

JUVENILES AND THE DEATH PENALTY IN THE
KINGDOM OF SAUDI ARABIA

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JUVENILES AND THE DEATH PENALTY IN SAUDI ARABIA

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1. Introduction

This submission provides details of a number of key issues that we believe need to be urgently addressed by the Kingdom of Saudi Arabia (hereafter 'KSA') and which we would recommend for inclusion of the List of Issues for the KSA ahead of the combined third and fourth review of the KSA's compliance with the Convention on the Rights of the Child by the Committee on the Rights of the Child at the 73rd session.

The issues addressed in this submission and the recommendations made herein are the direct result of Reprieve and ESOHR's experience providing assistance to juvenile offenders facing execution in the KSA, as well as research conducted on this issue. The issues addressed include concerns with the way existing legislation designed to protect the rights of children charged with criminal offences – particularly those that carry the death penalty – is drafted, concerns about the way it is implemented, and concerns about the attitude of the Government of the KSA and others to this issue. The submission also aims to highlight concerns about the failure to ensure fair trials to juveniles, inhumane prison conditions and concerns about the widespread use of torture against children. It also aims to highlight problems associated with the difficulties surrounding the establishment of juvenility, particularly for foreign nationals.

2. Execution of Juveniles

Saudi Arabia is a party to the Convention on the Rights of the Child (CRC)¹ Article 37(a) of which prohibits juvenile execution.² According to the CRC, the majority age is 18 “unless under the law applicable to the child, majority is attained earlier”.³

In its state party report, the KSA purports to comply with Article 1 of the CRC in its statutes, stating that “*juvenile is defined in the criminal law regulations on arrest and the regulations on juvenile detention centres as any person who has not reached the age of 18.*”⁴ They also state that the judicial discretion in determining the age of an offender is not absolute, and is subject to review by both the Court of Appeal and the Supreme Court.

Despite acknowledging its obligations under the CRC, KSA continues to blatantly violate both its international and domestic obligations.

i. Case Study: Rizana Nafeek

¹ United Nations Treaty Collection, “11. Convention on the Rights of the Child”, UNTC [Online]. (Available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en=title=UNTC-publisher=#23 [Accessed 29 Oct 2015]).

² Article 37(a) reads: “*States parties shall ensure that: no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age*”

³ Article 1 United Nations Convention on the Rights of the Child

⁴ UNCRC “Consideration of reports submitted by States parties under article 44 of the Convention: Combined third and fourth periodic reports of States parties due in 2011: Saudi Arabia” (CRC/C/SAU/3-4) (Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/072/96/PDF/G1507296.pdf?OpenElement> [Accessed 29 Oct 2015]).

In January 2013, Rizana Nafeek, a Sri Lankan domestic worker accused of killing a baby in her care, was beheaded, despite being 17 years old at the time of the alleged offence, in contradiction of Article 37(a) of the CRC.

Rizana travelled to Saudi Arabia to pursue work as a domestic worker and was accused of strangling a child in her care after a dispute with the child's mother. The Government of KSA relied on documents falsified by her employment agent which stated that Rizana was 23 to impose the death penalty, in spite of pleas from the Sri Lankan government to halt the execution, and documents which show she was only 17 years old at the time of the killing. During her trial Rizana had no access to lawyers and was forced to sign a confession under duress.⁵

Rizana was executed by beheading on 9 January 2013 in breach of Article 37(a) of the CRC. Her parents were only informed of their daughter's execution through media. Their request to have her body repatriated to Sri Lanka was refused.

3. Juveniles Sentenced to Death

a. Death penalty for non-lethal offences

According to research by Reprieve, 72% of all those facing execution in Saudi Arabia have been sentenced to death for non-violent offences, including attendance at political protests and drug offences. 69% of those executed in the past year were sentenced to death for non-violent offences.⁶ Among those facing execution for non-lethal offences are prisoners who were sentenced to death as children, despite claims in the KSA state party report that "*the juvenile courts are required to take all available correctional measures, and solutions are restricted to treatment, rehabilitation and reintegration into society in a manner inspired by the general orientation of the Convention on the Rights of the Child*".⁷ Some of those sentenced to death as children have been tried in parallel court systems introduced to try terrorism cases such as the Specialised Criminal Court.

