

# **‘KILLING IN THE NAME OF JUSTICE’**

THE DEATH PENALTY IN SAUDI ARABIA

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*Cover photo:* Seven mounds of earth erected in a public square in Abha in preparation for the execution by firing squad of seven men in March 2013. This exact photo was sent to the seven men by friends, who in turn sent it to Amnesty International. The men learned of their impending execution when they received this image. ©Private.

# CONTENTS

1. Executive summary .....	5
2. Methodology.....	8
3. Background.....	10
3.1 The judicial system and recent developments .....	10
3.2 The human rights environment.....	12
4. Scope of the death penalty in Saudi Arabian law .....	16
4.1 Crimes and offences that do not meet the threshold of “most serious crimes” punishable by death.....	17
4.2 Pardons and commutations.....	18
5. Use of the death penalty in Saudi Arabia.....	21
5.1 Drug-related crimes .....	21
5.2 Foreign nationals and the death penalty .....	24
5.3 Executions in public and without notice .....	27
Public executions .....	27
Transparency and notification of executions .....	28
6. Inadequate safeguards.....	30
6.1 Right to access to lawyers.....	31
6.2 Right to appeal.....	32
6.3 “Confessions” extracted through torture .....	33
6.4 Other shortcomings in trial proceedings .....	34
6.5 Juvenile offenders.....	37
6.6 Persons with mental and intellectual disabilities .....	38
7. Conclusion and recommendations.....	41



# 1. EXECUTIVE SUMMARY

Saudi Arabia remains one of the most prolific executioners in the world. Between January 1985, the earliest year from when information on executions is available, and June 2015 it executed at least 2,200 persons, almost half of whom were foreign nationals. Over one third of these executions were carried out for offences that do not meet the threshold of “most serious crimes” for which the death penalty can be imposed under international law. Most of these crimes, such as drug-related offences, are not mandatorily punishable by death according to the authorities’ interpretation of Islamic Shari’a law.

Saudi Arabia also continues to sentence to death and execute individuals for crimes committed when they were below 18 years of age, in violation of the country’s obligations under international customary law and the Convention on the Rights of the Child. Also in violation of international law, the death penalty in Saudi Arabia continues to be used against persons with mental disabilities.

The death penalty is also used disproportionately against foreign nationals, the majority of whom are migrant workers with no knowledge of Arabic – the language in which they are questioned while in detention and in which trial proceedings are carried out. They are often denied adequate interpretation assistance. Their country’s embassies and consulates are not promptly informed of their arrest, or even of their executions. In some cases their families are neither notified in advance of the execution nor are their bodies returned to them to be buried.

The authorities recurrently fail to abide by international standards for fair trial and UN Safeguards guaranteeing protection of the rights of those facing the death penalty. Too often trials in death penalty cases are held in secret and their proceedings are unfair and summary with no legal assistance or representation through the various stages of detention and trial. Defendants may be convicted solely on the basis of “confessions” obtained under torture or other ill-treatment, duress or deception.

The Saudi Arabian authorities continue to claim that they apply the death penalty only for the “most serious crimes” and only following the most rigorous and thorough judicial proceedings. They have argued that the death penalty is an integral component of Shari’a law that guarantees the rights of perpetrators and victims alike, and that the death penalty and public executions serve as a deterrent to crime. The authorities’ claims on the use of the death penalty contradict its practice in reality.

The scope of the death penalty in Saudi Arabian laws is a major cause for concern. In both Shari’a and statutory laws, offences that are not internationally considered “most serious crimes”, such as drug-related offences, are punishable by death. There is, however, no evidence to support the Saudi Arabian authorities’ argument that the death penalty prevents crime more effectively than other punishments.

Saudi Arabia also continues to impose the death penalty on those convicted of “offences”

that are not recognizably criminal offences under international human rights law. These include apostasy, adultery, witchcraft and sorcery.

In August 2014, Saudi Arabia executed 26 people in a sudden surge in executions that has persisted since then, with the total number of executions in the first six months of 2015 reaching 102. In the space of less than a year, from August 2014 to June 2015, therefore, the Saudi Arabian authorities executed at least 175 individuals, an average of one person every two days. Of the total number of recorded executions since 1991, executions for drug-related offences constituted 28% and have been steadily rising in the past five years.

Foreign nationals, particularly migrant workers from disadvantaged economic backgrounds who moved to Saudi Arabia from countries in Africa, the Middle East and Asia, comprise a high and disproportionate number of those executed in Saudi Arabia. Of the total 2,208 executions recorded between January 1985 and June 2015, at least 1,072, or some 48.5%, were of foreign nationals. During their trial, their foreign nationality and the fact that they often lack Arabic language skills place them in a particularly disadvantageous position.

Saudi Arabia continues to carry out executions, mostly by beheading but some also by a firing squad, in public and, in some cases, to display executed bodies after death in public. The authorities often fail to inform those under the sentence of death and their families of their imminent execution or to return the bodies of those executed to their families after death.

The situation is compounded by the fundamentally flawed nature of Saudi Arabian legal and judicial safeguards. In terms of the legal provisions, the lack of specificity in the definitions of most crimes render them open to wide interpretation by the judicial authorities. Those authorities also frequently fail to apply both national laws and international human rights law standards during trials. Notably, they too commonly deny detainees the right to a lawyer and to a meaningful appeal. One of the most significant concerns remains the fact that "confessions" extracted under torture, duress or coercion are often the sole evidence in cases of those sentenced to death.

The Saudi Arabian authorities also fail to consistently apply safeguards to ensure that two categories of individuals - juvenile offenders and people with mental and intellectual disabilities - are not subjected to the death penalty. Individuals in both categories have been executed in recent years.

The case of Ali Mohammed Baqir al-Nimr illustrates a number of these concerns. On 27 May 2014 the Specialized Criminal Court in Jeddah convicted him and sentenced him to death for offences committed when he was 16 or 17 years old and which included participating in demonstrations against the government, attacking the security forces, possessing a machine-gun and armed robbery. The court seems to have based its decision primarily on signed "confessions" which Ali al-Nimr claims were extracted under torture and other ill-treatment, and which the judge has refused to look into.

In the past two years, conducting human rights research on Saudi Arabia has become increasingly difficult. As well as continuing to prevent Amnesty International and other international human rights organizations from visiting the country to conduct human rights

research, the Saudi Arabian authorities have taken measures to silence independent activists in a bid to prevent cases and evidence of human rights violations from reaching the outside world.

The Saudi Arabian authorities continue to deny Amnesty International access to the country for research purposes. The organization has therefore had to conduct research for this briefing remotely. It has conducted detailed analysis of over 20 death sentences and executions since 2013. In all these cases, Amnesty International acquired information either directly from those sentenced to death before their execution, their lawyers and legal representatives, or a family member closely following the case. In most of the cases, it was able to analyse available court documents, which included decisions by different courts, charge sheets and, in rare cases, defendants' appeals.

Amnesty International has also reviewed information about executions made available by the authorities through statements released by the Ministry of Interior, including the names of executed prisoners, their nationality, the crimes of which they were convicted, as well as the dates and location of the executions.

Recent government initiatives to introduce legal and judicial reforms, even though they remain inadequate to address the systematic nature of violations in detention and courts, could help to bring Saudi Arabian criminal justice standards closer to those of international law if properly implemented. There is therefore an opportunity for change.

Pending full abolition of the death penalty, Amnesty International recommends that the Saudi Arabian authorities:

- Restrict the scope of the death penalty to intentional killing, in line with international law and standards on its use;
- Stop using the death penalty on anyone under the age of 18 at the time of their alleged offence, in accordance with Saudi Arabia's obligations under the Convention on the Rights of the Child;
- Stop using the death penalty on anyone suspected of suffering from mental and intellectual disabilities;
- Ensure that foreign nationals have adequate access to consular and interpretation services;
- Ensure rigorous compliance in all death penalty cases with international standards for fair trials;
- Ensure that all allegations of torture and other ill-treatment used to extract "confessions" are promptly and impartially investigated, and those found guilty of committing them are held to account.

As Amnesty International is highlighting, the Saudi Arabian authorities can address many of these concerns simply by ensuring application of their own laws and international obligations.

## 2. METHODOLOGY

Research for this briefing involved detailed analysis of over 20 death sentences and executions since 2013. In all these cases, Amnesty International acquired information either directly from those sentenced to death before their execution, their lawyers and legal representatives, or a family member closely following the case. In most of the cases, it was able to analyse available court documents, which included decisions by different courts, charge sheets and, in rare cases, defendants' appeals.

On a number of cases featured in this briefing, and others in the past,<sup>1</sup> Amnesty International had written to the Saudi Arabian authorities seeking clarification on aspects of these cases that it found to be in violation of Saudi Arabian and/or international law, and to invite the authorities to respond to the organization's concerns. It has also repeatedly requested to be allowed to visit Saudi Arabia both to meet the authorities and to conduct human rights research in the country.

Most recently, Amnesty International wrote to the Saudi Arabian Ministry of Interior and Ministry of Justice on 28 July 2015 to raise its long-standing concerns on the death penalty in the country, to seek clarification on a number of legal and procedural issues related to detention and trials in death penalty cases, to bring to their attention human rights violations in relation to cases – including those in this briefing – and to invite them to respond to the organizations' claims and findings. It also proposed meetings with the authorities in Saudi Arabia.

To date, the organization has not received a reply from the Saudi Arabian authorities, either on the substantive issues addressed in this briefing or on the requests for access. However, it continues to seek opportunities to discuss its concerns and recommendations with the authorities and to be allowed to visit the country.

Amnesty International has also reviewed information about executions made available by the authorities through statements released by the Ministry of Interior, including the names of executed prisoners, their nationality, the crimes of which they were convicted, as well as the dates and location of the executions. This information forms the basis of the broader analysis of patterns and statistics highlighted in the following chapters. It is worth noting that these official figures of executions are most likely to be lower than the actual totals of executions

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<sup>1</sup> Other than in public outputs such as urgent action appeals or public statements, Amnesty International has also sent formal letters to the Saudi Arabian authorities over the years raising its concerns on the death penalty in Saudi Arabia and bringing to their attention violations in specific cases. The organization has additionally included concerns on the death penalty in Saudi Arabia in its annual death penalty reports, and in the following two reports on the death penalty in Saudi Arabia: Amnesty International, *Affront to justice: Death penalty in Saudi Arabia* (Index: MDE 23/027/2008), October 2008 (Amnesty International, *Affront to justice*); and Amnesty International, *Defying world trends - Saudi Arabia's extensive use of capital punishment* (Index: MDE 23/015/2001), November 2001.

as activists continue to report unverified information about secret and unannounced executions.

In the past two years, conducting human rights research on Saudi Arabia has become increasingly difficult. As well as continuing to prevent Amnesty International and other international human rights organizations from visiting the country to conduct human rights research, the Saudi Arabian authorities have taken measures to silence local voices and independent activists in a bid to prevent cases and evidence of human rights violations from reaching the outside world (see Chapter 3).

Defendants on death row and their family members are also actively discouraged from contacting international organizations or raising their cases publicly. They are typically deceived into believing that all such attempts to enlist support or help will only complicate things further. They are sometimes given assurances that if they do not challenge the authorities' decisions or violations in the case, such as arbitrary detention and unfair trial, then they might be spared the sword.

On the death penalty particularly, the authorities have also resorted to casting dispersions on the objectives of international human rights organizations researching the topic. The Saudi Arabian authorities typically describe such international organizations as having a "Western" bias and accuse them of working to abolish Shari'a law and weaken Islam. This has meant that those who are sentenced to death and their families have usually been reluctant to share information on their cases with such organizations until they realize that they have been deceived - by which time it is usually too late.

It has been virtually impossible for Saudi Arabian civil society or judges to openly discuss the issue of the death penalty, let alone object to the authorities' narratives on its uses and practice. Lack of freedom of expression and the secret and summary nature of the criminal proceedings continues to stifle public debate.

