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# SAUDI ARABIA

## Remains a Fertile Ground for Torture with Impunity

### 1. Introduction

Saudi Arabia took the important step of ratifying the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in October 1997. However, in its Initial Report<sup>1</sup> to the UN Committee Against Torture (CAT), the government failed to show how it had implemented the Convention. It also failed to appear before CAT in November 2001 to provide further clarifications in this regard. The initial report sets out from the start to convey the message that Saudi Arabia is a torture-free country and to back this up it provides a list of laws and procedures. There is no concrete illustration of any prevention or remedy mechanisms having been firmly established and operational against torture. These failures are symptomatic of the gravity of the problem of torture in the country, which Amnesty International has been documenting for decades, and the government policy to spare no effort in trying to conceal it instead of rooting it out. In October 2001 Amnesty International submitted to CAT its own critique of Saudi Arabia's Initial Report stating that torture remained rife in Saudi Arabia and for this to change, radical reforms of laws, procedures and judicial practices were needed to tackle the core roots of this problem.

Torture in Saudi Arabia is facilitated and perpetuated by the lack of unequivocal prohibition of torture in law, serious defects in the criminal justice system, judicial and extra-judicial corporal punishments amounting to torture, discrimination in law and practice, lack of safeguards against *refoulement*, and the absence of any credible redress mechanisms. All these factors have institutionalised torture in Saudi Arabia for decades and produced a catalogue of victims, including men, women, and children. This reality remains prevalent even after the Convention came into force in Saudi Arabia in October 1997.

This report is based on the critique of Saudi Arabia's Initial Report submitted by Amnesty International to CAT in October 2001 and information obtained by the organization since then on the issue of torture. It is intended to remind the international community of the gravity of the problem of torture in Saudi Arabia and to urge the government once again to take immediate measures to make the Convention against Torture a living reality in the country, thereby putting an end to complaints like the following example:

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<sup>1</sup>See Saudi Arabia's initial report in UN Doc. CAT/C/42/add.2, 27 February 2001.

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“On January 28, 2002...by order of the Bremen Prison commander ...we were illegally subjected to severe punishment and physical abuse. Being suspended with chains, each of us were flogged 80 times with a flexible metal cable, and also severely kicked and beaten with anything that came into their hands...Our bodies are wounded, swollen, terribly bruised, and with great pain. Baharu’s kidney may have been damaged and he is passing blood with his urine..”<sup>2</sup>

## **2. Causes of torture**

### ***2.1 Limited prohibition of torture***

While Saudi Arabia’s penal laws regulate corporal punishment and bodily mutilation applicable to a wide range of offences, it has no legislation which defines torture or prohibits torture in the full sense of Article 1 of the Convention.<sup>3</sup> Saudi Arabia’s initial report states in Part I (A) that “The Kingdom’s regulations ...prohibit all forms of torture...” Amnesty International welcomes such a strong assertion and hopes that one day it will become a reality. Until then it remains an assertion in need of concrete substance. Sadly, the regulations provided in the report cannot be considered instruments which abolish all forms of torture. Indeed, most of the regulations contain no direct reference to torture. Only three regulations, Decree No. M/31 of May 1978 (21 Jumada II 1398 A.H) on Prison and Detention Regulations, Royal Order No.3594 of January 1950 (29 Rabi’ I 1369 A.H) on the Statute of the Directorate of Public Security and the Royal Order No. 277/8 of November 1984 (22 Safar 1405 A.H), make any explicit reference to torture, but nowhere is there a definition of torture consistent with Article 1 of the Convention against Torture.

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<sup>2</sup>This complaint was made by a group of detainees who had been in detention since their arrest in July 2001. On learning of their arrest Amnesty International urgent appeals to the government seeking assurances that they were protected from torture, see UA 211/01 Incommunicado Detention/possible prisoner of conscience, AI Index: MDE 23/012/2001, 24 August 2001.

<sup>3</sup>Article 1(1) states: “For the purpose of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

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The Prison and Detention Regulations state under Article 28 that: “All forms of aggression against prisoners or detainees are prohibited and disciplinary measures shall be taken against civilian or military officials who commit any act of aggression against prisoners or detainees, without prejudice to any criminal penalties to which they might be liable in cases in which aggression constitutes a criminal offence.” At least three observations can be made about the limitation of this provision. Firstly, it is restricted to prisoners and detainees, while the Convention prohibits torture everywhere and against everyone. Aggression does not convey the full scope of “torture” under the Convention. Further, it remains unclear if it also applies to detainees held under the Statute of Principles of Arrest, Temporary Confinement, and Preventive Detention (SPAD). The SPAD contains no provision prohibiting “aggression” but provides wide powers of arrest and detention by a multiplicity of arresting authorities not just members of the Directorate of Public Security. Secondly, the term “aggression” is vague, particularly when looked at in conjunction with the provision of “...without prejudice to any criminal penalties to which they might be liable in cases in which such aggression constitutes a criminal offence”. This suggests that aggression is not considered a criminal offence save in exceptional circumstances. No clarification is provided as to what constitutes aggression or when such aggression becomes a criminal offence and when it does not. Thirdly, Article 20(3) of this regulation allows for flogging of 10 lashes as disciplinary punishment against prisoners. Therefore this regulation does not prohibit all forms of aggression, and in particular it expressly permits flogging, which has been considered by the UN Special Rapporteur on torture to be inconsistent with the prohibition of torture and cruel, inhuman or degrading treatment or punishment.<sup>4</sup>

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<sup>4</sup>The UN Special Rapporteur on torture stated that : “Corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the Universal Declaration of Human Rights...” UN Doc. E/CN.4/1997/7, report to the 1997 session of the UN Commission on Human Rights (para 6).

