

**His Majesty King Salman bin Abdulaziz Al Saud**

King of the Kingdom of Saudi Arabia  
Al Yamamah Palace  
Riyadh 12911  
Saudi Arabia

29 June 2023

**Public letter to His Majesty, King Salman bin Abdulaziz Al Saud of the Kingdom of Saudi Arabia,  
from the International Bar Association's Human Rights Institute**

Your Majesty,

1. We are writing to you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern over reports that ten former judges of the Kingdom of Saudi Arabia have been charged with 'high treason', which carries a potential death sentence.
2. The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies, created with the aim to protect and promote the rule of law worldwide. It has a membership of more than 80,000 individual lawyers, and 190 bar associations and law societies that represent millions of lawyers from 160 countries. The IBAHRI, an autonomous and substantively independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide. The IBAHRI opposes the death penalty in all circumstances.
3. We note reports that the Specialised Criminal Court (SCC) in Riyadh has charged six former judges of the SCC and four former judges of the High Court of the Kingdom of Saudi Arabia with 'high treason'. Reportedly, the judges were publicly arrested at the courts at which they worked in April 2022 and the first hearing in their case took place in secret on 16 February 2023.
4. The IBAHRI recalls that Saudi Arabia is bound by, inter alia, the provisions of the Arab Charter on Human Rights (Arab Charter)<sup>i</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>ii</sup> Despite not ratifying the International Covenant on Civil and Political Rights (ICCPR),<sup>iii</sup> Saudi Arabia has reaffirmed its provisions, as well as the Universal Declaration of Human Rights (UDHR),<sup>iv</sup> as a State Party to the Arab Charter.<sup>v</sup>
5. We respectfully remind Your Majesty that, in line with the above obligations and responsibilities, Saudi Arabia must respect international and regional human rights law, standards and norms:
  1. *Independence of the Judiciary*
6. The charges of 'high treason' against the judges appear to stem from allegations of 'leniency' reportedly shown by the accused while discharging their judicial duties. For example, the State Security Circuit of the Public Prosecution Office reportedly charged the SCC judges after they signed confessions that they had been too 'lenient' in State security cases that they presided over at the SCC. The court documents in the judges' case allegedly cite these confessions as evidence for the charges and include, as examples of 'leniency', sentences that the judges handed down in

cases involving the prosecution of human rights defenders, women's rights activists and peaceful dissidents.

7. Under Article 12 of the Arab Charter, State Parties are bound to guarantee the independence of the judiciary and to protect judges from interference, pressure, and threats. In the same vein, the UN Basic Principles on the Independence of the Judiciary note that the judiciary shall 'decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason'.<sup>vi</sup> Article 46 of the Basic Law of Governance of the Kingdom of Saudi Arabia provides for the independence of the judiciary and states that the 'decisions of judges shall not be subject to any authority other than the authority of the Islamic Sharia'.<sup>vii</sup> Furthermore, Article 1 of the Law of the Judiciary of the Kingdom of Saudi Arabia reiterates the independence of judges and expressly forbids interference with the judiciary.<sup>viii</sup>
8. Subjecting judges to prosecution and the threat of execution based on the content of their legal judgments is in contravention of the above law, standards and norms on judicial independence. Judges must be permitted to fulfil their duties free from interference and the threat of sanction. The IBAHRI calls on Saudi Arabia to ensure that the independence of the judiciary and the rule of law are guaranteed in all circumstances.
9. Furthermore, Principle 4 of the UN Basic Principles on the Independence of the Judiciary emphasise that judicial verdicts must not be subject to revision. This is particularly germane as it has been reported that judgments previously rendered by the accused are being revised and altered after the fact, in violation of this principle.
10. The IBAHRI expresses concern that the arrest of the judges forms part of a broader, ongoing effort to dismantle the independence of the legal profession by intimidating, hindering, harassing or improperly interfering with judges, lawyers and jurists. In recent years, judges and lawyers have reportedly been arrested, including on alleged corruption charges and for criticising the justice system on Twitter, creating a chilling effect across the judiciary and the broader legal profession.
11. Furthermore, the IBAHRI understands that strict directives ban judges from participating in mainstream media and using social media. The IBAHRI respectfully recalls Principle 8 of the UN Basic Principles on the Independence of the Judiciary, which holds that judges are entitled to, inter alia, freedom of expression provided that 'in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary'. A blanket-ban on judges expressing themselves freely would be contrary to this principle.