## 3. BACKGROUND

This chapter provides relevant background on the judicial and legal system in Saudi Arabia, as well as on the human rights situation in the country. It is divided into two parts. The first part provides background on the Saudi Arabian judiciary and justice system, including important judicial and legal reform initiatives in past years, and the extent to which these initiatives have been inadequate to address systematic concerns that apply to the death penalty and are discussed in depth in chapters 4, 5 and 6. The second part discusses Saudi Arabia's human rights environment, particularly the status of its ratification of international treaties and the situation facing independent human rights activists; while they have played a key role in exposing systematic violations pertaining to the administration of criminal justice and monitoring the implementation of initiated reforms, they have experienced a harsh crackdown in recent years, such that, since 2012, most of them have been imprisoned.

### 3.1 THE JUDICIAL SYSTEM AND RECENT DEVELOPMENTS

As an absolute monarchy, Saudi Arabia enjoys no clear separation of powers. All powers of the state are concentrated in the hands of the King. The absolute powers of the King are further delineated in the Basic Law of Governance issued in 1992. There is no freely elected legislative body in the Kingdom of Saudi Arabia. The Shura (consultative) Council, which was also initially formalized in 1992, is an advisory body with no real power, and its 150 members are appointed by the King. Together with the Council of Ministers they can initiate legislation, recommend ratifying international treaties or lodging reservations to specific articles, but ultimately the King has to ratify any new laws.

The King in Saudi Arabia is the supreme judicial authority, appointing judges and retaining the power to grant pardons and to be appealed to directly, despite reforms that saw the creation of a Supreme Court and a number of appeal courts, and despite transferring some powers enjoyed by the Minister of Justice to the Supreme Judicial Council.

In the past two and a half decades, Saudi Arabia's judiciary and justice system have experienced a number of reforms, such as the establishment of the Bureau for Investigation and Public Prosecutions by statutory law in 1989, and the passing of the Basic Law of Governance in 1992, Article 46 of which states: "The judicial authority is an independent power. In discharging their duties, the judges bow to no authority other than that of Islamic Shari'a."<sup>2</sup>

In 2007, then King Abdullah bin Abdul Aziz Al Saud approved an ambitious plan for a new judicial system, including the establishment of a Supreme Court and special commercial, labour, administrative, family and security courts, a more clearly defined separation of powers between the Justice Minister and different judicial bodies, and the codification of penal

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<sup>2</sup> Royal decree A/91, Basic Law of Governance, 1 March 1992.

codes.<sup>3</sup> The plan was embodied in the Law of the Judiciary of 2007.

Among the notable features of the law is the fact that it transferred all relevant administrative prerogatives from the Ministry of Justice to the Supreme Judicial Council, and all the Supreme Judicial Council's judicial prerogatives to the Supreme Court. Such measures are practical steps toward strengthening the independence of the judiciary. The law also defines the relationship of the judicial branch with the Minister of Justice (a member of the executive branch) and the ministry. The previous judicial system tasked the Minister of Justice with administrative oversight of the courts and judges' affairs, while specifying that the post should consult with the Supreme Judicial Council. The new law gives these responsibilities to the Supreme Judicial Council. The Supreme Judicial Council was made responsible for overseeing affairs such as judicial appointments, disciplinary actions, training, leaves of absence, and other matters that had previously been within the Ministry's jurisdiction. The law also clarified that the Minister of Justice should be completely absent from the decision-making circle within the Supreme Court.<sup>4</sup>

Nevertheless, the Saudi Arabian criminal justice system still falls far short of international law and standards particularly in relation to procedures regulating arrest, detention and trials, as well as the treatment of prisoners. Despite the issuing of some statutory laws in areas such as criminal procedure, labour, human trafficking, cyber-crimes and terrorism, the justice system still lacks a criminal code. The Shari'a law-based criminal justice system gives judges wide powers of interpretation, leading, on the one hand, to vast discrepancies in the charges and sentences imposed on defendants in similar cases and, on the other, to the conviction of activists and others on charges that have no basis in either a statutory law or Shari'a law.<sup>5</sup>

Judges base their interpretation of Shari'a law on the Hanbali school of Sunni jurisprudence for all criminal and civil cases and for family, contract and commercial matters. Article 48 of the Basic Law of Governance specifies that "The Courts shall apply rules of the Islamic Sharia in cases that are brought before them, according to the Holy Quran and the Sunna."<sup>6</sup> Where a law or a decision cannot be derived from Shari'a, the King may issue royal decrees that become statutory laws, as long as these do not conflict with Shari'a precepts. Article 48 of the Basic Law of Governance obliges the courts to apply Shari'a rules "according to laws which are decreed by the ruler in agreement with the Holy Quran and the Sunna."<sup>7</sup> Saudi Arabia has published hundreds of such statutory laws to regulate areas where Shari'a precedents or interpretations have little bearing, such as traffic and banking laws.<sup>9</sup>

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<sup>3</sup> Amnesty International, *Affront to justice*, pp. 5-6.

<sup>4</sup> Amnesty International, *Affront to justice*.

<sup>5</sup> Amnesty International, *Affront to justice*, pp. 27-29.

<sup>6</sup> Royal decree A/91, Basic Law of Governance, 1 March 1992.

<sup>7</sup> Royal decree A/91, Basic Law of Governance, 1 March 1992.

<sup>8</sup> Also see, Human Rights Watch, *Precarious justice: Arbitrary detention and unfair trials in the deficient criminal justice system of Saudi Arabia*, March 2008, p. 14.

<sup>9</sup> Important regulations included the Public Security Law (1950), the Labour Law (1969, updated 2005), the Law of the Judiciary (1975, updated October 2007), and the Law of the Commission to Promote Virtue and Prevent Vice (1980, updated).

To a large extent, both Shari'a and statutory laws are vague on the vast majority of definitions of crimes and their punishment. In the absence of codified laws and a sufficiently precise penal code, the Saudi Arabian justice system violates core principles of international law, including the principle of legality.

This principle is anchored in Article 11 of the Universal Declaration of Human Rights, which states: "No one shall be held guilty of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed."<sup>10</sup>

The principle of legality, as established in international law, requires that the imposition of criminal liability be limited to clear and precise provisions so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation. The laws setting forth criminal acts must be accessible to the persons concerned and be formulated with sufficient precision to enable defendants to have been able to foresee, with legal advice if necessary, to a reasonable degree, the consequences that a given action might entail.

The principal of legality lies at the heart of the rule of law and provides an important safeguard against abuse. Vague and inaccessible laws violate this principle and thus undermine the rule of law.

Shari'a law as practised in Saudi Arabia is clear on *hudud* (fixed punishments considered as divinely ordained) and *qisas* (retribution) punishments, however it leaves to the discretion of the judge punishments for the majority of contemporary criminal cases that it considers to fall under the category of *ta'zir* crimes, in which the judge has discretion over the definition of what constitutes a crime and over the sentence, without being bound by judicial precedent.

The absence of a rule to abide by judicial precedent adds in fact a further layer of arbitrariness to sentences and punishments issued by different judges for the same type of offences across cases.

The Saudi Arabian justice system lacks basic safeguards of justice to ensure the right of all to a fair trial. Among other flaws, Saudi Arabian law fails in granting the right of the accused to access legal counsel from the outset of detention and the right to a public trial. Moreover, confessions obtained under duress or as a result of torture or other ill-treatment are commonplace and frequently admitted as evidence in trial (see Chapter 6 for details of lack of safeguards as they relate to the death penalty).

### 3.2 THE HUMAN RIGHTS ENVIRONMENT

No human rights organizations are tolerated in Saudi Arabia other than the National Human Rights Commission, a governmental body established in 2005, and the National Society for

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<sup>10</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 11(2), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 19 August 2015].

Human Rights, which, while having a less formal role, was also formed by a governmental decree, in 2004. Some local human rights NGOs have attempted to register themselves, but have not been permitted to do so and are forced to operate without a licence.<sup>11</sup> Almost all of them have seen their members arrested and detained under different pretexts; one example is the Saudi Civil and Political Rights Association (ACPRA), all of whose 15 founding members are either on trial or have been tried and sentenced for disobeying the ruler, among other charges.<sup>12</sup>

Saudi Arabia is yet to pass a law of associations despite a draft law receiving the approval of the Shura Council in 2008. In the absence of such a law, human rights organizations have not been able to obtain legal recognition, and their members can be, and have been, arrested and charged with "forming an unlicensed organization". Most of the country's independent human rights activists have been charged and sentenced to long prison terms partly on these grounds.<sup>13</sup>

Activists, victims of human rights violations and their families have been intimidated and threatened for contacting international organizations or UN bodies with the aim of sharing or exposing human rights violations in the country. Others have been charged with "contacting foreign bodies..." and "contacting Amnesty International..." to "spread false news about the Kingdom" and to "harm its reputation abroad". The authorities have furthermore encouraged and promoted misunderstandings of international human rights organizations with the apparent aim of discouraging Saudi Arabians from contacting them.<sup>14</sup>

The coming into force of a new counter-terror law, the Law for the Crimes of Terrorism and its Financing, in February 2014 has exacerbated the situation. The law considers contacting international organizations "to harm the reputation of the Kingdom and its standing" and a number of other vaguely defined acts to be "terrorist crimes".<sup>15</sup>

The authorities have at the same time continued to maintain a tight control over media and journalists, while actively tracking online activism and punishing bloggers, and anyone else who dares to use email and social media to share cases and information on human rights violations.<sup>16</sup>

In 2013, the authorities forcibly closed down all existing independent human rights organizations and ordered them to shut down their websites and online presences. These included ACPRA (forced to shut down in March 2013), the Union for Human Rights (forced

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<sup>11</sup> Amnesty International, *Saudi Arabia: Unfulfilled promises* (Index: MDE 23/018/2013), May 2013, p. 5.

<sup>12</sup> Amnesty International, *Saudi Arabia's ACPRA: How the Kingdom silences its human rights activists* (Index: 23/025/2014), 10 October 2014 (Amnesty International, *Saudi Arabia's ACPRA*).

<sup>13</sup> Amnesty International, *Saudi Arabia's ACPRA*, p. 5.

<sup>14</sup> Amnesty International, *Saudi Arabia must release all prisoners of conscience immediately and unconditionally irrespective of royal pardon conditions* (Index: MDE 23/014/2015), 6 February 2015.

<sup>15</sup> Amnesty International, *Saudi Arabia: Counter-terror law continues to provide legal cover to silence dissent a year on* (Index: MDE 23/012/2015), 2 February 2015.

<sup>16</sup> Amnesty International, *Saudi Arabia's ACPRA*, pp. 8-9.

to shut down in April 2013), the Adala Center for Human Rights (forced to shut down in May 2013) and the Monitor for Human Rights in Saudi Arabia (ordered to shut down in October 2013).<sup>17</sup>

In addition to the systematic repression of the rights to freedom of expression and freedom of association, a long-standing ban on demonstrations has practically suppressed legitimate forms of public expression and peaceful assembly.<sup>18</sup>

Saudi Arabia has only ratified a small number of international human rights treaties. These include the Convention on the Rights of the Child (ratified in 1996), the International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1997), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture, ratified in 1997), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 2000), the Convention on the Rights of Persons with Disabilities (ratified in 2008), the Optional Protocol to the Convention on the Rights of Persons with Disabilities (ratified in 2008), and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (ratified in 2011). Since 2009 it has also been a state party to the Arab Charter on Human Rights.

Saudi Arabia has lodged prohibitive reservations to all the international conventions it has ratified, with the exception of the Convention on the Rights of Persons with Disabilities and its Optional Protocol. In very similar terms, Saudi Arabia has formulated a reservation stating that it is not under an obligation to observe those terms of the conventions it has ratified that it finds contradictory with Islamic law. Such reservations do not clearly define the extent to which Saudi Arabia accepts its international obligations and render them vulnerable to violation.

