

# USA

## The trial of Ahmed Abu Ali - Findings of Amnesty International's trial observation

On 22 November 2005, US citizen Ahmed Abu Ali was convicted by federal jury of 9 counts of conspiracy to commit acts of terrorism, including plotting with *al-Qa'ida* operatives to assassinate President Bush. The jury in Alexandria, Virginia, rejected claims by Ahmed Abu Ali that his videotaped confession had been obtained following torture in the Kingdom of Saudi Arabia. Ahmed Abu Ali alleges that he was flogged and beaten and forced to "confess" while held in Saudi Arabia, with the apparent knowledge of US officials.

Amnesty International has been closely following the case of Ahmed Abu Ali, from his initial arrest and detention in Saudi Arabia in June 2003, the torture allegations, the apparent US complicity in the torture, and his transfer to and conditions of detention in the USA. Amnesty International sent trial observers to attend two parts of the proceedings against Ahmed Abu Ali. This document briefly sets out the background to the case, Amnesty International's concerns regarding the allegations of torture and the findings of the trial observation.

Ahmed Abu Ali is a US citizen. Born in Houston, Texas, he lived in Texas and Virginia all his life until going to study at the Islamic University in Medina, Saudi Arabia in 2002. Following the bombing attacks in Riyadh, Saudi Arabia on 12 May 2003, Saudi Arabian security forces carried out mass arrests particularly in the cities of Riyadh, Mecca and Medina. Ahmed Abu Ali was arrested in Medina on 8 June 2003 by the *Mabahith al-Amma* (general investigations) the Saudi Arabian security service under the control of the Interior Ministry.

### **Allegations of torture in Saudi Arabia**

According to Ahmed Abu Ali, after his fourth or fifth interrogation by the *Mabahith al-Amma* in a detention centre in Medina he asked for a lawyer and was punched, kicked in the stomach, handcuffed and squatting, and struck with a hard object more than 10 times with his shirt both on and off. He also says that he was threatened with amputation or beheading, and that he was whipped, he estimated 20 or more times, while chained to the floor in a crouching position with full back and neck exposed.

After three days of interrogation in Medina he was transferred to *al-Ha'ir* prison near Riyadh where he says he first began to confess to being a member of *al-Qa'ida*. He was interrogated there for 47 days, during which time he was held incommunicado and in solitary confinement, with no judicial review. Despite repeated requests Ahmed Abu Ali did not receive a visit from the US embassy until 8 July (with a member of Saudi security forces present) and was not allowed to call his family until 31 July. He confessed on videotape on 24 July.

The Saudi Arabian authorities first informed the US Federal Bureau of Investigations (FBI) of Ahmed Abu Ali's arrest on 9 June and agreed to ask him questions provided by the FBI and other US agents. Four days after his arrest members of these agencies observed an interrogation session behind a two-way mirror.

The FBI first interviewed Ahmed Abu Ali directly on 14 September 2003 in Riyadh. Ahmed Abu Ali testified that he told an FBI agent that he wanted a lawyer and had been mistreated. The agent, according to Ahmed Abu Ali, responded “I’ll go ask the General” and left the room. He was told by the FBI that “because he was in Saudi custody, he was not entitled to an attorney because the [the Saudi Arabian authorities] would not allow it”. Following this interview he alleges that he was again punched and kicked and “handcuffed to a chain hanging from the ceiling and left standing up until the afternoon”. US officials interviewed Ahmed Abu Ali for four nights in September 2003. One FBI agent stated that he and Ahmed Abu Ali,

*“...discussed the prospect of Mr. Abu Ali’s being prosecuted in Saudi Arabia, being prosecuted in Saudi Arabia and the U.S., being declared an “enemy combatant,” and being incarcerated indefinitely, perhaps for life without a trial, in the United States.”*

After each FBI interrogation session the Saudi Arabian authorities “took custody of him again”. One FBI agent, Barry Cole, later claimed to “have no specific knowledge” of the use of torture and beatings in Saudi Arabian prisons, although upon further questioning admitted to having “heard that prisoners are mistreated in Saudi jails”, and that he was “aware of a newspaper article whereby a Saudi official was quoted as saying [Ahmed Abu Ali] was mistreated”<sup>1</sup>.

On 16 December 2004, Judge John Bates in the US District Court for the District of Columbia noted that there was “at least some circumstantial evidence that Abu Ali has been tortured during interrogations with the knowledge of the United States”. He ruled that, because Ahmed Abu Ali was effectively being held in Saudi Arabia at the behest of the USA, the US authorities had to provide the court with evidence of their activities around his arrest, detention and interrogation. Instead, after more than a year-and-a-half without charge or trial in Saudi Arabia, Ahmed Abu Ali was returned to the USA on 21 February 2005 and formally charged with terrorism related offences.

