

## SAUDI ARABIA

**Despite the adoption of the Basic Law of Government, Saudi Arabia continues to be lacking in basic constitutional safeguards and civil liberties. The nation is a monarchy deriving religious legitimacy from the Wahhabi doctrine. Although the law in Saudi Arabia recognises the principle of the independence of the judiciary, it also subordinates the judiciary to the authority of the executive organ, in particular the Minister of Justice, the Minister of the Interior and regional governors. Serious human rights violations continued in Saudi Arabia. Women face systematic discrimination, and suspected political or religious activists suffer arbitrary arrest and detention or punishment under secretive criminal judicial procedures that violate basic tenets of the right to a fair trial. An alarming increase in executions and amputations continued to be reported, as well as torture and ill-treatment. The Saudi government continued to enforce a ban on political parties and trade unions and to impose restrictions on access to the country by human rights NGOs.**

Saudi Arabia is a monarchy without elected representative institutions or political parties. The name Saudi Arabia refers to King 'Abdulaziz Ibn Sa'ud, who founded the Kingdom in 1932 by unifying all the areas he ruled under one political system. Since the death of King 'Abdulaziz in 1953, four of his sons have ruled successively, namely, King Sa'ud (1953-1964), King Faisal (1964-1975), King Khalid (1975-1982), and the present King Fahd. The prominent fixture of Saudi Arabia in international affairs is due both to its dominant position in world oil markets and to its status as the spiritual home of Islam. Saudi Arabia is the site of the two Muslim holy cities, Mecca, where the Grand Mosque – *Ka'aba* – is located and Medina, the burial place of the Prophet Mohammed.

### THE DEVELOPMENT OF CONSTITUTIONAL AND LEGAL STRUCTURES

The ruling family has maintained absolute political power by controlling the political and administrative institutions created in response to internal and external pressures. The ruling family has sought religious legitimisation of its policies through the adoption of the Wahhabi doctrine as a state ideology, thereby linking the political structures in the Kingdom with the religious establishment. The constitutional and reform developments have involved three actors: the secular-educated Saudis, who have advocated change in terms of socio-economic and political reforms; the religiously inspired traditionalists, who have desired to reaffirm the religious character of the Kingdom; and the royal family, with its ultimate goal of maintaining its absolute political power by using religion as a source of legitimisation, on the one hand, and by controlling the institutions it has created, on the other hand.

The development and reform of political institutions reached its peak in March 1992 when King Fahd approved three laws: a Basic Law of Government, The Statute of the Consultative Assembly, and the Statute of the Provinces. The disruptive impact of the Iraqi invasion of Kuwait and subsequently the second Gulf War, as well as dissatisfaction among the citizenry concerning al-Sa'ud's absolute monarchy prompted King Fahd to issue this reform package.

### *The Basic Law of Government*

The Basic Law of Government emphasises the religious as well as the monarchical nature of the state. Art. 1 identifies Saudi Arabia as an Arab Islamic state, while art. 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”. According to art. 5 (a), the “law of government in the Kingdom of Saudi Arabia is monarchy”, while art. 5 (b) reserves the right to rule to the House of Sa‘ud. The King also has the power to appoint and dismiss his heir apparent in accordance with art. 5(c). The Basic Law strengthens the King’s absolute authority, as art. 55 affirms that the king carries out the policy of the nation, a legitimate policy in accordance with the provisions of Islam; and that the king oversees the implementation of the Islamic *Shari‘a*, the state general policies, and the protection and defence of the country. The Basic Law might seem to provide for the separation of powers, as according to art. 44 the powers of the state are divided into the judicial, executive, and regulatory branches. However, in the final analysis, the powers of government remain in the hands of the King, who is accountable to no other institution in the scheme of government.

The Basic Law reserves the legislative power for the King and the Council of Ministers. Although the Consultative Council, 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. Thus, according to art. 2 of the Basic Law of Government, and art. 3 of the Consultative Council Law, the 1958 Law of the Council of Ministers remains intact, since the two articles provide explicitly that nothing in them may be interpreted as superseding or amending existing legislation. According to the 1958 Law, the Council of Ministers has broad powers which can only be checked by the King, who has a final veto power on any decision adopted by the Council.

The Basic Law lacks provisions for the establishment of a constitutional court to arbitrate conflicts which may arise among the King, the Council of Ministers, and the Consultative Council or between individuals and the government over the interpretation of constitutional issues. Instead, the new laws reserve solely to the King the function to adjudge such matters.

The Basic Law of Government is important in that it makes explicit the supreme and expansive role of the monarchy. It emphasises the role of the family of al-Sa‘ud in government, the hereditary principle of succession, and other features pertaining to the royal family and its central role in the affairs of the state.