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Similarly, the provisions contained in the Statute of the Directorate of Public Security (Articles 100 and 231) and Royal Order No. 277/8 of November 1984 fall far short of the Convention's standard of prohibition of torture which is textually clear. Article 100 of the Statute of the Directorate of Public Security states that: "The investigating officer shall be vigilant and shall endeavour, by various judicious means, to ascertain the underlying reason for the suspect's persistence or silence without resorting to coercion or torture". Royal Decree No. 277/8 stipulates that "confessions should result from thorough and careful investigation without torture, since torture could induce a suspect to confess even if he had not committed the offence of which he was accused".<sup>5</sup> Both of these provisions read as mere advice, albeit welcome advice, and cannot be considered to amount to a legal instrument which prohibits torture, criminalizes it and provides for appropriate punishment for cases of torture in the sense of Articles 3 and 4 of the Convention. Article 231 of the Statute of the Directorate of Public Security states that: "Anyone who is found to be responsible for the unjustified detention of, or infliction of harm on, any person shall be punished by a term of detention equivalent to that for which he was responsible and shall also be liable for any harm that he inflicted". This article is more about wrongful or arbitrary detention and liability for harm seems to be limited only to such situations. Further, "harm" is not defined.

Clearly the prohibition of torture as contained in the Convention remains in conflict with operational penal laws, as well as judicial practices, as shown below.

## ***2.2 Defects of the criminal judicial process and the perpetuation of police brutality and torture by arresting authorities***

The effects of the lack of unequivocal prohibition of torture are compounded by serious legal and judicial defects inherent in the criminal justice system. Safeguards against torture such as prohibition of arrest without warrant, incommunicado detention, the use of confession obtained under torture, and guarantees of the right to effective legal assistance, have no place in this system.<sup>6</sup> This legal framework has over the years resulted in the emergence of a pattern of brutality by police and other arresting authorities and torture following incommunicado detention, which

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<sup>5</sup>See Saudi Arabia Initial Report P.9, UN Doc. CAT/C/42/add.2, 27 February 2001

<sup>6</sup>For detailed analysis see Amnesty International's reports *Saudi Arabia: A Secret State of Suffering*, AI Index: MDE 23/01/00, 28 March 2000, and *Saudi Arabia: A Justice System Without Justice*, AI Index: MDE 23/02/00, 10 May 2000.

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fundamentally has not changed even after the Convention entered into force in Saudi Arabia.

### ***2.2.1 Lack of judicial supervision over arrest procedures and brutality by arresting authorities***

Article 36 of the Basic Law (Constitution) in Saudi Arabia prohibits arbitrary arrest and detention, but the laws regulating this area of the criminal justice system do not provide any practical guarantees. The SPAD provides for wide powers of arrest to a wide variety of arresting authorities with total disregard for the rights of the suspect. Article 15 of the SPAD states:

*“Taking into account what is determined in statutes of the security of the borders and customs, the Board of Grievances, the Committee for the Control and Investigation and the Committee for the Propagation of Virtue and the Prevention of Vice, and other bodies and their executive statutes, and with the exception of those offences where royal decrees and directives rule that the release of the accused would be illegal, except after requesting permission of the Supreme authorities or after making a submission to the Ministry, all the following have in their jurisdiction the authorities to detain the accused as a cautionary measure or to release him: 1) District Emirs and their deputies; 2) The Head of Public Security and his aids; 3) The Chief of Police; 4) The Aides of the Chief of Police and the Chief of Criminal Arrest and the Chiefs of the Police Departments with respect to those cases which are considered within their jurisdictions; 5) The Director of the Public Agency for the Combatting of Drugs and the Directors of its affiliated Branches with respect to drugs offences and the like; 6) The Director of the Public Agency for Traffic and the Directors of the Agencies for Traffic with respect to traffic accidents; 7) The Director General of Passports and the Directors of the Agencies for passports with respect to cases concerning passports and residency.”*

It contains no provisions requiring that arrest be carried out with a judicial warrant, safeguards against incommunicado detention or rights for the suspect to obtain legal assistance or initiate legal proceedings before courts challenging the legality of detention. According to the SPAD, a detainee may at any time make a complaint to the Supreme authorities, including the Ministry of the Interior or the governor of the region. However, there is no avenue allowing for complaints to an

independent and impartial judicial authority, and there is no procedure explaining how a complaint can be made<sup>7</sup>, particularly when a person is held incommunicado.

The absence of strict judicial supervision over arrest has facilitated and continues to facilitate police brutality during arrest. The catalogue of victims of this system may be illustrated by the following cases of Phil Lomax, and a woman who requested that her name not be made public for fear of reprisals.

Phil Lomax, a British national who worked in Saudi Arabia, was subjected to beatings during arrest one night in May 1999. He told Amnesty International that seven *Mutawa'een* (religious police) and two policemen entered his flat and kicked him, both before and after handcuffing him behind his back. They took some of his personal effects, including photographs and videos, then took him away without providing a judicial warrant or explaining why they were arresting him.