Recent textual and institutional reforms of legal procedures and the judiciary have brought no discernible improvement as systematic violations by the security forces, prison authorities and courts have continued with impunity, as explained in the next chapters. Furthermore, some of these changes have actually had a negative effect on the country's human rights environment. The authorities created a new specialized security court in 2008, the Specialized Criminal Court, but are yet to specify its procedures. It has since then been used to prosecute human rights activists, many of whom continue to refuse to recognize the legitimacy of the court. The coming into force of the Law for the Crimes of Terrorism and its Financing in February 2014, along with the subsequent issuing of a related executive decree by the Ministry of Interior on 7 March 2014, vaguely and broadly defined "terrorist crimes" such that their scope can include peaceful acts of free expression, association and assembly.<sup>19</sup> The executive decree, for example, labels as "terrorist crimes" activities such as "calling for, participating in, publicizing, or inciting protests, demonstrations, gatherings, or group petitions", "attending conferences, lectures, or gatherings inside or outside [the

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<sup>17</sup> Amnesty International, *Saudi Arabia's ACPRA*, p. 8.

<sup>18</sup> Amnesty International, *Saudi Arabia's ACPRA*, p. 4.

<sup>19</sup> Amnesty International, *Saudi Arabia: Counter-terror law*.

country] that target the security and stability of the country and incite strife in society”, “calling for atheist thought” and “inciting states, or bodies, or international organizations against the Kingdom”.<sup>20</sup> The new cyber-crime law has similarly provided a legal basis for silencing human rights activists and other critical voices online and on social media.<sup>21</sup>

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<sup>20</sup> Amnesty International, *Saudi Arabia: Counter-terror law*.

<sup>21</sup> Amnesty International, *Saudi Arabia: Counter-terror law*.

## 4. SCOPE OF THE DEATH PENALTY IN SAUDI ARABIAN LAW

This chapter analyses the scope of the death penalty in Saudi Arabian laws, providing a description of the main categories of crimes punishable by death and the applicability of pardons and commutations in Saudi Arabia to some of them.

The Shari'a-based rules that provide for the use of the death penalty are *hudud* (divinely prescribed fixed offences and punishments, singular: *hadd*), *qisas* (retribution), and *ta'zir* (discretionary punishments for offences that have no fixed punishment under *hudud* or *qisas*).

In Saudi Arabia, the death penalty is a *hadd* for the following offences: "apostasy", "adultery" by a married person (for which it is stipulated that the sentence should be carried out by stoning), and rebellion and highway robbery (which is defined through a generic reference to violent criminal acts against persons and property and generation of fear in the community). In the case of rebellion and highway robbery, the punishment is death followed by crucifixion if the crime resulted in the death of the victim.

*Hudud* are considered divine punishments and are not subject to a pardon. Under *qisas*, while the death penalty is prescribed for intentional murder, relatives of the murder victim have the right to decide if the offender should be executed or pardoned, in which case the death penalty is dropped, sometimes in return for compensation.

However, the distinctions between these two categories of offences are not always clear, as there is no unified written code of crimes and punishments. For example, premeditated murder or assassination can be classified as highway robbery and rebellion (*hudud*) instead of *qisas* even if the killing does not occur in the course of a robbery or rebellion.

The death penalty can be also invoked at the discretion of a judge under *ta'zir*, on the grounds of the severity of the act or the character of the offender. Death sentences against people on charges of practising magic or "witchcraft" are examples of *ta'zir* rulings.

In relation to crimes punishable under *ta'zir*, judges have excessive discretionary powers in the categorization of offences and imposition of the death penalty. For example, theft, which has a fixed punishment under *hadd* of amputation (of the right hand, or the right hand and left foot, known as cross amputation, if it is considered to be a highway robbery offence), can also be punished by death under *ta'zir* if the judge decides that the offence deserves a harsher sentence.

Furthermore, crimes falling under the *ta'zir* category do not require proof of guilt beyond reasonable doubt, unless such crimes have been clearly codified in the form of a statutory law and there is no room for interpretation. This was recently confirmed by Saudi Arabia's

Supreme Court in a statement dated 1 February 2015.<sup>22</sup> For *ta'zir* crimes, suspicion alone can serve as the basis of evidence, even for crimes punishable by death under *ta'zir*, such as drug-related offences. In such cases, the judge is granted the right to use discretion to establish that the evidence supports the accusations against a suspect and that it is enough to punish someone to death.

Recent statutory laws, notably the Law of Combating Drugs and Psychotropic Substances and the Law for the Crimes of Terrorism and its Financing, have clarified further that the scope of the death penalty includes crimes punishable under *ta'zir*, such as drug-related offences and "terrorist crimes". These crimes, their definitions and punishments, remain vague in these laws. Judges are expected to use their discretionary powers to determine the nature and severity of a drug-related or terrorism-related offence and the appropriate punishment for it within the parameters set out in the two laws (see Chapter 5).

#### 4.1 CRIMES AND OFFENCES THAT DO NOT MEET THE THRESHOLD OF "MOST SERIOUS CRIMES" PUNISHABLE BY DEATH

While international law allows for the use of the death penalty in certain circumstances, it imposes clear restrictions on its use, establishes safeguards of due process and sets abolition of the death penalty as the goal to be achieved for the full enjoyment of the right to life, as recognized in Article 3 of the Universal Declaration of Human Rights.

The international community has further adopted the Safeguards guaranteeing protection of the rights of those facing the death penalty (UN Safeguards), which set out the most basic guarantees to be observed in all death penalty cases. The UN Safeguards were adopted by the UN Economic and Social Council (ECOSOC) and endorsed, by consensus, by the UN General Assembly in 1984.<sup>23</sup>

Among other restrictions, international law and standards have clearly limited the scope of the death penalty to "most serious crimes", a term which has been most recently interpreted to mean "intentional killing".<sup>24</sup> Saudi Arabia, however, continues to apply the death penalty to a wide range of non-lethal crimes that do not meet the threshold of the "most serious crimes" under international law. These include drug-related crimes, armed robbery, kidnapping, and rape.

By far, the largest number of executions for offences not considered "most serious crimes" in international law is for drug-related crimes (see next chapter).

Saudi Arabia also continues to apply the death penalty to "offences" that are not

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<sup>22</sup> The Kingdom of Saudi Arabia, the Supreme Court, Decision 21/M, 17 February 2015.

<sup>23</sup> UN Economic and Social Council resolution 1984/50 of 25 May 1984, endorsed by UN General Assembly resolution 39/118 of 14 December 1984. The Economic and Social Council recommended further measures aimed at strengthening the protection of the rights of those facing the death penalty in its subsequent resolution 1989/64 of 24 May 1989.

<sup>24</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 August 2012, A/67/275, para.66.

recognizably criminal offences under international law. These include apostasy, adultery, witchcraft and sorcery.

In 2014, one execution by beheading was recorded for “witchcraft” and “sorcery”. The most recent case of execution for “sorcery” for which Amnesty International has been able to collect detailed information dates back to September 2011 (see case box below). Amnesty International is not aware of cases of women being executed for “adultery” in recent years; such executions would be carried out by stoning.

## ABDUL HAMID BIN HUSSAIN BIN MOUSTAFA AL-FAKKI

Abdul Hamid Bin Hussain Bin Moustafa al-Fakki, a Sudanese man of around 36 years old, was arrested on 8 December 2005 in the city of Medina by the *Mutawa'een* religious police, officially called the Committee for the Propagation of Virtue and Prevention of Vice (CPVPV).

A man working for the CPVPV allegedly entrapped Abdul Hamid al-Fakki by asking him to produce a spell that would lead to the man's father separating from his second wife and returning to his first wife, the man's mother. Abdul Hamid al-Fakki apparently accepted to do this in exchange for 6,000 Saudi Arabian riyals (approximately US\$1,600).

Abdul Hamid al-Fakki apparently took an advance of 2,000 riyals from the man, together with the names of the man's father and the father's second wife, as well as the names of their mothers, and agreed to meet the man afterwards to deliver his work. He went to the agreed meeting place and was seen by CPVPV agents getting into the man's car. He delivered his work, consisting of nine pieces of paper with codes written on them with saffron, and received the rest of the money. He was then arrested while in possession of bank notes whose serial numbers had been recorded by the CPVPV.

Abdul Hamid al-Fakki was questioned and apparently beaten, and is believed to have “confessed” to carrying out acts of “sorcery” in a bid to solve the family problems of the man who had approached him.

Abdul Hamid al-Fakki was first brought before a summary court, which usually deals with minor offences, but the court refused to try his case on the ground that it did not have the relevant jurisdiction. As a result, the case was referred to the General Court in Medina which sentenced him to death on 27 March 2007 for “sorcery”. He had no legal assistance and very little is known about his trial proceedings as they were held in secret.

He was executed in Medina on 19 September 2011.<sup>25</sup>

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## 4.2 PARDONS AND COMMUTATIONS

As mentioned above, relatives of victims can pardon the convicted person with or without *diya* (compensation or “blood money”) if the crime falls under *qisas*. Pardons by victims' relatives must be certified by courts of law. This does not automatically mean, however, that a convicted person is spared the executioner's sword since judges have the power to invoke

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<sup>25</sup> Amnesty International urgent action, *Sudanese man executed in Saudi Arabia*, UA 114/10 (Index: MDE 23/024/2011), 20 September 2011.

*hadd* and consider the murder as harmful to public order in addition to it being a crime against the victim and his family.

This system of pardon does not appear to have a formal structure and seems to vary from region to region. For example, in the region of Mecca, a Pardon and Reconciliation Committee was founded by the then governor, Prince Abdulmajeed Bin Abdul Aziz, in around 2001. The committee claims to have mediated and facilitated successful negotiation of pardons and saved over 100 people from execution. In most other regions, the system appears to be ad hoc and can be initiated by families, tribal leaders, or government officials at the local, regional or national level. The *diyya* itself has no fixed value and depends on many variables, including the reasons for and methods of the murder, the status of the murder victim, his or her family or tribe, and regional traditions and customs; a judge can express an opinion on the value, but it is the family of the victim who decides.<sup>26</sup>

Beyond *qisas*, the King of Saudi Arabia has the sole right to pardon a person sentenced to death, but only if the crime is not punishable under *hudud*, because such a pardon would be considered un-Islamic. In practice therefore, the King has the right to pardon all crimes punishable under *ta'zir*, which include around half of the crimes for which persons are known to have been executed in Saudi Arabia in recent years.<sup>27</sup>

International law establishes for anyone sentenced to death the right to seek the pardon or commutation of the death sentence and clearly states that such pardons or commutations may be granted in all cases.<sup>28</sup> The Human Rights Committee and other human rights mechanisms have expressed concerns at the exercise of the state power to pardon and commute death sentences exclusively by the victim's family on the basis of financial compensation, as well as at the removal from the state of its responsibility to comply with its obligations under international law, and found the *diyya* practice contrary to international law.<sup>29</sup>

Moreover, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has raised concerns in relation to the discriminatory nature of the *diyya* practice:

*"[d]iscrimination on the basis of wealth, social origin or property is a problem in the sense that a wealthy offender can effectively buy freedom in a way which is not open to poor offenders. Diya is also potentially discriminatory based on the status of the victim.*

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<sup>26</sup> Amnesty International, *Affront to justice*, pp. 8-9.

<sup>27</sup> The estimate of "around half" is mainly based on official statements released by the Saudi Arabian Ministry of Interior, in addition to media reports. Official statements have been more reliable and accessible in recent years, but they also most likely to underrepresent the real execution numbers since Amnesty International is aware of executions that have not been reported by official statements.

<sup>28</sup> UN Safeguard No. 7 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in resolution 1984/50 on 25 May 1984 and endorsed, by consensus, through UN General Assembly resolution 39/118 of 14 December 1984; and Article 6.4 of the International Covenant on Civil and Political Rights.

<sup>29</sup> Human Rights Committee, Concluding observations on Yemen, UN doc. CCPR/CO/84/YEM, 9 August 2005, para. 15.