Ahmed Abu Ali’s account of the torture he was reported to have been subjected to in Saudi Arabia is consistent with the practice of torture documented by Amnesty International over many years. At the outset Amnesty International feared that he may be subjected to torture and ill treatment during his detention.

Amnesty International wrote to the then Secretary of State Colin Powell on 29 September 2003. In a response received on 4 February 2004, Elizabeth A. Kirincich, Director of the Office of American Citizens services and Crisis Management told Amnesty International that consular officials had seen no evidence of mistreatment. She also stated that the US authorities will “continue to closely monitor Ahmed Abu Ali’s case to ensure his legal rights under Saudi law are fully respected.”

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<sup>1</sup> *USA v Abu Ali*, Cr. No. 05-53. Transcript of detention hearing before Liam O’Grady, Magistrate Judge, US District Court, Eastern District of Virginia, Alexandria Division, 1 March 2005.

Saudi Arabian officials have consistently denied any allegations of torture, including in testimony given by government officials during court proceedings in the USA.

### **Trial in the USA**

The pre-trial hearings in the Ahmed Abu Ali case began on 11 October 2005. He was charged with a number of terrorism related offences including providing material support and resources to terrorists, contribution of services to *al-Qa'ida* and conspiracy to assassinate the president of the United States of America. He was not charged in connection with the attacks in Riyadh or in connection to any offences related to Saudi Arabia. His defence lawyers sought to have the videotaped confession dismissed because it was obtained under torture and should therefore be inadmissible in court under national legislation and international human rights standards.

The defence also sought to have the case against him dismissed because they claimed his arrest and detention were at the direction of the US government which used the Saudi Arabian government as “a partner, joint venturer, or surrogate,” and because the delay in his prosecution violated the Speedy Trial Act<sup>2</sup> and his right to a speedy trial under the US Constitution<sup>3</sup>.

During these pre-trial proceedings Ahmed Abu Ali testified that he was slapped, beaten and whipped, while shackled and blindfolded, deprived of sleep and food, and on another occasion shackled and hung from the ceiling. The court also heard testimonies from former FBI agents, US consular staff, forensic experts, psychiatrists and others. On 24 October all the defence's motions were denied by Judge Gerald Bruce Lee on the grounds that the US government had shown by a “preponderance of evidence” that the statements made by Ahmed Abu Ali in Saudi Arabia were “voluntary” and should be considered by a jury in the full trial. He did not, however, make a final ruling on the credibility of Ahmed Abu Ali's claims that he was tortured in Saudi Arabia.

The trial against Ahmed Abu Ali began on 30 October 2005 and centred on whether or not Ahmed Abu Ali's confession was voluntary and his claims that he was tortured.

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<sup>2</sup> The Speedy Trial Act of 1974, set out in 18 U.S.C. §§ 3161-3174, establishes, among other things, time limits for completing the various stages of a federal criminal prosecution in the USA.

<sup>3</sup> The Sixth Amendment to the US Constitution states ‘In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence’

### **Relevant principles of international human rights law and standards<sup>4</sup>**

- Torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment) are prohibited in all circumstances, without exception
- Any statement which is established to have been made as a result of torture or other ill-treatment may not be invoked as evidence against the person concerned or against any other person in any proceedings
- Anyone arrested or detained on a criminal charge has the rights, among others, to be brought promptly before a judge or similar officer authorized to determine of the arrest; to challenge the legality of the arrest; to prompt access to a lawyer; and to be tried within a reasonable time or be released.
- The defence and prosecution should have ‘equality of arms,’ namely procedural equality before the court. This entails, among other things, that both parties may examine, or have examined, witnesses; obtain the attendance and examination of witnesses; as well as present and examine evidence presented, under the same conditions.

### **Amnesty International’s findings**

Amnesty International observed part of the trial of Ahmed Abu Ali from 7-10 November 2005. From this observation the organization considers that the trial against Ahmed Abu Ali was conducted properly within the parameters established by the court. However, Amnesty International has serious concerns about those parameters, which have cast a dark shadow over the fairness of the trial.

Amnesty International is particularly concerned that during the trial, defence lawyers for Ahmed Abu Ali were not allowed to present any evidence pertaining to Saudi Arabia’s human rights record, its record on torture and even particularly on the record of the *Mabahith al-Amma*. Judge Lee ruled that only evidence which related directly to Ahmed Abu Ali’s interrogation would be admissible, thus denying the defence the opportunity to present relevant evidence, including from two UK nationals who were held in *al-Ha’ir* prison at the same time as Ahmed Abu Ali and claim to have been tortured into confessing to terrorist offences. One of the men, William Sampson , described in detail to Amnesty International

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<sup>4</sup> From various international standards, including UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Articles 2 and 15. International Covenant on Civil and Political Rights Articles 9 and 14, Principal 17 (1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

the use of torture and torture techniques during his detention in Saudi Arabia similar to Ahmed Abu Ali's allegations.