The woman was arrested by the *Mutawa'een* (religious police) at the end of 2000 on suspicion of possessing alcohol and detained for about six weeks before she was released untried. She told Amnesty International:

*“...three Mutawa'een burst into my home and one of them grabbed me by my hair and pulled me with such force that I heard every ligament in my head click.... I had my glasses on....One of them....grabbed my glasses off my head and spat in my face...he was dragging me down the stairs, stamped on my glasses, and took me out to the car...”*

### **2.2.2 Incommunicado detention, value of confession and torture**

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<sup>7</sup> The State Party's report refers in paragraph 13f to the power of the Public Investigation and Prosecution Department to hear complaints of prisoners and detainees. Yet, similar to the SPAD, this does not allow for complaints to independent and impartial judiciary.



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Arrest is invariably followed by incommunicado detention, a measure which has been declared by the UN Special Rapporteur on torture to be a serious factor conducive to torture.<sup>8</sup> Access to the outside world, including legal counsel, independent doctors, family, or consular representatives in cases of foreign nationals, may take place only after the interrogation of the detainee is completed and often not before a confession is obtained, a process that may take weeks or months. Even when access is finally granted it often takes place under strict supervision and censorship. Visiting relatives and consular representatives receive strict orders from prison officers not to engage the detainees in discussion of the conditions of the detention or details of the case. They are only allowed to exchange greetings, with prison officers present and listening throughout the meeting. In the case of foreign nationals the officers attend the meeting with their own interpreters.

Correspondence during the period of incommunicado detention is banned or heavily censored. One relative of a detainee interviewed recently by Amnesty International stated that:

*“A letter sent to the [detainee] by his mother via the... Embassy was not given to him by the prison officers. Instead, the officers read out to him selected passages from it, allowed him to look at some of these passages, then returned it to the ...Embassy representative who delivered it to them in the first place.”*

Such strict practice of incommunicado detention places the detainee totally at the mercy of the arresting authority, and is then followed by interrogation with the primary aim of obtaining a confession at any cost.

Confession is highly valued in Saudi Arabia's penal policy both as a necessary political tool and as a means of evidence in the criminal justice system. As a political tool it assumes at least two functions: one is to secure information, about other suspected political activists for example and the other is to secure material suitable for public consumption on government penal or other policies. A typical example of public consumption exercise is the showing on television this year of nationals from European and North American countries apparently confessing to

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<sup>8</sup>In 1995 the UN Special Rapporteur on torture called for a worldwide ban on incommunicado detention : “Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal and persons held incommunicado should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention.” See Report of the Special Rapporteur on torture, UN Doc. E/CN.4/1995/34, para 926 (d). The Special Rapporteur has continued to repeat this since, most recently in his report to the 2001 UN General Assembly (A/56/156, para 39(f))

having been responsible for several bombing incidents which resulted in deaths and injuries. The confessions were also widely published in the print media. All media in Saudi Arabia is subject to strict government control. According to the government, the defendants are yet to be tried, and the publicity of their “confessions” in advance of any trial can only be seen as a travesty of justice on the part of the government. The publicity implies that the defendants are considered guilty before trial, irrespective of the veracity of these confessions. Few except the Saudi Arabian government and the defendants know how the confessions were obtained. The defendants were subjected to strict incommunicado detention and had no access to legal assistance. They remain held virtually incommunicado and their legal status remains unclear.

As a means of evidence before courts, the confession is considered:

*“...the master of evidence and the decisive factor for ending the conflict before the judge...once the accused confesses to the crime it is proved against him and he receives the punishment he deserves...”<sup>9</sup>*

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<sup>9</sup> See “Means of evidence for criminal suit in Shari’a”, by Judge Dr Riyadh bin Abdulatif bin Abdulmuhsin al-Mahideb, 1 September 1997, Industrial City of Jubail, Kingdom of Saudi Arabia, P7.

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In a recent press interview, the President of the Board of Grievances (administrative court), Sheikh Mansour bin Hamad al-Malik, stressed that confession is the highest form of evidence that can be used to convict a defendant<sup>10</sup>.

This explains why it is usual practice for police not to proceed to courts with criminal cases before the confession is obtained. In theory, confession is only admissible evidence in court if it has been “ratified” by a judge beforehand. The purpose of the “ratification” is to ensure that the confession was not forced by the interrogators. But this process is flawed in practice because the judge does not play any supervisory role over detention or interrogation as these are the sole prerogative of the arresting authority. His involvement starts only when the interrogators request him to ratify the confession. When this happens, he asks the defendant if he or she agrees with the content of the confession. If the defendant disagrees the judge refrains from the ratification and his role ends there, even if the defendant complains of torture. The defendant is then returned to the arresting authorities and the interrogation starts all over again with the threat of torture or, indeed, further rounds of torture for those who had already been tortured. In most cases defendants find no alternative but to “confess”. At no time in this process is the defendant allowed legal assistance, informed of his or her rights or the nature of the judicial process, guaranteed adequate interpretation, or access to the outside world.