## II. *The Right to Liberty and Security*

12. The IBAHRI understands that the ten judges were arrested on 11 April 2022 and were held in incommunicado pre-trial detention for ten months, without access to their families or a lawyer. We respectfully remind Your Majesty that no one shall be subjected to arbitrary arrest or detention,<sup>ix</sup> and that anyone arrested or detained on a criminal charge shall be brought promptly before a judge – within 48 hours, except in absolutely exceptional circumstances<sup>x</sup> – and shall be entitled to trial within a reasonable time or to release.<sup>xi</sup>
13. The UN Working Group on Arbitrary Detention (WGAD) has held that arbitrary deprivation of liberty constitutes a *jus cogens* norm and regards cases of deprivation of liberty as arbitrary under customary international law in cases where, inter alia, it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (Category I); and the total or partial non-observance of international norms relating to the right to a fair trial established in the UDHR and in relevant international instruments is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).<sup>xii</sup>

14. We respectfully recall that the right to challenge the lawfulness of one's detention without undue delay is a peremptory norm of international law.<sup>xiii</sup> In relation to arbitrary detention under Category I, the UN WGAD has held that incommunicado detention precludes the ability to challenge that detention and places the person outside the protection of the law, in violation of Articles 6 and 8, UDHR.<sup>xiv</sup>
15. We also respectfully remind Your Majesty of the 2022 UN WGAD opinion on Saudi Arabia, which emphasises that 'pre-trial detention must be the exception rather than the rule'.<sup>xv</sup> It must be 'based on an individualised judicial determination that it is reasonable and necessary to prevent flight, interference with evidence, or the recurrence of crime, and must be accompanied by consideration of whether alternatives, such as bail, would render detention unnecessary'.<sup>xvi</sup>
16. Furthermore, legal representation is a core facet of the rights to liberty and security of person and to a fair trial and should be available at all stages of criminal proceedings.<sup>xvii</sup> In relation to arbitrary detention under Category III, the UN WGAD has held that the absence of legal counsel from the outset of detention and during incommunicado detention violates the right to legal assistance as part of the right to fair trial and due process under Articles 10 and 11(1), UDHR.<sup>xviii</sup> In relation to Category III, we respectfully further refer Your Majesty to Section IV below.

### *III. Prohibition of Torture and Ill-Treatment*

17. The prohibition of torture is a peremptory norm of international law.<sup>xix</sup> We respectfully remind Your Majesty of a 2022 UN WGAD Opinion to Saudi Arabia, which highlights that prolonged incommunicado detention is conducive to torture and ill-treatment and can itself constitute such treatment.<sup>xx</sup> In this regard, we respectfully emphasise that the right to access to a lawyer of one's choice at all stages of detention and proceedings is an integral safeguard against torture and ill-treatment, particularly in the early stages of detention.<sup>xxi</sup> This is particularly so considering the reported 'confessions', discussed further in Section IV below.
18. We also respectfully remind Your Majesty that Saudi Arabia, as a State Party to the CAT, has an obligation to undertake a prompt, independent, impartial and effective *ex officio* investigation where there are reasonable grounds to believe that torture and ill-treatment has been committed.<sup>xxii</sup>