Five UK nationals and one Canadian national were convicted in connection with a series of bombings which took place in Riyadh in November 2000, in which one man was killed and many others injured. Their "confessions", shown on Saudi Arabian television in February 2001 before their trial, are reported to have been the main evidence in their conviction and sentencing. William Sampson and Alexander Mitchell were sentenced to death whilst Raf Schyvens was sentenced to a prison term.

They provided detailed accounts of their treatment in prisons in Riyadh. They claimed that they repeatedly suffered various forms of torture during interrogation in order to force them to confess to police accusations against them. These included beatings all over the body and on the soles of the feet, sleep deprivation, and shackling and handcuffing for long periods.

All five UK nationals and one Canadian national, who were released from prison in August 2003 following a royal pardon, provided detailed accounts of their treatment in prisons in Riyadh.

Even, in its entry on Saudi Arabia, the 2004 US State Department country human rights report notes:

*"Ministry of Interior officials were responsible for most incidents of abuse of prisoners, including beatings, whippings, and sleep deprivation. In addition, there were allegations of beatings with sticks and suspension from bars by handcuffs. There were allegations that these practices were used to force confessions from prisoners."*

Given that the US State Department's own findings tallies with the specific allegations made by Ahmed Abu Ali, the decision to bar any evidence regarding torture in Saudi Arabia or from survivors of torture in Saudi Arabia is questionable, as the jury were left to make judgements on the torture allegations without any recourse to expert contextual information.

Whilst the defence was barred from producing general statements and evidence regarding patterns of torture in Saudi Arabia, general statements from Saudi Arabian officials were permitted. The jury heard, for instance, statements from Saudi officials, known as the "General" and the "Captain" who asserted that the *Mabahith al-Amma* in particular and Saudi Arabia in general prohibit torture and do not practise it.

The willingness of Judge Lee to admit such statements whilst excluding evidence regarding patterns of torture in Saudi Arabia – including the US State Department's own findings – pitted the word of Ahmed Abu Ali against the words of his alleged torturers and FBI agents who by all accounts worked closely with them, with no contextual background for consideration. The statements from Saudi Arabian officials were used as grounds to undermine Ahmed Abu Ali's own allegations, yet defence lawyers were unable to submit any evidence to rebut the claims of Saudi Arabian officials.

During a hearing observed by an Amnesty International delegate, Judge Lee said, explaining his decision not to allow testimonies from the UK nationals mentioned above, that one specific case of torture, even if proven, does not establish that torture took place in another

specific case. However, Judge Lee systematically blocked any attempts by the defence to show that torture in Saudi Arabia, especially of suspected “terrorists”, was in fact the rule rather than the exception.

Amnesty International is not in a position to determine conclusively whether or not Ahmed Abu Ali was tortured in Saudi Arabia – medical professionals were themselves divided on the issue - or whether his confessions were made as a result of that torture. Nor is the organization taking any position as to his guilt or innocence and the accuracy of the court’s verdict. However, Amnesty International considers that the disparity of evidence allowed regarding background of torture in Saudi Arabia casts serious doubts on the jury’s ability to make an informed judgement as to whether Ahmed Abu Ali may have been tortured into confessing.

Ahmed Abu Ali’s description of his torture in Saudi Arabia is consistent with Amnesty International’s long standing concerns regarding the use of torture. The organization has for a number of years been documenting the almost exclusive reliance of the criminal justice system in Saudi Arabia on the use of confessions.

Even the facts admitted by the Saudi Arabian officials and the prosecution make the confession highly suspect: the secrecy of the process; holding Ahmed Abu Ali incommunicado for about 50 days, without access to legal counsel and to a court and without visits from his family and subjecting him to long interrogations which took place during the night.

A statement in Judge Lee’s memorandum opinion of 25 October 2005 further demonstrates the over-simplistic assessment of Saudi Arabia’s human rights record, and his willingness to accept general evidence from one side while denying the other side from presenting such evidence:

*“The Lieutenant Colonel-Warden of the Medina facility where Ahmed Abu Ali was detained adamantly denied that Mr. Abu Ali was tortured, beaten, deprived of sleep, or questioned in Medina. He stated that the Government has a policy against torture and physical abuse of prisoners or suspects, and that the policy is enforced...The Lieutenant Colonel’s testimony held up under cross examination and the Court finds no reason to discredit his testimony.”*

In fact, in the trial any evidence which may have been presented “to discredit his testimony” and similar general statements was barred from proceedings.

### **Conclusion**

Amnesty International is seriously concerned that the trial of Ahmed Abu Ali may set a precedent in US courts of according unqualified support to the declarations of a foreign government regarding its human rights record as a means of rendering evidence admissible, including statements obtained by torture and ill-treatment. In this case, the statements of officials from Saudi Arabia, a state with a clear record of widespread torture and ill-treatment, flatly denying that such practices existed appear to have been taken at face value with no serious attempts allowed to challenge the claims presented.