Amnesty International has over the years exposed these fundamental causes of torture together with the catalogue of victims it has produced, and regrets that Saudi Arabia’s accession to the Convention has yet to make any visible change. One of the typical illustrative cases is that of Kalesh, an Indian national who was arrested in July 1999 and accused, along with another Indian national, of stealing a briefcase containing money. He was sentenced to 240 lashes and one year’s imprisonment. Amnesty International raised his case with the authorities at the time. Following his release in December 2000, the organization asked him to recount his experience and he responded:

*“I will provide every information you need. When I saw your questions, my spine chilled. All those memories are flooding to my mind...”*

*First of all, our case was a fabricated case to kick out my uncle who was the operations manager and his General Manager of the company I worked for. Three of us...were taken to the police station for “taking statement”. It was*

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<sup>10</sup> See al-Watan daily newspaper, 4 May 2001

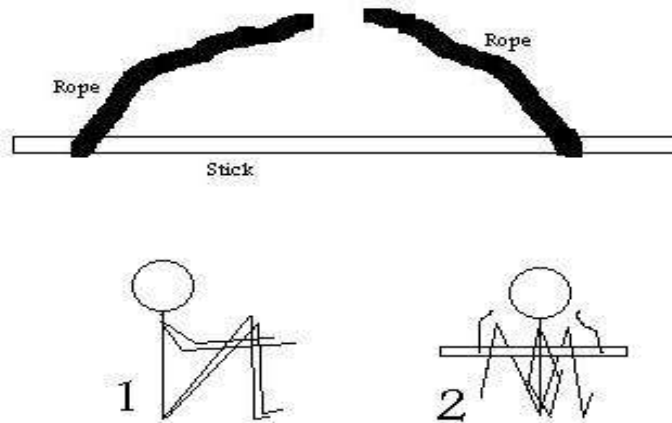
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*on a Wednesday night. On Thursday nothing happened. On Friday night, I was called to the captain's office for taking statement. When anybody is taken from the cell to the officer's office, they will be handcuffed and chained in the legs...*

*I was taken there after the last prayer of the day [evening]. There were three people in civil dress...Later I understood that two of them were first lieutenant and one was captain. They had a big stick with ropes at each end [see sketch 1, below]. I was asked to sit on the floor as shown in sketch 1. At this time I am handcuffed and chained in my legs. The stick with the ropes was inserted through the folding of my knees...and the ropes were tied to my handcuffed hands [see sketch 2, below]. I became like a football. They had a rope which was covered by black insulation tape. And they had the Agal [head rope].*

*I was sitting/lying on the floor and these three devils started asking me in Arabic and broken English where was the briefcase. I said I don't know. They started kicking and beating me brutally with the rod and the Agal. There are still marks for the remembrance of that day on my body. They kicked me with their boots. After around 25 minutes of continuous beating, they stopped and removed the stick and asked me to get up and walk. I somehow managed to get up and tried to walk. When my legs touched the floor I cried with pain. After making me walk two rounds, they inserted the stick again and started beating me again. I was beaten all over the body. I was not able to block any blows because of my posture. I was asked to whom I gave the briefcase. I said I don't know anything about it. After that one of them ordered to take me back to the cell and a guard came and took me back...The handcuff and chains were removed when I returned to the cell.*

*The next day evening..., I was called and the show was repeated. After that I was transferred to a single cell. Only my handcuffs were removed this time. My legs remained chained. It was summer time and there was no proper airconditioning system in the single cells. I was kept in the single cell with chains in my legs for three days. I was not able to remove my pants when I went to the latrine...How can I remove my pants fully as my legs are chained?*



*On the third day I was taken to officer's office. I was beaten again. By this time my uncle was also arrested and brought to the police station. I asked for the help of a translator as I was not well versed in the Arabic language...I was not given an independent translator. I was told that the other accused in the same case had confessed that he saw me taking the briefcase and giving it to my uncle. I learned later that Mr S. was also mercilessly tortured and forced to say my name...The officer told me that my uncle was also going to be imprisoned and we both will be serving 10 years in prison. He told me that if I said that my uncle and the general manager of the company ...[had] asked*

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*me to steal the briefcase....all the charges levelled against me will be dropped...*

*I wanted to save my uncle, who is innocent like me. He has two daughters, whom I consider as my own sisters. If their father is imprisoned, they won't have a good support and that will affect their future. That's how my thoughts went at that time...I also thought that if I say I took the briefcase the torture will end and my uncle will be saved if I took the whole blame. I thought that I could plead innocent later in the court. So, I said I took the briefcase, which was a lie. I was asked to thumb-print on some documents written in Arabic. There was no translator. The captain told me that my confession statement was ready. This has been my first experience with police and police station in my lifetime..."*

Kalesh's confession and its subsequent ratification sealed his conviction and punishment. His change of plea on grounds of torture did not alter this course of the power of confession. The record of the verdict by the trial judge stated that when the charges were:

*" ...put to the defendants they responded through the interpreter, a Sri Lankan national, that what the prosecutor claimed ...was not correct. ...the court went into recess to ask the prosecutor for evidence. [When the court resumed] the prosecutor attended and so did the defendants. The prosecutor was asked: do you have evidence? He responded: I do not have any evidence other than what has been recorded in the file. After that I [the judge] examined the file and the confession of the defendant containing admission to the charge which was duly ratified and recorded on pages 12 and 13 of the investigation file No.4. In putting the confession to him the defendant responded: I confessed in order to avoid the investigation. Details of the confrontation [between the accused and the accuser] contained in the file were also consulted.*

*On the basis of the preceding ...and although the first defendant [Kalesh] denied the charges, but as his confession was duly ratified, and since there is no excuse for anyone who confesses, I have decided to punish him to one year's imprisonment ...in addition to 240 lashes to be divided in four equal instalments to be carried out at intervals of no less one month between each of them...."*

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It should be noted that the court verdict contained no record of the judge making any attempt to understand why Kalesh confessed in order to avoid investigation. In fact Kalesh told Amnesty International: “ I told the judge that I confessed only to stop the torture, I cried in the courtroom... I showed the judge the marks of torture. The judge didn’t even seem to listen”. The answer is simply that judges have no supervisory power over arresting authorities and a ratified confession carries the value of a sealed proof. There is no obligation to investigate any allegations of torture or ill-treatment. Such legal and judicial arrangements are not favourable to the fulfilment of Articles 12 and 15 of the Convention.<sup>11</sup>

The high value attributed to confession in Saudi Arabia’s penal policy and the criminal justice system, coupled with strict practice of incommunicado detention and the denial of legal assistance to the accused, remain major factors institutionalizing torture in prisons and detention centres.