In General Comment 10, the Committee on the Rights of the Child confirmed: "Although the text is clear, there are States parties that assume that the rule only prohibits execution of persons below 18 years of age. However, under this rule the explicit and decisive criterion is the age at the time of the commission of the offence. It means that the death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time or trial sentencing or of the execution of the sanction".⁸

Despite this interpretation, the KSA continues to impose the death penalty on individuals who were under the age of 18 at the time of the commission of the offence, such as Ali Mohammed al-Nimr, Dawoud Hussain al-Marhoon, and Abdullah

⁵ Asian Human Rights Centre, *An appeal for continuous intervention with the Saudi Arabian authorities on Rizana Nafeek's case*, 10 December 2007, available at <http://www.humanrights.asia/news/ahrc-news/AS-284-2007> ; see also BBC, 'Sri Lankan maid Rizana Nafeek beheaded in Saudi Arabia' (London, 9 January 2013), available at <http://www.bbc.com/news/world-asia-20959228>

⁶ Please see the Appendix for Reprieve's full report

⁷ Supra note 4 at 319.

⁸ UNCRC, 25 April 2007. Committee of the Rights of the Child, General Comment No. 10 (2007) CRC/C/GC/10

al-Zaher. It is especially disturbing that the KSA does not dispute the age of juvenility of all three at the time of the commission of the offences.

i. Case Study: Ali Mohammed al-Nimr

Ali, born on 20 December 1994, is currently detained and sentenced to death in the General Directorate of Investigations Prison in Dammam. On 14 February 2012, Saudi authorities arrested Ali without presenting an arrest warrant or providing explanation for the arrest. Ali was 17 years old at the time. Saudi Investigation Authorities subjected Ali to torture and ill treatment during the course of their investigation, in order to extract a confession. The prosecutors allege that Ali made a statement which amounted to a confession. Despite the fact that Ali later recanted this “confession” and witnesses report that the document was not even in his handwriting, this statement formed the basis for the charges and conviction against him.

He was tried and sentenced by the Specialised Criminal Court (SCC) in Riyadh, KSA for non-lethal offences including betraying the Guardian and attending opposition protests. The SCC prevented Ali from instructing counsel in the course of proceedings against him until mid-way through his trial. Even then, the SCC prevented counsel from communicating with Ali either before or during his proceedings.

At his fifth hearing on 27 May 2014, the SCC sentenced Ali to death. In September 2015, the SCC informed counsel that Ali’s final appeal had been heard, and his death sentence was confirmed by the High Court. It is possible that if implemented, Ali’s sentence will include “crucifixion”,⁹ although recent reports from the KSA authorities suggest that the manner of execution has not yet been determined.¹⁰

ii. Case Study: Dawoud Hussain al-Marhoon

Dawoud was 17 when he was arrested without a warrant by Saudi Security agents as he was undergoing treatment for an eye injury at the Dammam Central Hospital on 22 May 2012. Saudi forces transferred him to the State Security Hospital and later to a juvenile offenders’ facility, where he was held incommunicado for over a week. During this time, he was subjected to torture and cruel, inhuman and degrading treatment. He was held for one year and four months before being transferred to the General Department of Investigations headquarters in Dammam. After transfer, he was placed in solitary confinement for a month and subjected to further torture.

All access to legal counsel was denied during this period. The SCC sentenced him to death following a total of eight hearings, a number of which were held in secret without the presence of his lawyer. The offences of which he was convicted included attending illegal protests and firearms offences (despite a lack of evidence). The decision was appealed but the lawyers were not been informed of any progress relating to the proceedings. They have been denied access to information relating to

⁹ In the Saudi context, Reprieve understands this punishment to mean decapitation followed by the public display of the victim’s body.

¹⁰ Micheal E Miller, ‘Ali Al-Nimr was a boy when thrown in Saudi prison. Now he’s a man sentenced to die’, *The Washington Post* (Washington DC, 7 October 2015), available at <https://www.washingtonpost.com/news/morning-mix/wp/2015/10/07/ali-al-nimr-was-a-boy-when-thrown-in-saudi-prison-now-hes-a-man-and-is-sentenced-to-die/>

the dates of hearings and were only informed of the outcome of the appeal after it had already been dismissed.

iii. Case Study: Abdullah al-Zaher

Abdullah was arrested in March 2013 in the midst of fire by Saudi security forces who subsequently caught him and proceeded to hit him with their weapons, causing him to fall on the ground bleeding. He was then transferred to Awwamiyya city police station, where he was beaten by police officers who used wire iron to ensure the effects were visible. He was eventually transferred to the social observation house, a dedicated prison for children.