*Thus it has been shown that the amount of diya can be less for female victims than for male victims, and less for non-Muslim victims than for Muslim victims, with further discrimination between recognized religious minorities (dhimmah) and non-recognized minorities."*

He also added that

*"entrusting the conduct of an execution to inexperienced hands and, even more problematically, to those who have reason to bear a grudge against the convicted person, greatly enhances the likelihood of torture or cruel, inhuman or degrading treatment being applied to the convict."<sup>30</sup>*

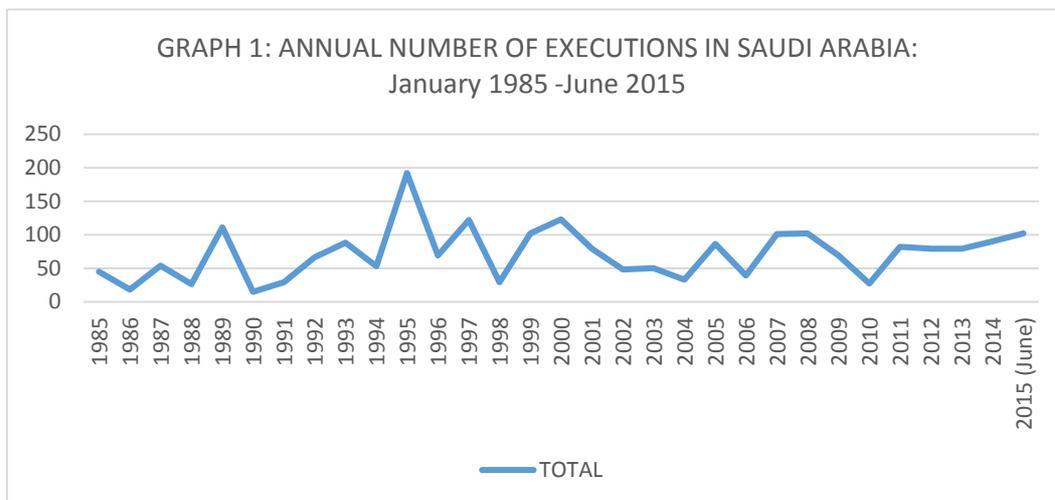
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<sup>30</sup> Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/61/311, 5 September 2006, paras 60-62.

## 5. USE OF THE DEATH PENALTY IN SAUDI ARABIA

In August 2014, Saudi Arabia executed 26 people in a sudden surge in executions; by contrast, between 1 January and 30 June 2014 it had executed a total of 17 people. The surge in executions has persisted since then, with the total number of executions in the first six months of 2015 reaching 102. In the space of less than a year, from August 2014 to June 2015, therefore, the Saudi Arabian authorities executed at least 175 individuals, an average of one person every two days.

As the chart below demonstrates, it is common for there to be sudden surges and drops in recorded executions in Saudi Arabia.<sup>31</sup> Annual figures for the last three decades show sudden rises from one year to the next and within the 12 months of a year. The lowest annual figure for recorded executions between 1985 and 2015 goes back to 1986 when a total of 18 persons were executed. Since 2010, when a relatively low number of 27 persons were executed during the year, the rate of executions has been on the rise.

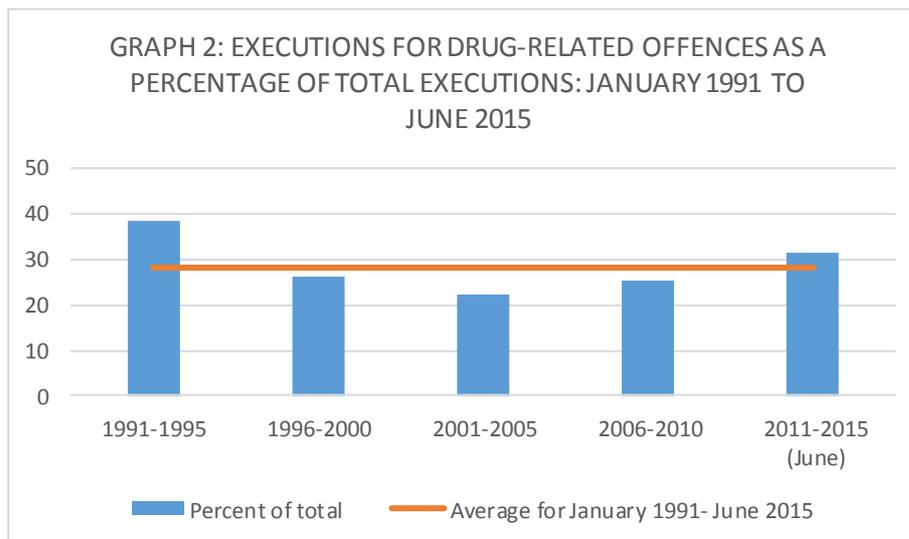


### 5.1 DRUG-RELATED CRIMES

Of the total number of recorded executions between January 1991 and June 2015, executions for drug-related offences, which form the largest category of non-lethal crimes under *ta'zir* for which the death penalty is invoked in Saudi Arabia, constituted 28%. The

<sup>31</sup> Data for all four graphs in this chapter comes from official statements by the Ministry of Interior following an execution, and in some instances media reports where such official statements are not available.

number of executions for drug-related offences dropped below the average for the period since 1985 between 1996 and 2010, but has seen a steady rise in the past five years.



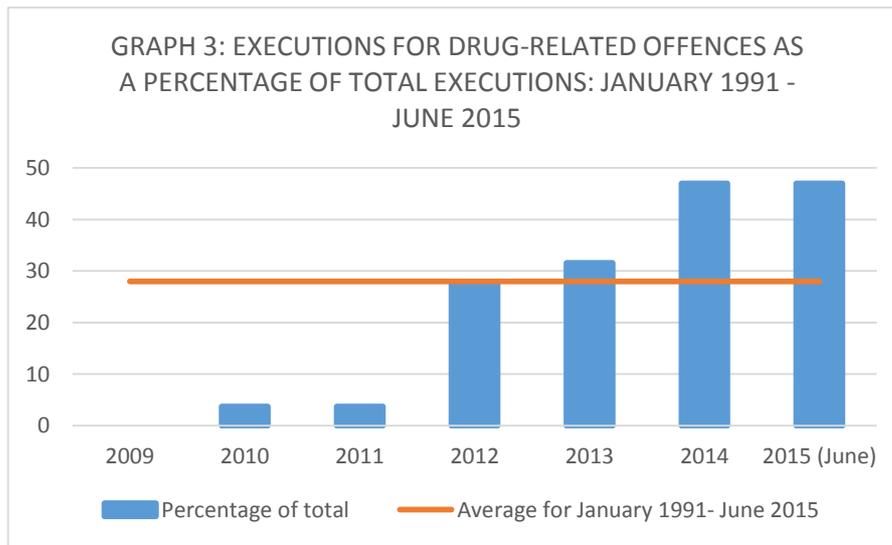
The past three years have seen a significant rise in executions Amnesty International recorded for drug-related offences. Whereas in 2010 and 2011, less than 4% of recorded executions for that year were for drug-related offences, in 2012 the equivalent figure rose to almost 28%, followed by 32% in 2013. In 2014 and 2015 (up to June), the percentage of recorded executions that were for drug-related offences was 47% for each period.

It is difficult to single out any specific factor that might have caused the significant rise in drug-related executions. The Saudi Arabian authorities have repeatedly argued that the death penalty is the most effective means to eradicate the problem of illegal drugs, most recently in 2007.<sup>32</sup> However, there is no evidence to support the argument that the death penalty prevents crime more effectively than other punishments. The most comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded:

*"[R]esearch has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as*

<sup>32</sup> Amnesty International, *Affront to justice*, p. 10. Additionally, at present, such a message of deterrence is also included in the announcements of the Ministry of Interior following an execution. These announcements typically read "By announcing this [execution] the Ministry of Interior underlines to everyone the determination of the government of the Custodian of the Two Holy Mosques, may Allah protect him, to combat all types of drugs because of the gross harm they cause to individuals and to the society, and to harshly punish all violators. And at the same time it warns anyone tempted to carry out such actions that the Shari'a punishment will be his fate."

*a whole still gives no positive support to the deterrent hypothesis*".<sup>33</sup>



Drug-related offences are punishable by death under *ta'zir*, whereby the appropriate punishment is decided at the discretion of the trial judge, based on parameters set by the Law of Combatting Drugs and Psychotropic Substances, issued by Royal Decree M/39 on 13 August 2005. According to Article 37 of the law, most drug-related crimes are punishable by death. These include "smuggling", "receiving drugs from a smuggler", "importing, exporting, manufacturing, producing, transferring, extracting, growing, or receiving drugs and psychotropic substances with the intention of promoting its use", and "consensually participating in committing all the previous acts".<sup>34</sup> The same article adds that courts can impose, instead of the death penalty, sentences of at least 15 years in prison, flogging and a fine of at least 100,000 Saudi Arabian riyals (approximately US\$27,000) on those convicted of these offences.<sup>35</sup>

Article 39 of the same law states that those convicted of drug possession can be sentenced to between two and five years in prison, flogging, and a fine ranging between 3,000 and 30,000 Saudi Arabian riyals (approximately US\$800 and US\$8,000 respectively), if the drug in their possession is not intended for trading, promotion or personal use. Article 41 adds that those who are caught possessing drugs for personal use can be sentenced to

<sup>33</sup> Roger Hood, "The question of the death penalty and the new contributions of the criminal sciences to the matter: a report to the United Nations Committee on Crime Prevention and Control", UN Doc. E/AC.57/1988/CRP.7, 1988. The survey was last reviewed and published commercially as Roger Hood and Carolyn Hoyle, "The Death Penalty: A Worldwide Perspective", Oxford, Clarendon Press, Fifth edition, 2014.

<sup>34</sup> Royal Decree M/39, Law of Combatting Drugs and Psychotropic Substances, 13 August 2005, pp. 17-18.

<sup>35</sup> Royal Decree M/39, Law of Combatting Drugs and Psychotropic Substances, 13 August 2005, pp. 17-18.

between six months and two years in prison.<sup>36</sup>

## FOUR MEN IN NAJRAN



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On the morning of Monday 18 August 2014, two sets of brothers from the same extended family were executed in the south-western city of Najran after being convicted of “receiving large quantities of hashish”.<sup>37</sup>

The four executed men – brothers Hadi bin Saleh Abdullah al-Mutlaq and Awad bin Saleh Abdullah al-Mutlaq, along with brothers Mufrih bin Jaber Zayd al-Yami and Ali bin Jaber Zayd al-Yami – were arrested and detained on separate occasions by members of the Ministry of Interior’s General Directorate of Investigations (known as *al-Mabahith*) after their alleged offence in 2007.

The men claimed to have been tortured during interrogation, including through beatings and sleep deprivation, in order to extract false “confessions” to link them to the crimes. They were referred to trial and sentenced to death largely on the basis of these “confessions”.<sup>38</sup>

The four relatives were executed despite desperate last-minute efforts from family members to alert the world to their plight. Relatives of the men contacted Amnesty International four days before their execution asking for help amid fears that the executions were imminent. Amnesty International immediately sought further information on the case from the relatives, but within hours the team was informed that the family of the four men had received a phone call from Ministry of Interior officials warning them to stop contacting Amnesty International.<sup>39</sup>

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## 5.2 FOREIGN NATIONALS AND THE DEATH PENALTY

Foreign nationals, particularly migrant workers from disadvantaged economic backgrounds who moved to Saudi Arabia from countries in Africa, the Middle East and Asia, comprise a high and disproportionate number of those executed in Saudi Arabia. During their trial, their foreign nationality and the fact that they often lack Arabic language skills place them in a particularly disadvantageous position.

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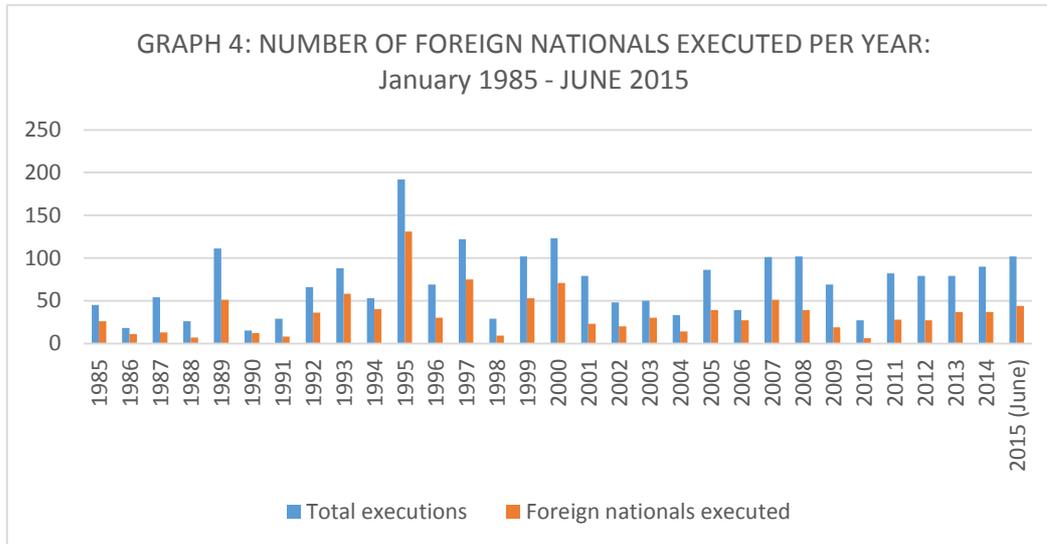
<sup>36</sup> Royal Decree M/39, Law of Combatting Drugs and Psychotropic Substances, 13 August 2005, p. 18.