### *The Law of the Consultative Assembly*

The second statute, the Law of the Consultative Assembly, establishes an assembly of sixty appointed members and one speaker. The assembly 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 swear allegiance to "the faith, the King, and the country".

The Law of the Consultative Assembly, although falling far short of its Hejazi predecessors or a true assembly or parliament, marked a departure in modern Saudi history. The statute not only offered a national public forum for discussion, but also provided for limited public participation in the decision-making arena.

### *The Law of Provinces*

The third statute, the Law of Provinces, is concerned with reforming local government. It defines the rights and duties of provincial governors and affirms the dominant role of the interior minister in the regional system. The statute creates provincial councils, composed of the governing prince, his deputy, other local representatives of government ministers, and at least ten well qualified citizens appointed by the king. This statute is intended to curb corruption, establish tighter control over financial matters in the provinces, and strengthen the ministry of the interior.

## **HUMAN RIGHTS BACKGROUND**

The Basic Law provides for a small number of political and civil rights, as well as a rather progressive commitment to economic, social, and cultural rights. Art. 26 provides that the state shall protect human rights according to *Shari'a*. Despite the endorsement of the principle of human rights, the qualification by reference to *Shari'a*, negates the concept. Non-codification of laws in Saudi Arabia leaves the interpretation of precepts of *Shari'a*, including the treatment of rights, to the competency of a government-appointed Council of Senior Scholars, which in turn is responsible to the King. Thus, the Basic Law instead of defining human rights by reference to internationally acknowledged standards, defines them by reference to national law, i.e., the principles of *Shari'a* as interpreted by the strict Wahhabi doctrine.

The Basic Law lacks any provisions for freedom of religion, freedom of speech and expression, equality and equal protection of law, freedom from torture, cruel or inhuman punishment, freedom of association and assembly, right to a fair trial, and freedom of thought and opinion. The Basic Law tends to formulate provisions in terms of obligations of the State rather than in terms of rights belonging to individuals or the citizenry. This conception of Saudi subjects as dependent on the State, presents the State as a paternalistic entity with the duty to care for its subjects, rather than treating Saudi citizens as individuals with entitlements.

Saudi Arabia has failed to ratify the principal international human rights instruments and has abstained from voting for the adoption of the Universal Declaration of Human Rights. Its abstention was based in part on its contention that article 18 on freedom of thought, conscience, and religion, particularly the right to change one's religion or belief, violates the precepts of Islam. The Government also argued that the human rights guaranteed by the Islamic-based law of Saudi Arabia surpassed those secured by the Universal Declaration. These arguments have been repeated to justify the refusal of Saudi Arabia to sign most of the two Covenants.

However, the position of Saudi Arabia regarding the accession of human rights instruments has changed since the mid-nineties, with a trend toward ratifying certain instruments with "Islamic reservations". 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". The reservation does not make explicit which provisions of the CRC are seen to be in conflict with Islamic law. When considering the initial report of Saudi Arabia, the Committee on the Rights of the Child (CRC) stated that the broad and imprecise nature of the State party's general reservation potentially negates many of the Convention's provisions and raises concern as to its compatibility with the object and purpose of the Convention, as well as the overall implementation of the Convention. The Committee recommended that Saudi Arabia withdraw its reservation. Moreover, the Committee observed that "noting the universal values of equality and tolerance

inherent in Islam ... the narrow interpretations of Islamic texts by State authorities are impeding the enjoyment of many rights protected under the Convention”.

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). But in contrast to its sweeping Islamic reservations with respect to the CRC and the CERD Conventions, Saudi Arabia, ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) with three limited reservations. The first Saudi reservation relates to Article 3 (1), which prohibits the forcible return of anyone to another state where she/he would be at risk of being subjected to torture. With its second reservation, Saudi Arabia does not recognise the jurisdiction of the Committee Against Torture as provided for in Article 20 of the Convention to investigate allegations of systematic torture. By its third reservation, Saudi Arabia declares that it shall not be bound by Article 30 (1), which requires 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.

In September 2000, Saudi Arabia acceded to the Convention of the Elimination of All Forms of Discrimination Against Women, but entered the reservation that “[i]n the case of contradiction between any form of the Convention and the norms of Islamic law, the Kingdom is not under any obligation to observe the contradictory terms of the Convention”.

At the regional level, Saudi Arabia strongly supported the adoption of the Cairo Declaration on Human Rights in Islam, which was adopted by the Organisation of Islamic Conference (OIC) in 1990. Saudi Arabia has signed the Arab Charter on Human Rights, adopted by the Council of the Arab League in 1994. The Arab Charter has affirmed some but not all internationally recognised human rights.