### ***2.3 Discriminatory laws and practices facilitating torture against women and foreign nationals***

The narrow legal conception of what constitutes torture and inhuman and degrading treatment in Saudi Arabia is narrowed further when looked at in relation to foreign nationals and women. While these two sectors of society can face torture in the same way as everyone else, they can also fall victims to torture because of their disadvantaged status in society. This situation is perpetuated by discriminatory laws and practice which require radical changes if the Convention against torture is ever to effectively implemented in Saudi Arabia.

#### ***2.3.1 Foreign nationals***

Foreign nationals, particularly those from countries in Africa, Asia and the Middle East, find themselves isolated and vulnerable by virtue of being in a foreign country far away from home, living under strict rules of residence impinging on their right of movement and employment with little or no support from their diplomatic missions. Such existence puts them at a disadvantage, compared to their Saudi Arabian

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<sup>11</sup>Article 12 states that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”. Article 15 states that “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”.

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counterparts when they come into contact with security forces and the criminal justice system.

Language limitations and restrictions on freedom of movement are obvious factors which make a criminal justice system that is hard on everyone even harder on foreign nationals, putting them at greater risk of torture. Such risk is made even greater by the lack of social support. The social make-up of the Saudi Arabian society: families, tribes, friendship and traditions of solidarity, plays a highly valuable role against abuse by the authorities of the state. These social institutions come into action when Saudi Arabian nationals confront the criminal justice system, with families, friends, heads of tribes or persons of authority engaging in inquiries about them. Such actions can, albeit not always, result in the effective protection from torture of those detained.

Foreign nationals are deprived of such valuable social protection against torture. While lack of data makes it difficult to quantify this disadvantage with regard to torture, an indication may be obtained from available samples of statistics on executions under *Qisas* (or retaliation) for murder where relatives of the murder victim are entitled to pardon or seek the execution of the offender. Between January 2000 and June 2001 Amnesty International recorded the cases of 16 prisoners who had been pardoned and released under the pardon system, some of them moments before the time set for their execution. Fifteen of them were Saudi Arabian nationals and one was a Yemeni national. The Yemeni national was convicted of murdering a relative, and the pardon was a result of family reconciliation. Of the 15 Saudi Arabian nationals, one pardon was secured because of strong friendship between the family of the offender and the family of the victim. The other 14 pardons resulted from reconciliations secured through intervention by the King, ministers, local dignitaries or tribal leaders. During the same period, at least 96 Saudi Arabian nationals and 84 foreign nationals were executed, which illustrates the stark difference between pardons and executions in relation to nationality: almost one pardon for every six executed Saudi Arabian nationals, and one pardon for every 84 executed foreign nationals. The total numbers, 96 and 84, of executions should be read in the context of Saudi Arabia's total population of about 19 millions which include six million foreign nationals. The stark picture provided in this context is unlikely to differ significantly with regard to torture.

### **2.3.2 Women**

As to women, the picture is even more dramatic. In addition to being victims of torture in the conventional sense, they live with it as a nightmare haunting them



everywhere, including in the sanctity of the home where it takes place at the hands of their husbands or in the case of foreign domestic workers, their employers, and it goes on with impunity. This situation is facilitated and perpetuated by severe discriminatory laws and practices.<sup>12</sup> While the range of discrimination against women is extremely pervasive and therefore difficult to depict how any particular aspect impacts on torture, there are at least two which can directly correlated with the occurrence of torture. These are the denial of the right to freedom of movement and the lack of domestic violence as a punishable crime.

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<sup>12</sup>For details of discrimination against women see Amnesty International report, *Saudi Arabia: Gross human rights Abuses against women*, AI Index: MDE 23/57/00, September 2000.

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Women are not allowed to walk in the street without being in the company of an immediate male relative (*Mahrim*), or to mix with men of no immediate family relationship. Breaching these codes would give rise to suspicion of prostitution and may result in arrest, brutality, and torture by police, particularly the *Mutawa'een*, who patrol the streets monitoring, among other things, women's conduct or dress or behaviour. The *Mutawa'een* were reported to have hampered rescue operations at a fire at a girls' school in Mecca on 11 March 2002 which resulted in the death of 15 girls. They reportedly prevented the girls from escaping from the fire because they were not wearing headscarves and their male relatives were not there to receive them. The *Mutawa'een* were also reported to have prevented rescuers from entering the school because they were males and therefore not permitted to mix with females. The government announced that it was setting up an investigation and Amnesty International called for such investigation to be transparent and the finding to be made public.<sup>13</sup>

Women are arrested by men, interrogated by men and tried by men, which carry inherent perceived or real intimidation and the threat of torture, including sexual abuse.

Domestic violence is rife in Saudi Arabia, and it is perpetuated by social conditions and tolerated by the state. Social conditions include the stigma of divorce as a "shame" which follows women and their families. To avoid this a family would go to the length of forcing a battered daughter to return to her violent husband. In such situations the husband has nothing to stop him, and the wife has no alternative but to suffer in silence. "Violence in dealing with the wife in our Saudi society is a crime that no one likes to talk about and the harm continues because of that silence", commented one Saudi Arabian university professor. The state tolerates men chastising their wives for disobedience, and there is a general perception among women that police officers will not look favourably upon a complaint against violence by the husband.