<sup>37</sup> The description of the crime for three of the four changed from “drug-smuggling” to “receiving large quantities of hashish” at the request of the case judge in the Supreme Court (the Supreme Court, “Point of View” 1/1/115, 2 April 2013). Documents reviewed for the case also include the decision by the court of first instance: Ministry of Justice, the General Court of Najran, Court Verdict 2/2, 2 September 2012.

<sup>38</sup> Information received by Amnesty International from family members of the four men on 14 August 2014.

<sup>39</sup> Amnesty International press release, *Saudi Arabia: Four family members executed for hashish possession amid ‘disturbing’ surge in executions*, 18 August 2014.

Of the total 2,208 executions recorded between January 1985 and June 2015, at least 1,072, or some 48.5%, were of foreign nationals. In other words, almost half of all executions recorded by Amnesty International in Saudi Arabia in this period were of foreign nationals and data from 2015 suggests that this trend is continuing. According to Saudi Arabia's Central Department of Statistics and Information, the estimated number of foreign nationals living in Saudi Arabia in 2014 is slightly over 10 million, out of a total population of approximately 30 million, which works out as 33%.<sup>40</sup>



This disproportionate use of the death penalty against foreign workers, who are often migrant workers from disadvantaged economic backgrounds, is a long-standing problem in Saudi Arabia.<sup>41</sup> Two main factors sustain this situation. Firstly, foreign workers are often alone in a foreign land with no relatives to turn to for help and limited or no consular support, and generally lack the language skills and other knowledge to understand the procedures against them and mount an adequate defence. Secondly, they are much less likely to receive a pardon.<sup>42</sup> The situation is also agonizing for their relatives, who are often unable to ascertain the fate of their loved ones.

Article 36 (b) of the Vienna Convention on Consular Relations, which Saudi Arabia ratified in 1988, states that, if the prisoner so requests,

<sup>40</sup> The Kingdom of Saudi Arabia, Central Department of Statistics and Information, *Estimates of population by sex and nationality*, available at: [http://www.cdsi.gov.sa/english/index.php?option=com\\_docman&Itemid=160](http://www.cdsi.gov.sa/english/index.php?option=com_docman&Itemid=160) [last accessed on 19 August 2015].

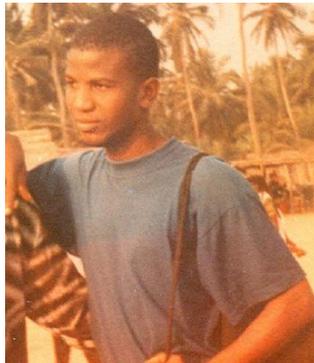
<sup>41</sup> Amnesty International, *Affront to justice*, p. 30.

<sup>42</sup> For more information and examples see, Amnesty International, *Affront to justice*, pp. 30-36.

*“the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph”.*<sup>43</sup>

International law guarantees the right of everyone charged with a criminal offence to the assistance of an interpreter, free of charge, if he or she does not understand or speak the language used in court.<sup>44</sup> Interpretation services must be made available to non-Arabic speaking defendants if they are to exercise effectively their rights at all stages of the judicial process. However, the Law of Criminal Procedure does not appear to recognize this necessity. It only makes provisions for such services at the trial stage, under Article 172. Given the secrecy that shrouds interrogations, adequate and independent interpretation facilities at this stage can virtually spell life or death for those facing death penalty charges. Principle 14 of the Basic Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that a person who does not understand or speak the language used by the authorities responsible for their arrest, detention or imprisonment must promptly receive information that they can understand about their rights, including the right to be informed of the reasons for arrest and any charges against them.<sup>45</sup>

## SULIAMON OLYFEMI



Suliamon Olyfemi, a Nigerian national, was sentenced to death after an unfair trial in 2004-2005 in connection with the killing of a policeman in 2002. He continues to maintain his innocence. According to reports, on 28 September 2002, a group of men, among them one policeman, arrived in an area where many African nationals worked as car cleaners. An argument escalated into a fight and the policeman was killed. The following day, security forces carried out mass arrests in the area.

Suliamon Olyfemi and 12 other Nigerian men were tried in connection with the policeman's death. They did not have legal representation and apparently were not provided with adequate interpretation assistance during interrogation and trial. They were unable, therefore, to understand the trial proceedings, which were conducted in Arabic. During interrogation, they were reportedly instructed by the police to sign with their fingerprints statements that they could not read and whose contents were not clear to them. There is

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<sup>43</sup> United Nations, Vienna Convention on Consular Relations, p. 15.

[http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf) (last accessed on 8 August 2015).

<sup>44</sup> Including under Article 14(3) of the International Covenant on Civil and Political Rights and Article 40(2) of the Convention on the Rights of the Child.

<sup>45</sup> See UN Doc. A/RES/43/173, “Body of Principles for the protection of all persons under any form of detention or imprisonment”, 9 December 1988.

concern that these statements contained “admissions” that were then used as evidence against them in their trial. Some of the men have allegedly been tortured in detention.

All 13 were convicted; Suliamon Olyfemi was sentenced to death and the others were sentenced to prison terms and flogging. He remains at risk of imminent execution as he has exhausted all levels of appeal.<sup>46</sup>

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According to Shari'a law as practised in Saudi Arabia, anyone under sentence of death for a conviction of murder may appeal to the heirs of the victim for pardon and reconciliation and avoid execution. In practice, only those able to influence the victim's relatives through power or money (or a combination of both), through kinship or friendship or through good fortune succeed in obtaining a pardon. Migrant workers typically lack relationships and resources that could facilitate the issuing of a pardon, and are therefore in the great majority of cases unable to obtain one. This conclusion is partly based on a previous Amnesty International analysis of 104 cases of prisoners who benefited from pardon between 2000 and 2008.<sup>47</sup> Of the 104 cases analysed, 10 were foreign nationals, 92 were Saudi Arabians and two were of unknown nationality. Amnesty International also examined media coverage of the process leading to pardons in dozens of other death penalty cases in different parts of the country since 2008.

### 5.3 EXECUTIONS IN PUBLIC AND WITHOUT NOTICE

#### PUBLIC EXECUTIONS

Several UN human rights bodies have called for an end to public executions. Resolution 2005/59 adopted by the UN Commission on Human Rights on 20 April 2005 urged all states that still practise the death penalty “to ensure that where capital punishment occurs, it shall not be carried out in public”.<sup>48</sup> In his 2012 interim report, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called on states to refrain from carrying out executions in public or in any other degrading manner; end the practice of secret executions; and end the practice of executions with little or no prior warning given to condemned prisoners and their families.<sup>49</sup> In its Concluding Observations on the report submitted by the Nigerian authorities on its implementation of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee found that “public executions are also incompatible with human dignity”.<sup>50</sup>

Saudi Arabia continues to carry out executions, mostly by beheading but some also by a firing

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<sup>46</sup> Amnesty International, *Affront to justice*, pp. 2-3.

<sup>47</sup> Amnesty International, *Affront to justice*, p. 33.

<sup>48</sup> Office of the High Commissioner for Human Rights, *The question of the death penalty, Human Rights Resolution 2005/59*, 20 April 2005, para. 7(h), available at [ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2005-59.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-59.doc) (last accessed 9 August 2015).

<sup>49</sup> UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Note by the Secretary-General*, 9 August 2012, A/67/279, para. 40, available at: <http://www.refworld.org/docid/509a69752.html> (last accessed 9 August 2015).

<sup>50</sup> UN Doc. CCPR/C/79/Add.65 (1996).

squad, in public. Public executions typically take place either in the public square of a town or city, or in other spaces accessible to the public.

Saudi Arabia also continues to display executed bodies after death for crimes such as *haraba* (banditry) that result in the death of the victim. This typically takes the form of tying the beheaded body together with the head in a bag to an elevated position on a post in a public square.

Despite the public nature of these events, the Saudi Arabian authorities prevent those attending executions from recording and disseminating photos or videos of them, arguing that such recordings violate the dignity of the executed person and their family. Until very recently, the authorities did not actively enforce this ban, but, in January 2015, a security officer apparently filmed and leaked the video footage of the public execution of a Burmese woman convicted of killing her stepdaughter that drew worldwide condemnation. The video footage of the incident showed the woman begging for her life just before being beheaded, as well as the execution itself. The authorities subsequently announced that they had arrested the security officer who had recorded the video and would be putting him on trial under the country's cyber-crime laws.

#### TRANSPARENCY AND NOTIFICATION OF EXECUTIONS

Transparency on the use of the death penalty is among the fundamental safeguards of due process that prevent the arbitrary deprivation of life. Making information public with regard to legislation providing for the death penalty as well as its implementation allows for an assessment of whether fair trial and other international standards are being respected. In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty "to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution".<sup>51</sup>

Transparency in the use of the death penalty also requires that convicted prisoners and their lawyers are officially informed of the date of execution in sufficient time to take any further recourse available at the national or international level and to prepare themselves.<sup>52</sup>

The families of anyone suspected or convicted of a crime punishable by death have the right to visit them. They also have the right to information about the progress of judicial and clemency proceedings. They have the right to be officially informed in advance of an execution so as to allow for a last visit or communication with the condemned person, and to be informed of the execution.<sup>53</sup> The bodies of executed individuals should be returned to the

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<sup>51</sup> Office of the High Commissioner for Human Rights, "The question of the death penalty", Human Rights Resolution 2005/59, para. 5(c).

<sup>52</sup> Human Rights Committee, *Pratt and Morgan v Jamaica* (210/1986 and 225/1987), UN Doc. Supp. No. 40 (A/44/40) at 222 (1989), para. 13.7.

<sup>53</sup> Human Rights Committee, *Schedko v Belarus*, UN Doc. CCPR/C/77/D/886/1999 (2003), para. 10.2.

family for private burial.<sup>54</sup>

The Saudi Arabian authorities, however, routinely fail to inform families of the imminent execution of a family member, and they also do not directly inform them of executions after they have been carried out. In many instances, convicted prisoners are informed of their impending execution a day before it is carried out, specifically when they are taken to a solitary cell in preparation for it. In many cases, including that of Indonesian domestic worker Siti Zainab Binti Duhri Rupa, who was executed on 14 April 2015 in Medina, family members, and foreign consulates in cases of foreign nationals, have found out about the execution of their relative or national through the media or public announcements.

## ALI AGIRDAS



Ali Agirdas. ©Private.

Ali Agirdas, a Turkish man convicted of drug trafficking after an unfair trial, was executed on 20 November 2014 in Saudi Arabia's capital, Riyadh. His family had not been told he was about to be executed, and it seems from his last phone call to them on 19 November that neither was he. The family only learned about the execution that same afternoon, when their relatives and neighbours told them it had been reported on the official Saudi Press Agency website. The family have asked repeatedly for his body to be returned to them, without success. They have not even been told where it is being kept.

Ali Agirdas had been arrested on 24 February 2007, when he was 28, and charged with trafficking drugs in Riyadh. He was convicted and sentenced to death by the General Court in Riyadh on 18 June 2008. His sentence was later upheld by a court of appeal and the Supreme Court before being ratified by the King.

