

General allegation

121st session (11-15 May 2020)

Saudi Arabia

32. The Working Group on Enforced or Involuntary Disappearances received information from reliable sources on obstacles encountered in the application of the Declaration on the Protection of All Persons from Enforced Disappearances in Saudi Arabia.

33. According to the information received, the existing legal framework in Saudi Arabia does not offer sufficient protection against enforced disappearance. The unchecked and increased concentration of power with the royal authority which has undermined judicial independence, has contributed to a culture of impunity, and investigative rules and practices have fostered the occurrence of enforced disappearances. Enforced disappearances have also been the result of a repressive environment against manifestations of free speech and peaceful assembly. Detention and disappearance have been used as tools to suppress beliefs and behaviours that do not align with state-sanctioned political and religious dogma.

Trends and manifestations of enforced disappearance in the Kingdom of Saudi Arabia

34. It is reported that although the widespread use of enforced disappearance is concealed behind a culture of secrecy, accessible information indicates clear trends of occurrence of both short and long term enforced disappearances. Sources allege that recorded cases suggest a trend whereby enforced disappearance is used to specifically target and silence dissenting voices, particularly those of human rights defenders, journalists and religious figures. Such disappearances are generally short-term, with victims often 'reappearing' and subjected to unfair trials. Enforced disappearances is allegedly used as a subjugation technique and interrogation practice targeting dissenting voices.

35. Disappearances occur through various means such as the use by intelligence services of arrest without warrants whereby victims are abducted by officers in plain clothes who do not present any paperwork nor explain the reasons for the arrest. The intelligence services use their extensive powers in security operations in both legitimate operations and politically motivated ones. Often individuals are abducted from their homes, during the evening or late at night. This modus operandi has reportedly been observed in a number of cases documented by the sources.

36. Reportedly, persons abducted in such ways are taken to an unknown location where they are forcibly disappeared for anywhere between a few days to several years. In cases for which the whereabouts eventually becomes known, the victims are held incommunicado, and in solitary confinement, for extended periods of time, or reappear before prosecutors in order to be charged and put on trial.

37. It is further reported that the secret police agency of the Presidency of State Security known as the 'Mabahith' uses methods that lead to systematic violations including enforced disappearances, torture and arbitrary detention. The Mabahith controls detention centre such as Al Ha'ir or Ulaysha where detainees are reportedly kept outside the protection of the law. The use of enforced disappearance and arbitrary detention by the secret police are said to be linked to the systematic use of torture to extract confessions. These practices are said to be strengthened by an obvious lack of accountability, as allegations of torture or other forms of ill-treatment do not appear to be taken seriously and officials are never prosecuted for committing such acts. Following a visit to Saudi Arabia in 2017, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while

countering terrorism concluded¹ that Saudi Arabia's failure to provide minimum procedural safeguards during detention and interrogation, as well as its judicial practice of admitting coerced confessions into evidence, strongly suggests that the practice of torture is officially endorsed.

38. Moreover, it is alleged that enforced disappearances are committed when the authorities refuse to acknowledge the continued detention and whereabouts of those subjected to incommunicado detention. The practice of holding individuals incommunicado in Saudi Arabia is reportedly characterised by ill-treatment and torture, used as a means of interrogation, and lack of access to legal representation. As a result, it is alleged that the practice of incommunicado detention in Saudi Arabia systematically amounts to enforced disappearance.

39. The online detainee database (Nafetha) operated by the Ministry of Interior provides information regarding the legal status of detainees and other information such as scheduled trial dates. However, it is reported that the database does not provide information about all detainees held at Mabathith prisons and does not include persons held at other prisons.

Shortfalls of the legal framework

40. It is reported that Saudi Arabia does not have specific legal provisions criminalising enforced disappearance and the existing legislation fails to offer sufficient protection against this crime, leaving persons vulnerable to the discretionary practices of the institutions holding criminal justice powers.

41. Furthermore, the sources report a number of procedural shortcomings. For instance the Committee against Torture (CAT) in its 2016 Concluding observations² on Saudi Arabia noted with concern that the 2013 Code of Criminal Procedure provides the right to all detainees to have access to legal counsel and contact a person of their choice, yet the "laws do not specify a time frame within which officials must honour the right of persons deprived of their liberty to have access to a lawyer [..., moreover] lawyers must obtain the permission of investigators in order to access their clients"(para.14). Furthermore, laws do not guarantee the right to confidential communication between lawyers and their clients, nor do they provide a time frame within which officials must honour the right of detained persons to contact a person of their choice, but they give extended powers to investigators who have the discretion to bar accused persons from engaging in such communications for up to 60 days. Detainees can be held without charge for up to six months and there is no requirement to promptly present persons deprived of liberty to a judge who has the power to order their release. Officials have reportedly not implemented the requirements to promptly notify persons deprived of liberty of the reasons for their detention and to receive language assistance such as translation and interpretation.