One Saudi Arabian professor of sociology has pointed out a way forward by stating that:

*"...our society is in need of legal remedy putting limits on the husband in order to make him aware that beating and torturing the wife is considered a*

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<sup>13</sup>See *Saudi Arabia: Investigation into tragic death of 14 school girls must be transparent and public*, AI Index MDE 23/003/2002-News Service Nr. 47

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*punishable crime...there must be institutions to receive women who find their families standing against them in order to protect her and to assist her to retrieve her rights.”*

Female domestic workers recruited into homes where domestic violence is rife quickly turn into victims, and are affected even more markedly than their Saudi Arabian counterparts. They can be subject to violence by the male head of the family, male children and sometimes by the female members of the family. The form of violence they may be subjected to varies from food and sleep deprivation to beating and sexual assault. Like their Saudi Arabian female counterparts, they suffer in silence, but their situation is exacerbated by the fact of being far away from home, in a foreign home in a foreign country, which makes the suffering immeasurable. A quantification of the scale of vulnerability of female domestic workers may be indicated by the ratio of executions. Of at least 30 women executed in Saudi Arabia over the last decade, 17 were foreign nationals.

The UN Committee on the Rights of the Child has expressed concern “ that domestic violence is a problem in Saudi Arabia, and that this has harmful consequences on children”. It went on to recommend that Saudi Arabia “... establishes hotlines and shelters staffed by women, for the protection of women and children at risk of or fleeing abuse...”<sup>14</sup>.

#### **2.4 *Refoulement of people at risk of torture***

Saudi Arabia is not a state party to the 1951 Convention relating to the status of refugees (Refugee Convention) and has no domestic laws which clearly prohibit *refoulement* in accordance with the text and spirit of the Convention, or Article 3(1) of the Convention against Torture. However, Saudi Arabia is a party to bilateral and multilateral security agreements such as the Arab Convention for the Suppression of Terrorism<sup>15</sup> which lack the most basic safeguards against *refoulement*.

In its initial report to CAT Saudi Arabia referred to Article 42 of its Basic law of Government as a safeguard against *refoulement*, but this does not amount to a

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<sup>14</sup> See Concluding Observations of the Committee on the Rights of the Child: Saudi Arabia 26/01/2001. CRC/C/15/add 148 . Paras 35 and 36.

<sup>15</sup>See Amnesty International report: “ *The Arab Convention for the Suppression of Terrorism a serious threat to human rights*”, AI Index: IOR 51/oo1/2002.

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safeguard in the sense of Article 3(1) of the Convention against torture as is clear from its text: “The State shall grant the right of political asylum if the public interest so requires, the rules and procedures for the extradition of ordinary criminals will be defined by statutes and international conventions.” Therefore the criteria for asylum is not the interest of the asylum seeker’s fear of persecution or the risk of human rights abuses such as torture but the public interest of the Saudi Arabian State. Article 3(1) of the Convention is unequivocally against expulsion, forcible return or extradition of anyone to “...another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

In addition to the legal ambiguity, Saudi Arabia’s practice with regard to upholding the provision protecting persons from being sent to states where they face the risk of torture leaves much to be desired. Since Saudi Arabia became a state party to the Convention, the government has returned scores of people to countries, including Egypt and Libya, where torture is a routine practice. In 1996, six Egyptians were forcibly returned to Egypt and were reported to have been subjected to torture upon arrival. In 1998, a Libyan family who travelled from the UK, where they have asylum status, to Mecca for pilgrimage, were arrested and forcibly returned to Libya instead of the UK where they have refugee protection. The head of the family, Al-Sayyid Mohammad Shabou, is reported to have been tortured and is still held without trial in Abu Salim Prison in Tripoli.

More recently, in July 1999, Magdi Ibrahim al-Sayyid al-Naggar, an Egyptian national who was working in Saudi Arabia since 1991, was forcibly handed over to the Egyptian authorities apparently because of his brother’s political activities. He was detained upon arrival and held at the Headquarters of the State Security Intelligence Department (SSI) in Lazoughly Square, Cairo, where torture is routinely practised. About two months prior to his forcible return in May 1999, the UN Committee Against Torture felt it necessary to recommended that: “Egypt takes effective measures to prevent torture in police and State Security Intelligence custody...(and) that a proper registry of detainees, both police and State Security Intelligence, which is accessible to members of the public be established and maintained”.<sup>16</sup>

Forcible returns like these should not have been carried out without the careful consideration stipulated by Article 3 (2) of the Convention, which requires

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<sup>16</sup> See Concluding Observations of the UN Committee Against Torture: Egypt 17/05/99.A/54/44, paras 211 and 213

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that in assessing grounds for the risk of torture: "...the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

### ***2.5 Continuing use of judicial corporal punishment***

Although the UN Special Rapporteur on torture has considered corporal punishment to constitute torture or cruel, inhuman and degrading treatment or punishment, Saudi Arabia's penal laws continue to prescribe it for a wide variety of offences and it is imposed on men, women, and children in contravention of the Convention against Torture and the Convention on the Rights of the Child. The punishment includes flogging, amputation, and other forms of bodily mutilation.