Widespread human rights violations persisted in Saudi Arabia. Women faced severe discrimination, and a number of suspected political or religious activists were subjected to arbitrary arrest and detention or punishment under secretive criminal judicial procedures that contravened the fundamental precepts of the right to a fair trial. An alarming increase in executions and amputations, torture and other ill-treatment was reported. The Saudi government continued to enforce a ban on political parties and trade unions and to impose restrictions on access to the country by human rights NGOs.

## THE JUDICIARY

The Basic Law of Government contains several general articles on the independence of the judiciary. Art. 46 proclaims that the judiciary is independent, while art. 47 guarantees the right to file suits to all citizens and other residents according to procedures specified by law. By virtue of art. 48, the courts shall apply the provisions of *Shari'a* according to the Holy Book and the Traditions and the laws issued by the King. Although the law in Saudi Arabia recognises the principle of the independence of the judiciary, it also subordinates the judiciary to the authority of the executive organ, in particular the Minister of Justice, the Minister of the Interior and regional governors. The Statute of the Judiciary vests the Minister of Justice with broad powers for supervision over all courts and judges, including, *inter alia*, the approval and reconsideration of the decisions of the Court of Cassation. The King appoints members of the Supreme Judicial Council, the highest judicial body in the Kingdom, responsible for interpreting *Shari'a* and reviewing all court verdicts resulting in the imposition of the death penalty, amputation and stoning.

The independence of the judiciary is further undermined by powers invested 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 judiciary is denied any role in supervising these processes. Thus, the proper role of judges to administer justice fairly and independently is undermined by a system which provides for the executive authority's intervention and undue involvement both in law and in practice. With the principle of an independent and impartial judiciary eroded, detainees are inevitably treated differently by reason of their sex, nationality, religious beliefs or social standing.

The Kingdom does not recognise internationally acknowledged standards for fair trial and there is no judicial review of the duration of detention or procedures of search and arrest. The practice of setting up special tribunals to adjudicate political cases is notorious in the Kingdom, since, legally speaking, the prosecution is not obliged to bring cases to the regularly constituted courts. Frequently, the government bypasses the court system altogether, disposing of suspects either by administrative action or by forming closed summary tribunals.

Codification of many laws is still lacking in the Saudi legal system. Criminal laws are vague and open to wide interpretation by judges who enjoy powers unconstrained by written rules. Court hearings are summary and secret. Defendants are invariably denied access to legal counsel and the right to mount their own defence, and they have no opportunity for effective exercise of the right of appeal. These shortcomings are compounded by the reliance of the criminal justice system on confessions obtained by arresting authorities in order to secure criminal convictions. Arbitrary arrest, particularly of suspected political and religious opponents, which is a routine practice in Saudi Arabia, is facilitated and perpetuated by the lack of meaningful safeguards to restrain the executive power in this area.

### *Wahabism*

The justice system in Saudi Arabia is based on the Wahabi interpretation of *Shari'a*. Wahabism is an interpretation of the Hanbali school of jurisprudence, one of the four schools in Sunni Islam. (The others are Maliki, Hanafi and Shafi'i.) The system is particularly influenced by the teachings of the Hanbali jurist Ibn Taimiya. The Hanbali School had its origin in the writings of Ahmad Ibn Hanbal during the ninth century in Baghdad. Hanbalism marks a deliberate stage in the distinction between state and religion in Islam. Hanbalism denounced *ilm al-kalam* (scholastic theology), *qiyas* (analogical reasoning), *ijma'* (consensus), *'aql* (reasoning), and any other accretion which gave too much leeway to the interpretation of the Qur'an and Sunna and which affected the "purity" of Islam. Thus, according to the Hanbali School, the precepts of Islam must be derived only from the Qur'an and Sunna, and everything else is *bid'a* (unacceptable innovation).

The teachings of Ibn Taimiya had three major implications for the Wahhabi doctrine. Firstly, the views of Ibn Taimiya on state and religion. Those views rest on the principle of cooperation, which means that the *ulama* have to support and advise the ruler as long as he applies the *Shari'a*. The government is considered Islamic by virtue of the support it gives to Islam; and it is perfectly legitimate to accept the rule of anyone who follows the *Shari'a*. According to those views, the Wahhabi doctrine accepted Al Sa'ud as a legitimate and hereditary government for Arabia. The second implication was the fundamental doctrine of *tawhid* (the doctrine of the Unity of God). The third implication, which came as a logical development of the doctrine of *tawhid*, relates to a harsh condemnation of saint worship, shrine visits and grave cults, and became an important element in the Wahhabi doctrine.