### *IV. The Right to a Fair Trial and Due Process*

19. The IBAHRI understands that the first hearing of the judges' trial was conducted in secret. Under Article 13(2) of the Arab Charter, trials shall be public, except in 'exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights'.<sup>xxiii</sup> The IBAHRI submits that there are no such circumstances in the reported facts of the case to warrant conducting the trial behind closed doors. Public hearings ensure the transparency of proceedings, thereby providing 'an important safeguard for the interest of the individual and of society at large'.<sup>xxiv</sup> Where former members of the judiciary are themselves on trial and face the death penalty, this is particularly important in order to ensure respect for the independence of the judiciary and the rule of law.
20. The IBAHRI also understands that the ten judges were denied their right to legal representation during their initial hearing. The IBAHRI respectfully recalls that the right to legal representation of one's own choosing is guaranteed by, inter alia, Articles 16(3) – (4) of the Arab Charter.<sup>xxv</sup> This is a fundamental pillar of the right to a fair trial as an accused person cannot mount an adequate defence if they are not afforded legal representation.
21. The IBAHRI further understands that no credible evidence was produced at the first hearing to corroborate the charges against the judges. Rather, the only evidence reportedly adduced in support of the charges against the SCC judges were confessions allegedly signed by the accused. After such an unreasonably long pre-trial detention period, without access to, inter alia, legal

representation, the IBAHRI is concerned that these ‘confessions’ may be tainted by coercion. Under, inter alia, Article 16(6), Arab Charter,<sup>xxvi</sup> a defendant must not be ‘compelled to testify against himself or to confess guilt’. Furthermore, under Article 15, CAT and customary international law, State parties shall ensure that any statement that is established to have been made as a result of torture or ill-treatment shall not be invoked as evidence in any proceedings.<sup>xxvii</sup>

22. Additionally, other charges against the judges reportedly include ‘complacency toward state security criminals’. It is unclear whether this is a cognisable offence under national law. Vague or overly broad laws are vulnerable to abuse or arbitrary application. The principles of legal certainty, *nulla poena sine lege* and the prohibition of the retroactive application of criminal law are well-established in law, notably Article 15, Arab Charter, Article 11, UDHR, and Article 38, Basic Law of Governance.<sup>xxviii</sup> We call on Your Majesty to ensure that criminal laws that are not sufficiently precise and/or with retroactive application are not enacted or applied.

#### V. *The Right to Life*

23. The IBAHRI understands that prosecutors are seeking the discretionary death penalty in the judges’ case. We respectfully remind Your Majesty that the right to life requires ‘the highest level of protection’.<sup>xxix</sup> Article 5, Arab Charter, affirms the non-derogable right to life of all people and holds that no person shall be arbitrarily deprived of their life. The prohibition against arbitrary deprivation of life is a peremptory norm.<sup>xxx</sup> The UN Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty stipulate that capital punishment may only be carried out after a legal process that provides all possible safeguards to ensure a fair trial.<sup>xxxi</sup> The IBAHRI respectfully emphasises that violations of fair trial guarantees in proceedings resulting in the imposition of the death penalty render the sentence arbitrary and in violation of the right to life.<sup>xxxii</sup>
24. Furthermore, under international law, where the death penalty is still practiced, it may only be imposed for ‘the most serious crimes’.<sup>xxxiii</sup> Various UN human rights charter- and treaty-based mechanisms have consistently held that this term must be read restrictively, relating only to crimes of extreme gravity involving intentional killing.<sup>xxxiv</sup> Activities that do not result directly and intentionally in death, such as those of a political nature (including treason, ‘crimes against the State’ and ‘disloyalty’), cannot serve as the basis for the death penalty.<sup>xxxv</sup> Additionally, the death penalty cannot be imposed based on vaguely defined criminal provisions that depend on subjective or discretionary considerations, the application of which is not reasonably foreseeable.<sup>xxxvi</sup>
25. The IBAHRI stresses that to subject the judges to the death penalty for alleged crimes that do not meet the threshold of ‘the most serious’ and/or for vaguely defined crimes after a secret trial lacking fair trial guarantees and due process would constitute a grave violation of a *jus cogens* norm, namely the obligation to protect the right to life, amounting to a serious repudiation of customary international law by the Kingdom of Saudi Arabia.
26. To conclude, we respectfully call on the Saudi Arabian authorities to ensure that judges can carry out their legitimate professional activities without fear of intimidation, harassment, or interference; to cease the use of incommunicado detention and to immediately and unconditionally release all those who have been arbitrarily arrested and detained; to ensure the right to a fair trial and due process; to review the scope of the death penalty without delay to ensure that its imposition and implementation are strictly limited to the confines of international law, including the non-applicability to so-called political activities as set out above, and to repeal the use of the death penalty for such offences accordingly.
27. In light of the worldwide abolitionist trend,<sup>xxxvii</sup> the IBAHRI also urges Saudi Arabia reconsider the application of the death penalty in general and to introduce an immediate moratorium on its use with a view to abolition. The IBAHRI further recommends Saudi Arabia to ratify both the ICCPR and its Second Optional Protocol.