Flogging is prescribed under *Hudud*<sup>17</sup> for alcohol-related offences and certain sexual offences. Judges are also free to use it at their discretion for other offences as a main or additional punishment. When flogging is imposed as a *Hudud* punishment it has a ceiling of 100 lashes, but when imposed as a *Ta'zir* punishment in Saudi Arabia it has no upper limit. The highest number of lashes recorded by Amnesty International to have been imposed on a prisoner was 4,750 lashes. Flogging is applied as judicial punishment throughout the country after grossly unfair trials, as shown in the case of Kalesh. Other examples include three people: Muhammad al-Dawsari, Sa'id al-Subay'i, and Muhammad al-Hadithi who were sentenced in June 2001 to 1,500 lashes each in addition to 15 years' imprisonment. All were convicted on drug charges. The floggings are carried out at a rate of 50 lashes every six months for the whole duration of 15 years.

Flogging is also imposed as extra-judicial punishment carried out for traffic offences and anyone suspected of harassing women. In this regard it is carried out by the *Mutawa'een* in a number of provinces where the Emir of the province has given them orders to arrest and flog suspects without recourse to justice. Hundreds of people, mainly children, have been subjected to immediate flogging in the last 15 months. For example, in September 2001, al-Riyadh Arabic daily newspaper reported that in Riyadh alone, 172 youths had been flogged a total of 2560 lashes between

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<sup>17</sup>There are three categories of crimes and punishments under Shari'a applied in Saudi Arabia: Hudud (fixed punishments), Qisas (retaliation or retribution) and Ta'zir (discretionary punishments for all other offences not covered under Hudud or Qisas).

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them since the start of the campaign to stop the harassment of girls.<sup>18</sup> When Saudi Arabia's delegation appeared before the Committee on the Rights of the Child in March 2000 it assured the Committee that corporal punishment was prohibited against children. However, the Committee felt it necessary to recommend that Saudi Arabia should "take all necessary steps to end the imposition of corporal punishment including flogging and all forms of cruel, inhumane and degrading punishment to persons who may have committed crimes while under 18...".<sup>19</sup>

Amputation is prescribed under both *Hudud* and *Qisas*. Under *Hudud* it is prescribed for theft (amputation of the right hand) and for highway robbery (amputation of the right hand and left foot). Amnesty International has recorded 33 amputations and nine cross-amputations since the Convention came into force in Saudi Arabia.

A *Qisas* punishment means causing injury to the offender similar to the injury caused to the victim. For example, in August 2000, the Saudi Arabian media reported that Abdel Moti Abdel Rahman Mohammad, a 37-year-old-Egyptian national was subjected to forcible surgical removal of his left eye at King Fahd Hospital in Medina. The operation was carried out as a judicial punishment of *Qisas* after he was found guilty of disfiguring Shahata Ajami Mahmoud, a 53-year-old Egyptian, by throwing acid at his face and damaging his left eye.

Unless these punishments are suspended and the criminal justice system is reformed in accordance with international human rights standards, Saudi Arabia cannot claim to have given meaningful implementation to the Convention.

## **2.6 Lack of redress**

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<sup>18</sup> See al-Riyadh, 12 September 2001

<sup>19</sup>See Concluding Observations of the Committee on the Rights of the Child: Saudi Arabia 26/01/2001. UN Doc. CRC/C/15/add 148 . Para 34.

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Saudi Arabia's initial report to the UN Committee Against Torture referred to a Minister of Interior's Circular No. 50/14102 of June 1999 which apparently calls for the establishment of "...a Standing Commission to investigate accusations concerning the subjection of any person to torture or other cruel, inhuman or degrading treatment or punishment during procedures for the arrest, detention or investigation of suspects."<sup>20</sup> Amnesty International welcomes this news, but the report does not provide any information as to when such a commission will be established, what terms of reference will it be given and how independent it will be from the official bodies where torture is institutionalised. However, if this commission is to have any effect it must be based on a clear understanding of the failure of the existing judicial and governmental bodies, including courts, the Board of Grievances, and the Majalis (audience chambers) of the governors of the provinces, the Crown Prince and the King, to provide serious redress mechanisms for torture victims

Amnesty International has over the years repeatedly brought to the attention of the government allegations of torture, including deaths in custody, but has never received a reply from the government on a single case having been investigated and its findings made public in accordance with international human rights standards. In addition to the cases of torture referred to in the preceding sections, the organisation submitted a number of cases of deaths in custody alleged to have occurred as a result of torture since Saudi Arabia became a state party to the Convention.

For example, in December 1996, Maitham al-Bahr, a 21 year-old Saudi Arabian student, died in al-Dammam Central Prison allegedly as a result of torture. He was held in incommunicado detention. A post-mortem examination reportedly revealed, *inter alia*, swellings in various parts of the body allegedly sustained as a result of torture. Amnesty International is not aware of any independent investigation by the Saudi Arabian authorities into his case.

Mohammad al-Hayek was reported to have died in June 1998 in the *Mabahith al-Amma* (General Intelligence) prison in al-Dammam. He is understood to have been arrested in 1996 during waves of arrests particularly targeting the Shi'a minority. To Amnesty International's knowledge there has been no official investigation into the circumstances of his death.

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<sup>20</sup>See UN Doc. CAT/C/42/Add.2, 20 September 2001 (English).