Ali Agirdas had no interpreter or lawyer during his interrogation and trial. He was only assisted by a lawyer during his appeal and was convicted on the basis of a written statement in which he "confessed". Ali Agirdas had told the interrogator that he did not know about the drugs he was accused of trafficking. However, the interrogator presented him with a document in Arabic and said signing it would help his case. At his trial, the judge told Ali Agirdas that he had signed a confession in Arabic, a language he spoke a little but could not read, which said he had known he was carrying drugs when he was arrested. Ali Agirdas told the court he had not known what was in the document.<sup>55</sup>

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<sup>54</sup> Human Rights Committee, Concluding Observations: Botswana, UN Doc. CCPR/C/BWA/CO/1 (2008) para. 13.

<sup>55</sup> Amnesty International urgent action, *Executed, body not returned to family*, UA 302/09 (Index: MDE 23/034/2014), 26 November 2014.

## 6. INADEQUATE SAFEGUARDS

International law and standards on the use of the death penalty protect against the arbitrary deprivation of life, which, together with the use of torture and other ill-treatment and punishment, is absolutely prohibited under customary international law.<sup>56</sup> The imposition of the death penalty following an unfair trial violates the right to life and the prohibition of inhuman or degrading treatment or punishment.<sup>57</sup>

Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law as set out in Article 14 of the ICCPR. International fair trial guarantees comprise, among others, the right of the defendant to be presumed innocent until and unless proved guilty; the right to be informed promptly and in detail in a language which they understand of the nature and cause of the charges; the right to adequate time and facilities to prepare a defence; the right to access to a lawyer of their choice and to communicate with counsel in a confidential manner; the right to free legal assistance for those unable to pay for it; the right to call and examine witnesses for the prosecution and to present witnesses for the defence; the right to free assistance of an interpreter if necessary; the right to consular notification for foreign nationals to communicate with and receive visits from representatives of their government; the right not to be compelled to testify against themselves or to confess guilt; and the right to appeal to a higher court.

The UN Human Rights Committee has stated that “the imposition of a sentence of death upon conclusion of a trial in which the provisions of the [International] Covenant [on Civil and Political Rights] have not been respected constitutes a violation of article 6 of the Covenant”.<sup>58</sup> It has also stated that the “assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty”.<sup>59</sup>

As mentioned in Chapter 3, recent legal reforms in Saudi Arabia have introduced important safeguards that if properly implemented would significantly improve the compliance of Saudi Arabia’s use of the death penalty with international law.

One of the most important safeguards is contained in Article 4 of the Law of Criminal Procedure, which clearly stipulates that “Any accused person shall have the right to seek the assistance of a lawyer or a representative to defend him during the investigation and trial

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<sup>56</sup> Human Rights Committee, General Comment 24, para. 8; Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/67/275, 2012 para. 11; Committee against Torture, General Comment 2, para. 1.

<sup>57</sup> *Öcalan v Turkey* (46221/99), European Court Grand Chamber, 2005, paras 166-169.

<sup>58</sup> *Maryam Khalilova v Tajikistan*, Views of the Human Rights Committee, Communication No. 973/2001, UN Doc. CCPR/C/83/D/973/2001, 13 April 2005, para. 7.6.

<sup>59</sup> Concluding observations of the Human Rights Committee: Trinidad and Tobago, UN Doc. CCPR/CO/70/TTO, 3 November 2000, para. 7.

stages".<sup>60</sup> Article 70 adds: "The Investigator shall not, during the investigation, separate the accused from his accompanying representative or attorney."<sup>61</sup> Article 71 states furthermore: "The litigants shall be notified of the time and place of the investigation proceedings."<sup>62</sup>

One of the most important omissions in the Law of Criminal Procedure is the absence of any provision stating that it is the right of a detainee to be informed of the rights and guarantees mentioned above, such as the right to have access to a lawyer from the time of the investigations. Not informing detainees of their legal rights makes them vulnerable to deception and coerced confessions.

This chapter explores how fair trial guarantees are violated in death penalty cases in Saudi Arabia. It also addresses the Saudi Arabian authorities' failure to consistently apply safeguards to ensure that two categories of individuals - juvenile offenders and people with mental and intellectual disabilities - are not subjected to the death penalty.

## 6.1 RIGHT TO ACCESS TO LAWYERS

In practice, one of the most common violations of fair trial guarantees faced by detainees is the lack of access to lawyers. Although Saudi Arabian laws clearly stipulate the right of defendants to have lawyers from the time of pre-trial detention and interrogations, it is rarely granted to defendants. In cases that Amnesty International is aware of and where defendants explicitly requested a lawyer, they were either denied that right without explanation, told that bringing in a lawyer would complicate matters, or told that they could only have a lawyer when they went to court, in clear violation of Saudi Arabian laws.

The right to the assistance of a lawyer without delay enables an individual suspected of or charged with a criminal offence to protect their rights and begin to prepare their defence. Such assistance is important to enable detainees to challenge the legality of the detention and serves as an important safeguard against torture and other ill-treatment, coerced "confessions", enforced disappearance and other human rights violations.

Frequently, defendants and their lawyers are denied access to the court documents even after being sentenced by a first instance court. Detainees must have the right to adequate facilities to prepare a defence, including timely access to relevant information such as all documents and related evidence on which the prosecution intends to rely. States must also ensure timely access to the trial transcript, recent judgements and rulings on the appeal.

Amnesty International is aware of cases in which the authorities have resorted to forcing lawyers to sign pledges not to share court documents or discuss the case in public, while at the same time leaking information to state-controlled media and thereby ensuring a one-sided version of events is presented in public. This practice clearly undermines the presumption of innocence and consequently the fairness of the trial.

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<sup>60</sup> Law of Criminal Procedure, *Umm al-Qura Newspaper*, issue 3867, 3 November 2001, Article 4.

<sup>61</sup> Law of Criminal Procedure, Article 70.

<sup>62</sup> Law of Criminal Procedure, Article 71.

## LAFI KLEIB MERDES AL-SHAMMARI

On the morning of 26 May 2015, Lafi Kleib Merdes al-Shammari was executed in al-Qureyat, north-western Saudi Arabia. The 30-year-old father of six was arrested in 2009, together with another Saudi Arabian national, at the al-Haditha northern border pass with Jordan and sentenced to death for drug trafficking.

Lafi Kleib Merdes al-Shammari was not allowed a lawyer throughout his detention and trial which took place in secrecy at the al-Qureyat Court.<sup>63</sup> According to Amnesty International's information, the judge at an appeal court in Riyadh later recommended that his case be reconsidered due to numerous irregularities, including the fact that Lafi Kleib Merdes al-Shammari had been sentenced to death despite it being his first offence; by way of illustration of the arbitrary nature of the ruling, a person who was arrested with him and charged with the same offences was sentenced to 10 years in prison despite 12 prior arrests related to drug trafficking. The first instance judge, however, refused to reconsider his case or carry out a retrial. The court has also refused to provide him and his legal representative a copy of the charge sheet and court verdict.<sup>64</sup>

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### 6.2 RIGHT TO APPEAL

The Saudi Arabian authorities continue to claim that they only use the death penalty for the most serious crimes and only "after it was upheld by at least 13 judges at three levels of courts from the preliminary court to the Supreme Court".<sup>65</sup> In practice, the process of appeal and the upholding of sentences by the Supreme Court appear to be mere formalities rather than a thorough review process by higher courts.

Under Saudi Arabian law, convicted individuals can only appeal a first instance court decision in writing, and usually the defendant does not appear before the judge in a public hearing. According to international law and standards, fair trial rights must be respected during appeals, including the right to legal counsel, the right to adequate time and facilities to prepare the appeal, the right to equality of arms and the right to a public and reasoned judgment within a reasonable time.

In Saudi Arabia when a death sentence is imposed and then upheld by an appeal court, the case is automatically sent to the Supreme Court, where the verdict becomes final after being upheld. Saudi Arabian law provides defendants on the death row with the means to appeal in writing directly to the Supreme Court in order to have the conviction and sentence reviewed. In *ta'zir* cases, the Supreme Court's role is to check the formalities of the procedures in lower courts and not to review case details per se unless they relate to misapplied regulations by lower court judges. In *hudud* and *qisas* cases, the Supreme Court is required by law to review all case details and evidence. In practice however, the Supreme Court does not hold a

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<sup>63</sup> Amnesty International phone interview with a relative closely following the case, 25 May 2015.

<sup>64</sup> Amnesty International internal document, *Request for WARN action*, 25 May 2015.

<sup>65</sup> See speech of President of the Saudi Arabian National Human Rights Commission, Dr Bandar al-Aiban, at the Human Rights Council in Geneva on 4 March 2015, as well as media reports of the speech such as *al-Jazirah*, "The Kingdom renews its sovereign right to implement *Qisas* legislation," 5 March 2015, available at: <http://www.al-jazirah.com/2015/20150305/ln51.htm> (last accessed 9 August 2015).

hearing with defendants or their lawyers.

### 6.3 "CONFESSIONS" EXTRACTED THROUGH TORTURE

Forced "confessions" extracted under torture or other ill-treatment continue to be frequent in the Saudi Arabian justice system and are commonly admitted as evidence in trial.<sup>66</sup> In many cases, such "confessions" form the basis of the prosecution and are often the sole evidence for convictions; a problem facilitated by the absence of guarantees that self-incriminating statements extracted through torture and other ill-treatment or deception can be adequately challenged by defendants.

Saudi Arabian national law as well as international treaties to which the country is a state party, particularly the Convention against Torture, clearly and categorically prohibit the use of torture or other ill-treatment. However, defendants are all too routinely subjected to such practices to obtain "confessions" that they committed the crimes they have been charged with, while detained without a lawyer present.<sup>67</sup> They are often convicted solely on the basis of these "confessions" obtained under torture or other ill-treatment, duress or deception that are admitted by judges as evidence in trials.

Article 102 of the Law of Criminal Procedure states:

*"The interrogation shall be conducted in a manner that does not affect the will of the accused in making his statements. The accused shall not be asked to take an oath nor shall he be subjected to any coercive measures. He shall not be interrogated outside the location of the investigation bureau except in an emergency to be determined by the Investigator".<sup>68</sup>*

Article 36(1) of the Law of Criminal Procedure maintains that "the arrested person must be treated with dignity, and cannot be harmed physically or mentally. He must be informed of the reasons for his arrest and has the right to call whomever he wants to inform of his arrest."<sup>69</sup>

In practice, the above safeguards are completely lacking. Detainees routinely complain of threats, intimidation and ill-treatment, sometimes including torture, during interrogations. In most cases, allegations of torture or other ill-treatment are ignored and judges fail to order the opening of a thorough and impartial investigation.<sup>70</sup> In the case of Ali Mohammed Baqir al-Nimr, a juvenile sentenced to death (see below), the judge simply told the defendant's legal representatives that they should write to the Ministry of Interior to have them look into the claims of torture.

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<sup>66</sup> Amnesty International, *Affront to justice*, p. 24.

<sup>67</sup> Amnesty International, *Affront to justice*.

<sup>68</sup> Law of Criminal Procedure, Article 102.

<sup>69</sup> Law of Criminal Procedure, Article 36(1).

<sup>70</sup> In addition to the case of the seven men, see the case of the two set of brothers in Chapter 5 (5.1). For more information, see Amnesty International, *Affront to justice*, pp.16-26.