42. The CAT also expressed concern at the provisions of the 2014 counter-terrorism legislation which, inter alia, allowed authorities to detain individuals for up to 90 days without access to family members or legal counsel. This law also allowed security forces to hold criminal suspects in custody for up to six months without judicial review. In November 2017, the law was replaced by a reportedly more repressive counter-terrorism legislation which criminalises a wide spectrum of acts, including acts which fall under the rights to freedom of opinion, expression, peaceful assembly and association, as well as freedom of thought, conscience and religion. Articles 19 and 20 of the 2017 law grant the Public Prosecution the authority to hold the accused in incommunicado detention for up to 90 days "if the investigation so warrants," and grant the Specialised Criminal Court ("SSC") the power to extend the period of

¹ See A/HRC/40/52/Add.2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/363/55/PDF/G1836355.pdf?OpenElement>, accessed 6 May 2020.

² See CAT/C/SAU/CO/2, 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/SAU/CO/2&Lang=En, accessed 6 May 2020.

custody indefinitely, including incommunicado detention. In practice, the use of incommunicado detention puts individuals at risk of disappearance.

The inadequacy of the institutional framework

43. It is reported that in recent years the restructuring of the security apparatus have centralised security powers under the authority of the King. On 20 July 2017, the Presidency of State Security was established by royal decree, with authority over all security institutions and a direct line of reporting to the King and the Crown Prince. The Presidency of State Security enjoys large discretionary powers including the authority to conduct “search, investigation, seizure, criminal and administrative prosecution” without judicial oversight, leaving individuals more vulnerable to enforced disappearance.

44. Public prosecution was also placed under the purview of the Royal Court, which is itself under the effective control of the King. Therefore, Judges are appointed and discharged by Royal Decree, based on a proposal of the Supreme Judiciary Council, whose presiding members are also appointed by the King. There is no separation between the judiciary and the executive power, thus hindering judicial independence. It is reported that the judiciary is required to coordinate its decisions with executive authorities, with the King and Crown Prince as arbiters. It is also alleged that the appointment of a new head of the Royal Court and the promotion of several public prosecutors, consolidate nepotism in the judicial system.

45. The absence of effective checks and balances has reportedly had an impact on the protection against human rights violation including enforced disappearances and related violations. The absence of legal or judicial constraints and accountability mechanisms does not allow for any avenue to address the practice of enforced disappearances in Saudi Arabia.

Absence of effective remedy for victims and families

46. There are allegations as to the lack of mechanisms providing effective remedies to relatives. Relatives who have made enquiries with the police as to the whereabouts of the disappeared individual are not provided with any official information and receive no additional direction or support in identifying additional avenues of recourse. Moreover, in the context described above there is no access to habeas corpus which constitute an obstacle to article 3 of the Declaration.

47. In addition, there is reportedly an important risk of reprisal in Saudi Arabia, cultivating a culture of fear. There are documented cases of individuals being detained, in violation of article 13 of the Declaration, after speaking out about the arrest of family members. This practice disincentives public efforts to hold the authorities to account. It is reported that even when information regarding a disappeared person is sought non-publicly, through enquiries at police stations or when cases are referred to the UN Working Group on Enforced or Involuntary Disappearances, families have been threatened by the authorities. It was further stressed by the sources that Saudi Arabia was mentioned in 8 out of 10 annual reports of the UN Secretary-General on acts of intimidation and reprisal for cooperation with the United Nations in the field of human rights. The fear of reprisals is further heightened by the prospect that enquiries with authorities will put the disappeared person at greater risk of abuse³.

48. Lastly, it is reported that even in cases when a person has been forcibly disappeared and later freed, fear of reprisal means that such cases are never taken to court, undermining accountability at the domestic level. This is exemplified by the case of Khalid Al Omair whose case was addressed by the UN Human rights Special

³ Saudi Arabia was listed in the following annual reports of the UNSG: 2019 report (A/HRC/42/30), 2018 report (A/HRC/39/41), 2017 report (A/HRC/36/31), 2015 report (A/HRC/30/29), 2014 report (A/HRC/27/38), 2013 report (A/HRC/24/29), 2012 report (A/HRC/21/18), 2011 report (A/HRC/18/19).

Procedures mechanism in a communication⁴ addressed to the Government of Saudi Arabia in July 2018 which provided a reply⁵ on 23 October 2018. Khalid Al Omair was allegedly forcibly disappeared and detained in July 2018 following his filing of an allegation of torture during his previous detention of eight years.

49. Sources assert that the practice of enforced disappearance in Saudi Arabia is widespread and systematic. The obstacles to the implementation of the 1992 Declaration are reportedly pervasive and deliberate, embedded in the legal, institutional and policy framework of Saudi Arabia. The utilisation of broad and repressive legislation, the systematic practices of security agencies and officers including arrest methods and interrogation techniques, and the lack of available remedies are all systemic obstacles to the implementation of the provision of the Declaration. Sources further allege that there is a risk that the practice of enforced disappearance could constitute a crime against humanity.

⁴ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23967>, accessed 6 May 2020.

⁵ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34374>, accessed 6 May 2020.