28. We would be grateful to receive your assurances that you have received our letter and that our concerns will be addressed as a matter of urgency.

Yours sincerely,



**Anne Ramberg Dr Jur hc**  
**Co-Chair, IBAHRI and Immediate Past Secretary General of the Swedish Bar Association**



**Mark Stephens CBE**  
**Co-Chair, IBAHRI**

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<sup>i</sup> Arab Charter on Human Rights (Arab Charter) (22 May 2004) (ratified by Saudi Arabia in 2008).

<sup>ii</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) 1465 UNTS 85 (ratified by Saudi Arabia in 1997, with reservations to Articles 20 and 30(1)).

<sup>iii</sup> International Covenant on Civil and Political Rights (ICCPR) (4 April 1968) 999 UNTS 170.

<sup>iv</sup> Universal Declaration of Human Rights (UDHR) (10 December 1948) 27 A (III).

<sup>v</sup> Arab Charter (2004) [PP 5].

<sup>vi</sup> Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Independence of the Judiciary (6 September 1985), Principle 2.

<sup>vii</sup> Basic Law of Governance (1 March 1992) Royal Decree No. A/90, Article 46.

<sup>viii</sup> Law of the Judiciary (23 July 1975) Royal Decree No. M/64, Article 1.

<sup>ix</sup> Article 14(1), Arab Charter; Article 9(1), ICCPR; Articles 3 and 9, UDHR.

<sup>x</sup> UN Human Rights Council, Opinion No. 84/2022 adopted by the Working Group on Arbitrary Detention concerning Abdelrhman Mohammed Farhanah (Saudi Arabia) (10 March 2023) UN Doc A/HRC/WGAD/2022/84 [81].

<sup>xi</sup> Article 14(5), Arab Charter; Articles 9(3) and 14(3)(c), ICCPR; Article 11(1), UDHR.

<sup>xii</sup> UN Human Rights Council, Report of the Working Group on Arbitrary Detention (24 December 2012) UN Doc A/HRC/22/44 [38(a) and (c), 75].

<sup>xiii</sup> UN Human Rights Council, Report of the Working Group on Arbitrary Detention (10 October 2019) UN Doc A/HRC/WGAD/2019/56 [80].

<sup>xiv</sup> See, eg, UN Human Rights Council, Opinion No. 84/2022 adopted by the Working Group on Arbitrary Detention concerning Abdelrhman Mohammed Farhanah (Saudi Arabia) (10 March 2023) UN Doc A/HRC/WGAD/2022/84 [87 – 88].

<sup>xv</sup> *Ibid.* [82].

<sup>xvi</sup> *Ibid.* [82].

<sup>xvii</sup> *Ibid.* [93, 95].

<sup>xviii</sup> See, eg, UN Human Rights Council, Opinion No. 72/2021 adopted by the Working Group on Arbitrary Detention concerning Abdullah al-Howaiti (Saudi Arabia) (28 January 2022) UN Doc A/HRC/WGAD/2021/72 [87 – 88].