In some cases, the authorities threatened the defendants not to retract their confession or deny it, or they will be tortured and punished. Sometimes, the authorities also threaten to punish and torture their family members.<sup>71</sup>

## SEVEN MEN IN ABHA

In the early hours of 13 March 2013, seven men (all in their early 20s) were taken to the public square in Abha, a town in south-western Saudi Arabia, and shot. They were not officially informed of their impending execution, but found out about it through friends and relatives who had sent them photos of a large security presence and seven mounds of earth being erected in the public square. Their last-minute appeals and those of international organizations did not succeed in halting the execution.<sup>72</sup>

The seven men were arrested in early 2006. They claimed that, during their interrogation at the Criminal Investigation Department in Abha, they were severely beaten, denied food and water, deprived of sleep, forced to remain standing for 24 hours, and then forced to sign "confessions".<sup>73</sup>

They were detained for three and a half years in Abha General Prison before they went on trial. The Abha General Court found all seven guilty of armed robbery in August 2009 and sentenced them to death. Their trial lasted only a few hours, and they were denied any legal representation or appeal. They said that security officers present at the trial warned them that if they withdrew their "confessions" they would be tortured again, and members of their families – including their mothers – would be brought to prison and tortured in their presence.<sup>74</sup>

Two of the seven men, Ali bin Muhammad bin Hazam al-Shihri and Sa'id bin Nasser bin Muhammad al-Shahrani, were juveniles at the time of their alleged crime. The court document, which gives the date of the death sentence as 26 September 2009, states that Ali al-Shihri and Sa'id al-Shahrani were 20 and 21 respectively when they were sentenced to death.<sup>75</sup> Although the date of their alleged crime is unspecified in the court document, it nevertheless mentions that Ali al-Shihri was arrested on 20 March 2005 and Sa'id al-Shahrani was arrested on 17 January 2006. This puts them at 16 and 17 at the time of their arrest.<sup>76</sup> Furthermore, both were held in the juvenile ward of the Abha General Prison before they turned 18 and were moved by the prison authorities to the general ward.<sup>77</sup>

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## 6.4 OTHER SHORTCOMINGS IN TRIAL PROCEEDINGS

Other shortcomings of the Saudi Arabian criminal justice system render safeguards against the arbitrary application of the death penalty and other Saudi Arabian obligations under

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<sup>71</sup> See the case of seven young men in Chapter 6 (6.5) and the case of the four men in Chapter 5 (5.1).

<sup>72</sup> Amnesty International news flash, *Saudi Arabia: Executing seven men would be act of sheer brutality*, 12 March 2013.

<sup>73</sup> Amnesty International phone interview with two of the seven men, 27 February 2013.

<sup>74</sup> Amnesty International phone interview with two of the seven men, 27 February 2013.

<sup>75</sup> Ministry of Justice, Court Verdict 2/S/9, 26 September 2009, p. 1.

<sup>76</sup> Ministry of Justice, Court Verdict 2/S/9, 26 September 2009, p. 1.

<sup>77</sup> Amnesty International phone interview with two of the seven men, 27 February 2013. Also see, Amnesty International urgent action, *Seven men publicly executed in Saudi Arabia*, UA 58/13 (Index: MDE 23/011/2013), 14 March 2013.

international law inadequate in practice.

As explained in Chapter 4, the Saudi Arabian justice system allows suspicion alone to serve as the basis of evidence for crimes punishable under *ta'zir*. The law therefore does not require proof of guilt beyond reasonable doubt even for crimes punishable by death under *ta'zir*. In such cases, the judge is granted the right to use discretion to establish that the evidence supports the accusations against a suspect and that it is enough to punish someone to death.

As in the case of Sheikh Nimr Baqir al-Nimr below, courts can also convict defendants relying solely on evidence provided by eyewitnesses. In Sheikh al-Nimr's case, the judge, in violation of Saudi Arabian and international law, decided not to allow the defence to cross-examine eyewitnesses whose testimony provided the sole evidence to one of the charges against the Sheikh. Evidence for some crimes punishable by death under *ta'zir* can also be circumstantial and inconclusive, yet that does not prevent the judge from issuing a death sentence.

Article 155 of the Law of Criminal Procedure states that court judges have the right to hold a closed trial "for [unspecified] security reasons, or maintenance of public morality, if it is deemed necessary for determining the truth".<sup>78</sup> While international law considers the public nature of trials to be an essential safeguard for the right to a fair trial,<sup>79</sup> the Saudi Arabian justice system leaves it up to the judge to decide, according to the vague stipulation above, if the trial should be held in closed proceedings or not.

International law also provides that court verdicts should be made public: "Any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."<sup>80</sup> Saudi Arabian law does not fully comply with this requirement. Article 182 of the Law of Criminal Procedure specifies that "The judgment shall be read in an open session at which the parties must be present, even [if] the case has been considered in closed sessions",<sup>81</sup> but Article 183 only requires the court to "formally communicate [the judgment] to whomever the court deems appropriate."<sup>82</sup>

In practice, few trials in Saudi Arabia are open to the public<sup>83</sup> and judges can decide to ban the public in general<sup>84</sup> or a particular category of people, such as women, from attending a

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<sup>78</sup> Law of Criminal Procedure, Article 155.

<sup>79</sup> Trials behind closed doors are allowed for prescribed and narrowly defined circumstances, such as security reasons, but the circumstances have to be clearly stipulated.

<sup>80</sup> International Covenant on Civil and Political Rights, Article 14.

<sup>81</sup> Law of Criminal Procedure, Article 182.

<sup>82</sup> Law of Criminal Procedure, Article 183.

<sup>83</sup> Amnesty International, *Affront to justice*, 23-24.

<sup>84</sup> Law of Criminal Procedure, Article 155.

trial without the need to explain or justify their decision.<sup>85</sup>

## SHEIKH NIMR BAQIR AL-NIMR



Sheikh Nimr Baqir al-Nimr. ©Private.

Sheikh Nimr Baqir al-Nimr, the imam of al-Awamiyya mosque in al-Qatif, eastern Saudi Arabia, and a vocal critic of the authorities' discrimination against Shi'a Muslims, was sentenced to death by the Specialized Criminal Court in Riyadh on 15 October 2014 after a deeply flawed trial that led to him being convicted on a list of vague charges including "disobeying and breaking allegiance to the ruler", "calling to overthrow the regime", "inciting against national unity", "supporting riots", "calling for demonstrations", "inciting sectarian strife", "defaming the ruler", "questioning the integrity of the judiciary", "meeting with wanted suspects and supporting them", and "interfering in the affairs of a neighbouring state" (in reference to Bahrain).

Sheikh Nimr al-Nimr was arrested without an arrest warrant on 8 July 2012 when security officers forced his car to stop and shot him when he refused to accompany them. The Ministry of Interior announced that the cleric had been arrested as an "instigator of sedition" and was shot at as "he and those with him resisted security forces at a check-point, opened fire at security forces and crashed into a car belonging to security forces as he sought to escape". He was shown in photos, which were apparently released by the authorities shortly afterwards, lying in the back of a car with what appeared to be a gunshot wound to his leg.<sup>86</sup>

The trial, which commenced on 25 March 2013, was deeply flawed. The cleric was denied the right to prepare an adequate defence and to respond to the charges imposed on him; he was not allowed to conduct regular confidential conversations with his lawyer or even to have access to a pen and some paper. In clear violation of Saudi Arabian law, the judge allowed the arresting officers not to testify at the trial or be cross-examined by the defence in court, but yet relied on the security officers' written testimonies as the sole source of evidence that the Sheikh had opened fire at the security officers. His lawyer was not informed of the dates of a number of court hearings, was prevented from talking to the media on trial proceedings and was forced to sign a pledge not to share court documents. At the same time, media outlets controlled by the state carried out a smear campaign against the cleric, referring to him as the "leader of the Awamiyya strife", depicting him as illiterate, uneducated and an advocate of violence, and reporting that he lied to the judge, all in contravention of the presumption of innocence.<sup>87</sup>

In addition to the written testimony from the security officers who arrested him, evidence presented against Sheikh Nimr al-Nimr also came from religious sermons and interviews attributed to him. Amnesty International has reviewed these texts and concluded that he was exercising his right to freedom of expression and was not inciting violence. A number of the charges brought against him, including disobeying the ruler, are not consistent with international human rights law and should not be criminal offences at all, as they criminalize the peaceful exercise

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<sup>85</sup> On arbitrary decisions by judges banning public attendance see Amnesty International, *Saudi Arabia's ACPRA*, pp.11-14.

<sup>86</sup> For more on the incident and the photos, see Amnesty International press release, *Saudi Arabia must charge or release detained dissident cleric*, 9 August 2012.

<sup>87</sup> Amnesty International urgent action, *Cleric sentenced to death after flawed trial*, UA 271/14 (Index: MDE 23/028/2014), 31 October 2014.

of the right to freedom of expression. Many of the charges imposed on him are vague and contrary to the principle of legality, imposed solely with the intent to punish the peaceful exercise of his rights.

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## 6.5 JUVENILE OFFENDERS

Among the most important safeguards in international law limiting the scope of the death penalty is the absolute prohibition on the use of the death penalty against juvenile offenders, or those under 18 years of age when the offence was committed. Over the years the prohibition of the execution of juvenile offenders has gained widespread acceptance, becoming a principle of customary international law and a peremptory norm of general international law.<sup>88</sup>

Article 37(a) of the 1989 Convention on the Rights of the Child, to which Saudi Arabia is a state party, provides that "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."<sup>89</sup>

Despite the clear and absolute prohibition, Saudi Arabia continues to use the death penalty against juvenile offenders.

### ALI MOHAMMED BAQIR AL-NIMR



Ali Mohammed Baqir al-Nimr.  
©Private

On 27 May 2014 the Specialized Criminal Court in Jeddah convicted and sentenced to death Ali Mohammed Baqir al-Nimr for offences committed when he was 16 or 17 years old and which included participating in demonstrations against the government, attacking the security forces, possessing a machine-gun and armed robbery. The court seems to have based its decision primarily on signed "confessions" which Ali al-Nimr claims were extracted under torture and other ill-treatment, and which the judge has refused to look into.

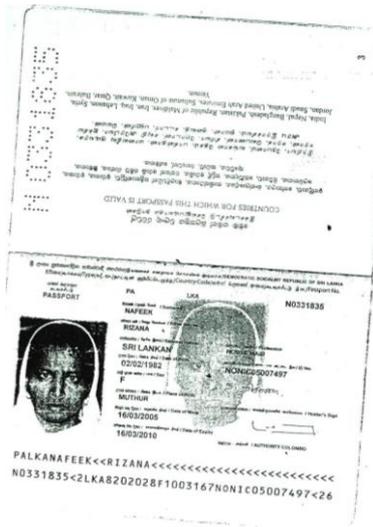
Ali al-Nimr was arrested on 14 February 2012, when he was 17 years old, and taken to the General Directorate of Investigations prison in Dammam, in Saudi Arabia's Eastern Province. He was denied access to his lawyer and claims to have been tortured and otherwise ill-treated by officers of the General Directorate of Investigations to make him sign a "confession". He was then taken to a centre for juvenile rehabilitation, Dar al-Mulahaza. He was returned, however, to the General Directorate of Investigations prison in Dammam when he turned 18, where he remains detained and at risk of execution.

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<sup>88</sup> See also Amnesty International, *The exclusion of child offenders from the death penalty under general international law* (Index: ACT 50/004/2003), July 2003.

<sup>89</sup> See also UN Safeguard No. 3, as adopted by Economic and Social Council resolution 1984/50 of 25 May 1984.

Ali al-Nimr is the nephew of Sheikh Nimr Baqir al-Nimr, a Shi'a cleric from Qatif who has been detained since July 2012 and was sentenced to death by the same Specialized Criminal Court.<sup>90</sup>



The Saudi Arabian authorities have also executed individuals whose age was considered to be in dispute at the time of their alleged offence. In one such case, Rizana Nafeek, a Sri Lankan domestic worker was executed despite claims she was under 18 at the time of her alleged crime. The Saudi Arabian authorities did not recognize her as under 18, basing their conclusion on Nafeek's passport, in which her date of birth was given as 2 February 1982. Meanwhile media reports citing Sri Lankan officials claimed that a certified copy of her birth certificate indicated her actual date of birth was 4 February 1988. The Sri Lankan authorities had confirmed that her passport was forged and a court in Sri Lanka had sentenced the two men who had forged her passport to prison terms for the forgery.<sup>91</sup>

Copy of Rizana Nafeek's passport. ©Private

In cases where the age of an alleged juvenile offender is in dispute, the Saudi Arabian authorities should, in line

with the principle that the best interests of the child shall be a primary consideration - as required by the Convention on the Rights of the Child - presume the individual to be a child, unless the prosecution proves otherwise.<sup>92</sup>

Human Rights Council resolution 19/37 of 23 March 2012 further urges UN member states

*"to take special measures to protect children in contact with the law including by means of the provision of adequate legal assistance, training in juvenile justice for judges, police officers, prosecutors and specialized lawyers, in addition to other representatives who provide other appropriate assistance, such as social workers; the establishment of specialized courts, as appropriate; the promotion of universal birth registration and age documentation..."*<sup>93</sup>

## 6.6 PERSONS WITH MENTAL AND INTELLECTUAL DISABILITIES

International law and standards recognize that certain factors must be taken into consideration when an individual is tried, convicted and sentenced for a criminal act. Mental and intellectual disabilities can constitute grounds for excluding criminal responsibility if the

<sup>90</sup> Amnesty International urgent action, *Death penalty for juvenile activist*, UA 143/14 (Index: MDE 23/014/2014), 4 June 2014.