A set of issues can be identified as distinguishing Wahhabi theology from other Islamic schools of thought. The central tenet of the Wahhabi doctrine is the doctrine of *tawhid* (monotheism), which consists of three parts: the assertion of the unity of God; unity of divinity; and unity of names and attributes of God. Linked to the concept of monotheism in the Wahhabi doctrine is the concept of *takfir* (charge of unbelief), which according to Wahhabism indicates that mere affiliation with Islam is not sufficient in itself to prevent a Muslim from becoming a polytheist. Wahhabism defines an infidel as a person who has known the religion of the Prophet and yet stands against it, prevents others from accepting it, and shows hostility to those who follow it. The Wahhabi doctrine further states that an infidel should be killed and that it is the duty of every able believer to fight infidels.

The literal approach to interpretation of religious texts is manifest in the Wahhabi doctrine. Its strict adherence to Qur'an and Sunna as the only sources of Islamic law leads it to reject all interpretations provided by the four Sunni schools of jurisprudence, including the Hanbali school which the Wahhabis follow, if these are not in conformity with the two primary sources. The Wahhabis reject the idea that the “door of *ijtihad* (juristic reasoning) is closed”. Their strict adherence to the literal approach denies their doctrine flexibility and adaptability to modern conditions and leads them to reject modern technology and inventions on the basis of the concept of *bid'a*.

Judges in Saudi Arabia are free to refer to and apply interpretations of the law according to all four Sunni schools of jurisprudence. *Shari'a* applies to many spheres of law, including personal status and criminal law. However, *Shari'a* is supplemented by laws enacted by the government, particularly in the area of economic affairs.

#### *Court system structure*

The court system in Saudi Arabia is composed of lower courts, the Court of Cassation and the Supreme Judicial Council. *Shari'a* courts exercise jurisdiction over common criminal cases and civil suits regarding marriage, divorce, child custody and inheritance. Cases involving relatively small penalties are tried in *Shari'a* summary courts, while more serious crimes are adjudicated in *Shari'a* courts of common pleas. According to Saudi Arabian law and practice, defendants are asked by the judge if they accept the verdict and sentence in cases involving less serious offences. For those who do, the sentence becomes enforceable with immediate effect. For those who contest the verdict, and in all cases of capital punishment and amputation, the cases are referred to the Court of Cassation for review. However, under article 20 of the Statute of Justice, the decision of the Court of Cassation becomes final only upon approval by the Minister of Justice, who may refer the case back to the court for reconsideration if he disagrees with its decision. If the court maintains its initial decision, the Statute requires that the matter be referred to the Supreme Judicial Council for final resolution.

The Supreme Judicial Council, the highest judicial body in the Kingdom, is responsible for interpreting *Shari'a* and reviewing all court verdicts resulting in the imposition of the death penalty, amputation and stoning. The members of the Council are appointed by the King.

Other civil proceedings, including those involving claims against government and enforcement of foreign judgements, are held before specialised administrative tribunals, such as the Commission for the Settlement of Labour Disputes and the Board of Grievances. Military courts have jurisdiction over military personnel and civil servants charged with violations of military regulations. The decisions of the military courts are subject to review by the Minister of Defence and the King.

## LAWYERS

While certain laws in Saudi Arabia refer to the possibility of detainees having access to a lawyer, legal representation is the rare exception, not the norm. Lawyers are not considered an integral part of the Saudi judicial system, the rationale being that the judge acts as the defendant's lawyer and challenges every piece of evidence presented by the prosecution. In late 1999, there were media reports of plans to promulgate a law regulating the legal profession, but no details were revealed and there was no indication as to whether this new law would lead to the establishment of a fully independent bar association. The same plans were mentioned by the Saudi Representative during the March/April 2000 session of the UN Commission on Human Rights. The Saudi Representative informed the Commission that Saudi Arabia was committed to the protection and promotion of human rights through carefully studied measures within the context of a comprehensive human rights strategy. These measures include, *inter alia*, an invitation to the UN Special Rapporteur on the independence of judges and lawyers to visit the country and the adoption of a new law for the legal profession and legal counselling. The visit of the Special Rapporteur, which was scheduled for the second week of October 2001, was postponed due to security concerns.

In late September 2001, the Saudi Council of Ministers approved a new law regulating the licensing of lawyers, which allows defendants to appoint lawyers to represent them before courts and other governmental agencies. The new law prohibits torture and limits the period of arrest to five days if charges were not filed against the defendants. However, the law gives broad powers to the Minister of the Interior to detain people indefinitely.