developments in some of the cases concerned may be reported:

1. Mohammed bin Saleh al-Bajadi

He was released after serving his sentence related to the case.

2. Fadhel bin Makki al-Manasif

He was sentenced in a final court judgment to 14 years' imprisonment and to a ban on travel outside the Kingdom for a similar period after serving his sentence.

3. Abdullah bin Hamid al-Hamid

He was sentenced in a final court judgment to enforcement of the remainder of his previous prison sentence because he breached the condition that would have led to his release, and to five years' imprisonment from the date of completion of the previous sentence. He was also sentenced to a ban on travel outside the Kingdom for a period similar to his prison term after its completion.

4. Mohammad bin Fahad al-Qahtani

He was sentenced in a final court judgment to 10 years' imprisonment and to a ban on travel outside the Kingdom for a similar period after serving his sentence.

5. Saleh bin Ashwan al-Ashwan

He was sentenced in a final court judgment to six years' imprisonment, three of which were suspended. He was sentenced to a ban on travel outside the Kingdom for five years after serving his sentence, and to a fine of 10,000 riyals (SRIs). His computer, which had been confiscated, was returned to him.

6. Issa bin Mohammad Nukheifi

He was released after serving his sentence related to the case.

7. Sulaiman bin Ibrahim al-Rashudi

He was sentenced in a final court judgment to 15 years' imprisonment and to a ban on travel outside the Kingdom for a similar period after serving his sentence. He has been released.

8. Abdulkareem bin Youssef al-Khoder

He was sentenced in a final court judgment to 10 years' imprisonment and to a travel ban for a similar period.

9. Omar bin Mohammad al-Sa'id

He was sentenced in a final court judgment to seven years' imprisonment and to a 10-year travel ban from the date of his release from prison.

10. Wajeha al-Huwaider and Fawzia al-Oyouni

They were both released.

11. Mikhliif bin Khalif al-Shammari

He was released after serving his sentence related to the case.

12. Fowzan bin Muhsin al-Harbi

He was sentenced in a final court judgment to 10 years' imprisonment and to a ban on travel outside the Kingdom for a similar period. All means used in perpetrating the crime were confiscated.

13. Waleed bin Sami Abu al-Khair

He was sentenced in a final court judgment to 15 years' imprisonment and to a ban on travel outside the Kingdom for a similar period.

14. Abdulaziz bin Youssef al-Shubaily

He was sentenced in a final court judgment to eight years' imprisonment and to a ban on travel outside the Kingdom for a similar period. He was convicted of committing offences punishable under the Repression of Cybercrime Act, explicitly defaming the integrity and faith of members of the Council of Senior Scholars, disparaging the judiciary, accusing executive authorities of violating human rights and failing to comply with a court order to dissolve an unlicensed association.

15. Issa bin Hamid al-Hamid

He was sentenced in a final court judgment to 11 years' imprisonment, a ban on travel outside the Kingdom for a similar period, a fine of SRI 100,000 and an undertaking of non-recidivism.

16. Abdulrahman bin Hamid al-Hamid

He was sentenced in a final court judgment to nine years' imprisonment, a fine of SRI 50,000, and a ban on travel outside the Kingdom for a period similar to that of his sentence upon release.

17. Souad al-Shammari

She was not detained.

18. Zuhair bin Mohammed Jamil Kutbi

He was sentenced in a final court judgment to four years' imprisonment, a fine of SRI 100,000 and a five-year travel ban. Half of the sentence was suspended and he was released on serving his sentence related to the case.

19. Ashraf Abdel Sattar Fayyad

He was arrested and interrogated in accordance with the provisions of the Code of Criminal Procedure, his case was referred to the competent court, and he was tried in accordance with the procedures referred to in Part One. The Public Prosecutor's charges were read out to him and he responded orally when questioned regarding the charges. During the legal proceedings he expressed regret for his acts. The court heard the testimony of witnesses, one of whom testified that there was hostility between him and the person concerned. After hearing the statements of all the parties, taking note of all defence arguments submitted orally and in writing, and reviewing the records containing the evidence collected, the competent court sentenced him to eight years' imprisonment. When he was notified of the sentence, he decided to lodge an appeal and requested that the procedure be referred to the appellate court by a memorandum of appeal. His request was granted, and a copy of the decision, the memorandum of appeal and the case file were submitted to the court of appeal (court of second instance), which upheld the judgment. As

the judicial proceedings had thus been completed, the judgment became final and enforceable, and the enforcement order was referred to the competent authority.

20. Abdulrahman bin Abdullah al-Subaihi, Bandar bin Abdullah al-Noqaithan, and Abdulrahman bin Mohammad al-Rumaih

They are not detained. They were tried and released.

21. Ali bin Mohammad al-Nimr

A death sentence was imposed on him in a final court judgment. It has not yet been executed.

22. Dawood bin Hussein al-Marhoon

A death sentence was imposed on him in a final court judgment. It has not yet been executed.

23. Abdullah bin Hassan al-Zaher

A death sentence was imposed on him in a final court judgment. It has not yet been executed.

24. Muhanna bin Abdulaziz al-Hobail

He was sentenced in a final court judgment to four years' imprisonment and to a ban on travel outside the Kingdom for a similar period. He was convicted of incitement to sedition, undermining public security, and offences punishable under the Repression of Cybercrime Act. He has been released.

25. Sulaiman bin Nasser al-Alwan

He was sentenced in a final court judgment to 15 years' imprisonment and to a ban on travel outside the Kingdom for 10 years.

26. Said bin Mubarak al-Zair Saeed bin Mubarak al-Zair

He was sentenced in a final court judgment to four years' imprisonment and to a ban on travel outside the Kingdom for a similar period. The means used in perpetrating the crime were confiscated.

27. Bishr bin Fahd al-Bishr

He was released on serving his sentence relating to the case.

28. Saleh bin Awad al-Huwaiti

He was sentenced in a final court judgment to five years' imprisonment. He has been released.

29. Thamer bin Abdulkarim al-Khader

He was sentenced in a final court judgment to five years' imprisonment and to a ban on travel outside the Kingdom for a similar period. He has been released.