<sup>91</sup> Arab News, "Forgers of Lankan maid Rizana Nafeek's certificate jailed in Lanka", 18 January 2012.

<sup>92</sup> Human Rights Council resolution 19/37 (A/HRC/RES/19/37), 19 April 2012, para. 55.

<sup>93</sup> Human Rights Council resolution 19/37, para. 54.

disability destroys the defendant's capacity "to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law".<sup>94</sup> Mental and intellectual disabilities also may affect the capacity of a person to stand trial, assist their legal counsel, decide on appeal and understand the nature of the punishment imposed on them. Mental or intellectual disabilities can leave defendants more vulnerable at all stages of the criminal justice process, from arrest to sentencing. At all stages of the process it is the responsibility of the criminal justice system to determine if an individual is disadvantaged because of their disability, and ensure they get assistance and treatment as needed.

For these reasons, international law and standards on the use of the death penalty clearly state that the death penalty should not be imposed on people with mental or intellectual disabilities – whether the disability manifests itself at the time of the commission of the crime or the defendant is first affected by or diagnosed with a mental or intellectual disability after being arrested, while in detention facing trial, or after being sentenced to death, while spending time on death row.<sup>95</sup>

These standards emerged over a period of years. In 1984 the UN Economic and Social Council in its Safeguards guaranteeing protection of the rights of those facing the death penalty stated that "the death sentence shall not be carried out on... persons who have become insane." In 1989 ECOSOC recommended that UN member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution". Standards were further clarified through the subsequent work of other UN bodies and mechanisms, including the former UN Commission on Human Rights, which, in its resolution 2005/59, urged states not to impose the death sentence on or execute "a person suffering from any mental or intellectual disabilities". Most recently, UN General Assembly resolution 69/186 of 18 December 2014 called on states that still retain the death penalty "To progressively restrict the use of the death penalty and not to impose capital punishment... on persons with mental or intellectual disabilities".

In the case of both mental and intellectual disabilities, Saudi Arabian laws provide little or no guidance as to how commonly held understandings of mental and intellectual disabilities and their effect on criminal responsibility are to be applied as safeguards in practice. This, together with inadequate legal representation, the mandatory imposition of the death penalty and lack of resources for independent medical assessments before and after sentencing means that – too often – persons with mental and intellectual disabilities have been sentenced to death and, in some cases, executed.

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<sup>94</sup> Article 31.1(a) of the Rome Statute of the International Criminal Court.

<sup>95</sup> UN Safeguard No. 3, as adopted by Economic and Social Council resolution 1984/50 of 25 May 1984; Commission on Human Rights resolution 2005/59, para. 7(c); Human Rights Committee: Concluding Observations: USA, UN doc. CCPR/C/USA/CO/3/Rev.1 (2006) para. 7; Human Rights Committee: Concluding Observations: Japan, UN doc. CCPR/C/JPN/CO/5 (2008), para. 16; Human Rights Committee: *Sahadath v Trinidad and Tobago*, UN doc. CCPR/C/78/D/684/1996 (2002), para.

## SITI ZAINAB BINTI DUHRI RUPA



Siti Zainab Binti Duhri Rupa. ©Private

Siti Zainab Binti Duhri Rupa, an Indonesian domestic worker and mother of two, was executed on 14 April 2015 in the city of Medina for killing her employer in 1999. Neither her family nor the Indonesian government was notified in advance of her execution.

Siti Zainab Binti Duhri Rupa had been detained in Medina Prison since 1999. According to media sources that year, Siti Zainab made her “confession” during police interrogation, and was subsequently convicted of the murder and sentenced to death. She had no legal representation throughout her detention and trial, and did not have access to a consular representative during the police interrogation.

According to reports, the security forces that interrogated her suspected that she had a severe mental disability.<sup>96</sup>

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Another recent case of an execution of a person suspected of having a severe mental disability took place on 22 September 2014. On that day, Hajras al-Qurey was executed after being found guilty of drug trafficking and sentenced to death by the General Court in Najran on 16 January 2014. He and his son Muhammad al-Qurey were arrested on 7 January 2012 at the al-Khadra crossing with Yemen, when customs officers suspected them of carrying drugs in their car. According to the court documents, Hajras al-Qurey tried to drive away at speed to escape from the border police, who gave chase and caught them.<sup>97</sup> According to his family, Hajras al-Qurey had psychological problems and had been known to lose control of himself when under pressure.<sup>98</sup> The General Court in Najran ignored evidence from an assessment it had commissioned that found Hajras al-Qurey had a mental disorder that might have impaired his judgment.<sup>99</sup>

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7.2; and Special Rapporteur on extrajudicial, summary or arbitrary executions, UN doc. A/51/457 (1996), paras 115-116.

<sup>96</sup> Amnesty International urgent action, *Siti Zainab Binti Dhuri Rupa executed*, UA 212/10 (Index: MDE 23/1564/2015), 1 May 2015. For more information, also see, Amnesty International, *Affront to justice*, p. 39.

<sup>97</sup> Ministry of Justice, Court Verdict 3455723, 16 January 2013, p. 2.

<sup>98</sup> Information received from the family on 11 August 2014.

<sup>99</sup> Amnesty International urgent action, *Hajras al-Qurey executed*, UA 201/14 (Index: MDE 23/024/2014), 22 September 2014.

## 7. CONCLUSION AND RECOMMENDATIONS

The Saudi Arabian authorities continue to make prolific use of the death penalty and apply it to a range of offences. They impose the penalty after court proceedings that violate international law and standards, and in some cases Saudi Arabian laws.

The wide scope of the death penalty remains a serious concern. The authorities continue to use the death penalty as a punishment for crimes that do not meet the threshold of “most serious crimes” in international law. The vast majority of these crimes are not mandatorily punishable by death according to the authorities’ interpretation of Shari’a law since they fall under the category of crimes punishable under *ta’zir*. Some “offences” punishable by death, such as “adultery”, “apostasy”, “sorcery” and “witchcraft”, are not even considered crimes under international law.

The Saudi Arabian authorities also continue to execute juvenile offenders, or those who are below 18 at the time of their alleged crime, in clear violation of Saudi Arabia’s obligations under the Convention on the Rights of the Child and customary international law. In recent years, they have also executed persons with, or suspected of having, mental and intellectual disabilities.

Foreign nationals continue to be disproportionately sentenced to death and executed in Saudi Arabia. The authorities consistently fail to respect the rights of foreign nationals, particularly economically disadvantaged migrant workers, to access a lawyer, prompt consular services and adequate interpretation. They typically do not have relationships or resources that could facilitate the issuing of a pardon, and are therefore in the great majority of cases unable to obtain one.

Saudi Arabia’s criminal justice system facilitates the issuing of death sentences. Judges are granted excessive discretionary powers and are not required to abide by judicial precedent. In some cases, such as for crimes punishable under *ta’zir*, judges are also not required to prove beyond reasonable doubt that a person committed a crime when sentencing a defendant to death.

Although recent legal reforms in Saudi Arabia have introduced important safeguards that if properly implemented would significantly improve the compliance of Saudi Arabia’s use of the death penalty with international law, fair trial guarantees continue to be violated in death penalty cases. Detainees have been sentenced to death after being coerced or misled into signing “confessions” that are sometimes the sole evidence used to convict them. Meanwhile, appeals are typically rendered meaningless, as appeal courts guarantee no real opportunities to challenge first instance court decisions.

In light of these serious violations of international law and standards, Amnesty International

reiterates its call on the Saudi Arabian government to declare a moratorium on executions. Such a moratorium would provide the opportunity for the authorities to reconsider many of the concerns related to their use of the death penalty and to bring laws and practices in Saudi Arabia into line with international law and standards.

In the meantime, and pending full abolition of the death penalty, Amnesty International urges the Saudi Arabian authorities to take the following measures:

- Restrict the scope of the death penalty to intentional killing, in line with international law and standards on its use;
- Stop using the death penalty as punishment for crimes that are not considered “most serious crimes” in international law, and particularly for those crimes that Shari’a law as practised in Saudi Arabia does not mandatorily call for the death penalty;
- Stop using the death penalty on anyone under the age of 18 at the time of their alleged offence, in accordance with Saudi Arabia’s obligations under the Convention on the Rights of the Child;
- Stop using the death penalty on anyone with, or suspected of having, mental or intellectual disabilities;
- Ensure that detainees are informed of and are granted their rights from the time of their arrest, including their right to a lawyer;
- Ensure that foreign nationals have adequate access to consular and interpretation services;
- Ensure that all allegations of torture and other ill-treatment used to extract “confessions” are promptly and impartially investigated, and those found guilty of committing them are held to account.
- Ensure that defendants receive a fair trial in proceedings that ensure the most rigorous compliance with international standards for fair trial, at least equal to Article 14 of the International Covenant on Civil and Political Rights, and without resort to the death penalty. In particular, all defendants should be granted their rights:
  - To have immediate and unhindered access to a lawyer of their choice from the time of their arrest and detention;
  - To be tried before an independent, impartial and competent tribunal;
  - To competent defence counsel at every stage of the proceedings;
  - To adequate time and facilities to prepare their defence;
  - To be presumed innocent until guilt has been proved beyond a reasonable doubt;
  - To appeal to a higher court;

- To seek pardon and commutation of sentence.
- Review the cases of all prisoners currently under sentence of death with a view to commuting their sentences or offering them a new and fair trial without resort to the death penalty;
- Bring trial proceedings into full conformity with the UN Safeguards guaranteeing the protection of the rights of those facing the death penalty (ECOSOC Resolution 1984/50 of 25 May 1984), and ensure that these are adhered to in practice, in order to guarantee adequate opportunity for defence and appeal, and exclude the imposition of the death penalty when there is room for alternative interpretation of the evidence. This should include the provision by the authorities of legal assistance for the accused if they cannot arrange it, and the introduction of conditions that would prevent trials in death penalty cases when defendants do not have proper access to legal assistance;
- Review and amend or appeal the vague laws on crime and punishment in order progressively to reduce the number of offences punishable by death, ensuring that the death penalty is not prescribed for non-violent offences, and with the aim of restricting judges' discretion in the use of the death penalty, taking into account Resolution 2001/68 adopted by the former UN Commission on Human Rights on 25 April 2001;
- Invite the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Saudi Arabia.

## **'KILLING IN THE NAME OF JUSTICE'**

### **THE DEATH PENALTY IN SAUDI ARABIA**

Saudi Arabia remains one of the most prolific executioners in the world. Between January 1985, the earliest year from when information on executions is available, and June 2015 it executed at least 2,200 persons, almost half of whom were foreign nationals. Over one third of these executions were carried out for offences that do not meet the threshold of "most serious crimes" for which the death penalty can be imposed under international law. Most of these crimes, such as drug-related offences, are not mandatorily punishable by death according to the authorities' interpretation of Islamic Shari'a law.

Saudi Arabia also continues to sentence to death and execute individuals for crimes committed when they were below 18 years of age, in violation of the country's obligations under international customary law and the Convention on the Rights of the Child. Also in violation of international law, the death penalty in Saudi Arabia continues to be used against persons with mental disabilities.

The authorities recurrently fail to abide by international standards for fair trial and UN Safeguards guaranteeing protection of the rights of those facing the death penalty. Too often trials in death penalty cases are held in secret and their proceedings are unfair and summary with no legal assistance or representation through the various stages of detention and trial. Defendants may be convicted solely on the basis of "confessions" obtained under torture or other ill-treatment, duress or deception.

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