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Ahmad bin Ahmad al-Mulablib, a 55-year old prayer leader from al-Jufer village in al-Ihsa, died while in the custody of the *Mutawa'een* shortly after his arrest in November 1998, reportedly as a result of torture. A few days after his arrest, on 20 November, his relatives were reportedly requested by the *Mutawa'een* to collect his body from one of their detention centres. The reasons for his arrest were said to have been connected to his Shi'a religious practices. Amnesty International wrote to the government of Saudi Arabia in December 1998 requesting clarification of the reports and seeking to be informed of the findings of any investigation into the circumstances surrounding his death, but no response has ever been received.

Government silence on such issues stems from the strict secrecy that underpins all aspects of the state institutions, including the criminal justice system. With the prevalence of such secrecy no torture redress mechanism can be expected to function effectively thereby providing torturers with continuing impunity.

### **3. Conclusion and recommendations**

It is clear that Saudi Arabia's implementation of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment leaves much to be desired. This failure resides in stark contradictions between domestic laws, judicial practices, and lack of effective redress mechanisms, on the one hand, and the Convention on the other.

There is no clear cut legal definition of torture in Saudi Arabia in the sense of Article 1 of the Convention. There are a few vaguely worded references to torture in different laws which do not constitute a definition even in the narrow sense of the Convention. Further, such narrow definition is seriously undermined by laws, or the absence of laws, legitimising acts which constitute torture under Article 1 of the Convention, such as domestic violence, discrimination, and corporal punishment.

The fragility of this narrow conception is weakened further by the government's penal policy and serious defects inherent in the criminal justice system. Lack of judicial supervision over arrest and detention, the practice of incommunicado detention, the high value attributed to confessions, and lack of credible investigative and redress mechanisms, are all ingredients upon which torture thrives with impunity.

If torture is to be stamped out in Saudi Arabia the government should implement fully Amnesty International's 12-Point Program for the Prevention of



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Torture by Agents of the State, which is appended to this report, and should urgently take the following preventive and remedial steps:

### ***3.1 Preventive measures***

The government of Saudi Arabia should:

1. issue unequivocal prohibition of torture as a punishable crime in accordance with the Convention against Torture, such prohibition should include criminalization of domestic violence;
2. ensure that laws regulating arrest and detention prohibit arbitrary arrest, prolonged incommunicado detention, and that these measures are carried out under strict judicial supervision with suspects always guaranteed prompt and regular access to lawyers, families and medical attention;
3. take immediate steps to stop the use of uncorroborated confession, ratified or unratified, as evidence and ensure that allegations of torture made by defendants during trials are taken seriously by courts;
4. provide adequate training at all levels of the judiciary and law enforcement agencies.;
5. amend all discriminatory laws against women and foreign workers in accordance with the Convention on the Elimination of All forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination, both of which Saudi Arabia has ratified;
6. revise asylum and extradition laws with the aim of bringing them into line with international refugee laws; particularly Article 3 of the Convention against Torture and the 1951 Convention relating to the status of refugees;
7. invite the UN Special Rapporteur on torture to visit Saudi Arabia.

### ***3.2 Redress***

The government should ensure that:

1. allegations of torture are subject to independent and impartial investigations as a matter of course and perpetrators of torture are brought to justice;

2. women and foreign workers are enabled to seek redress by providing them with opportunity to lodge complaints before courts and to have access to lawyers free of charge if necessary. They also be provided with refuge facilities when escaping domestic violence;

3. victims of torture should be compensated for the physical and psychological harm suffered at the hands of their torturers.

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## **Appendix: Amnesty International's 12-Point Program for the Prevention of Torture by Agents of the State**

Torture is a fundamental violation of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law.

Yet torture persists, daily and across the globe. Immediate steps are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

Amnesty International calls on all governments to implement the following 12-Point Program for the Prevention of Torture by Agents of the State. It invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and to work for its eradication worldwide.

### **1. Condemn torture**

The highest authorities of every country should demonstrate their total opposition to torture. They should condemn torture unreservedly whenever it occurs. They should make clear to all members of the police, military and other security forces that torture will never be tolerated.

### **2. Ensure access to prisoners**

Torture often takes place while prisoners are held incommunicado — unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

### **3. No secret detention**

In some countries torture takes place in secret locations, often after the victims are made to “disappear”. Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers and the courts. Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority and to ensure the prisoner's safety.

### **4. Provide safeguards during detention and interrogation**

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of

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their detention. Judges should investigate any evidence of torture and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

#### **5. Prohibit torture in law**

Governments should adopt laws for the prohibition and prevention of torture incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

#### **6. Investigate**

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

#### **7. Prosecute**

Those responsible for torture must be brought to justice. This principle should apply wherever alleged torturers happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments must exercise universal jurisdiction over alleged torturers or extradite them, and cooperate with each other in such criminal proceedings. Trials must be fair. An order from a superior officer must never be accepted as a justification for torture.

#### **8. No use of statements extracted under torture**

Governments should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

#### **9. Provide effective training**

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. Officials should be instructed that they have the right and duty to refuse to obey any order to torture.

#### **10. Provide reparation**

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Victims of torture and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

**11. Ratify international treaties**

All governments should ratify without reservations international treaties containing safeguards against torture, including the UN Convention against Torture with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of international bodies and experts on the prevention of torture.

**12. Exercise international responsibility**

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture. Governments must not forcibly return a person to a country where he or she risks being tortured.

This 12-Point Program was adopted by Amnesty International in October 2000 as a program of measures to prevent the torture and ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. Amnesty International holds governments to their international obligations to prevent and punish torture, whether committed by agents of the state or by other individuals. Amnesty International also opposes torture by armed political groups.