<sup>xix</sup> See, eg, Article 8, Arab Charter; Articles 7 and 10, ICCPR; Article 5, UDHR; Articles 1, 2 and 16, CAT; International Law Commission, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) (2022), Annex. Available at: <[https://legal.un.org/ilc/texts/1\\_14.shtml](https://legal.un.org/ilc/texts/1_14.shtml)>.

<sup>xx</sup> UN Human Rights Council, Opinion No. 84/2022 adopted by the Working Group on Arbitrary Detention concerning Abdelrhman Mohammed Farhanah (Saudi Arabia) (10 March 2023) UN Doc A/HRC/WGAD/2022/84 [87].

<sup>xxi</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention (5 February 2010) A/HRC/13/39/Add.5 [102 – 103]; UN Human Rights Council, Report of the Working Group on Arbitrary Detention (24 December 2012) UN Doc A/HRC/22/44 [84].

<sup>xxii</sup> Articles 12 and 16, CAT.

<sup>xxiii</sup> See also: Article 10, UDHR; Article 14(1), ICCPR ('...The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre 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...').

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- <sup>xxxiv</sup> UN Human Rights Committee, General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial (23 August 2007) UN Doc CCPR/C/GC/32 [28]. See also: United Nations High Commissioner for Human Rights, 'Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty' (16 July 2015) A/HRC/30/18 [49 – 50].
- <sup>xxxv</sup> See also, Article 14(3)(d), ICCPR; Article 11(2), UDHR.
- <sup>xxxvi</sup> See also, Article 14(3)(g), ICCPR.
- <sup>xxxvii</sup> UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (10 April 2014) UN Doc A/HRC/25/60 [17, 22].
- <sup>xxxviii</sup> See also, Article 15(1), ICCPR.
- <sup>xxxix</sup> UN General Assembly, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (9 August 2012) UN Doc A/67/275 [117].
- <sup>xxx</sup> UN Human Rights Committee, General Comment No. 36: Article 6: Right to Life (3 September 2019) UN Doc CCPR/C/GC/36 [68].
- <sup>xxxi</sup> Economic and Social Council, Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty (25 May 1984) UN Doc E/RES/1984/50, Safeguard 5.
- <sup>xxxii</sup> UN Human Rights Committee, General Comment No. 36: Article 6: Right to Life (3 September 2019) UN Doc CCPR/C/GC/36 [41].
- <sup>xxxiii</sup> Article 6, Arab Charter; Article 6(2), ICCPR; Economic and Social Council, Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty (25 May 1984) UN Doc E/RES/1984/50, Safeguard 1 ('In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences').
- <sup>xxxiv</sup> See, eg, UN General Assembly, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns (9 August 2012) UN Doc A/67/275 [34 – 67] ('The first of the safeguards guaranteeing protection of the rights of those facing the death penalty should be understood to mean: "In countries which have not abolished the death penalty, capital punishment may be imposed only for intentional killing, but it may not be mandatory in such cases."' [67]).
- <sup>xxxv</sup> See, eg, UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston (29 January 2007) UN Doc A/HRC/4/20 [39 – 53]; UN Human Rights Committee, General Comment No. 36: Article 6: Right to Life (3 September 2019) UN Doc CCPR/C/GC/36 [35]; UN Commission on Human Rights. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (25 January 2000) UN Doc E/CN.4/2000/3 [70]. See also: UN Human Rights Council, Question of the death penalty: Report of the Secretary-General (26 July 2022) UN Doc A/HRC/51/7 [64].
- <sup>xxxvi</sup> UN Human Rights Committee, General Comment No. 36: Article 6: Right to Life (3 September 2019) UN Doc CCPR/C/GC/36 [38].
- <sup>xxxvii</sup> The UN General Assembly, by overwhelmingly majorities, has called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing the death penalty in nine separate Resolutions going back to 2007 and most recently in Resolution 77/222 of 15 December 2022: UN General Assembly, '77/222. Moratorium on the use of the death penalty' (6 January 2023) UN Doc. A/RES/77/222.