Similarly to Dawoud and Ali, Abdullah was refused access to a lawyer throughout his trial, which began 20 months after his arrest. After several hearings, the SCC sentenced Abdullah to death, for offences including participation in demonstrations in Qatif and chanting slogans which were hostile to the state.

In September 2015, the judiciary ratified his death sentence without informing his lawyer or his family. On 5th October 2015, he was transferred from General Directorate of Investigation prison in Dammam to a solitary cell in the new al-Ha'ir prison in Riyadh, raising serious concerns that his death sentence will be implemented at any time.

4. Fair trial violations

The three boys were arrested without warrant in violation of Article 35 of the Law of Criminal Procedure, Royal Decree no. (M/39), 28 Rajab 14220 – 16 October 2001: “no person shall be arrested or detained except on the basis of an order from the competent authority. He shall also be advised of the reasons of his detention and shall be entitled to communicate with any person of his choice to inform him of his arrest”.¹¹

Furthermore, Saudi Arabia’s treatment of all three boys is in contravention with the right to be assisted by a lawyer, in line with Articles 4 of the Saudi Code of Criminal Procedure, and Article 40(2) (b) (ii) of the CRC.¹² The right to legal assistance in capital trials is axiomatic to the right to a fair trial, yet juveniles are routinely denied access to legal counsel. Without access to a lawyer, it is nearly impossible to challenge the legality of the arrest.

ESOHR has collected information which shows that between the years 2011 and 2012, KSA authorities arrested 61 children arbitrarily, in the context of demonstrations that were happening in the eastern province. Some of those children were detained for over six months without being taken to trial.

Additionally, in its state party report, the KSA claims to have established chambers for juvenile cases in the criminal courts, each chamber consisting of a single judge or three judges, in its Judiciary Act Royal Decree No M/78.¹³ The state party report indicates that the Supreme Judicial Council, at its 65th session in Decision No. 239-

¹¹ Law of Criminal Procedure, Royal Decree No. (M/39), 28 Rajab 1422 [16 October 2001], Article 35.

¹² Article 40(2)(ii) states: “States Parties shall ensure that: every child should [...] have legal or other appropriate assistance in the preparation and presentation of his or her defence”.

¹³ Supra note 4.

95 of 26/6/1428 (15 July 2007) designates special courts under the supervision of competent judges to try children as distinct from adults, in a speedy manner.¹⁴

Despite these claims, juveniles continue to be tried before the Specialised Criminal Court, in contravention of Article 40(2) (b) (iii) which guarantees children the right to have their hearing determined without delay by a competent, independent and impartial authority or judicial body.¹⁵ The SCC has routinely been criticised for lacking competence, independence and impartiality, as it was established in 2008 to hear terrorism cases, but has frequently been used to prosecute peaceful protests and human rights activists.¹⁶ Furthermore, the SCC has faced accusations of violating fair trial rights.¹⁷

Finally, the failure to provide prompt information on the charges against all three boys, in violation of Article 40(2) (b) (ii), which extends the provision “to be informed promptly and directly of the charges against him”, is indicative of a rampant practice. The Committee on the Rights of the Child has noted under Article 37(d) CRC the term “prompt” - also used under Article 16(1) ACHR - is even stronger than the term “without delay” under Article 14(3)(c) ICCPR.

5. Prison Conditions

a. Family not notified of detention, cannot contact/visit juvenile

The right for family to know of their child’s detention is enshrined in both Article 40(2) (b) (ii) and 40(2) (b) (iii) of the CRC.¹⁸ However, the families of many juveniles in detention in Saudi Arabia do not learn of their children’s imprisonment until months, or years, have passed. In the case of Mohammad al-Nimr and Dawood al-Marhoon, the families were not informed of their whereabouts by the Saudi authorities for several weeks following their arrest. Most recently, prison authorities failed to inform their relatives of a prison transfer until up to a week after, and further prevented the young men from contacting their relatives or receiving visits. For some, they learn of the impending execution of their children through the media, such as Rizana Nafeek’s parents.

b. Poor prison conditions

Cruel and inhumane treatment is prohibited by Article 37(a) of the CRC. However, it is not unusual for juveniles who have been sentenced to death in the KSA to be held incommunicado in solitary confinement, without access to lawyers or family. Ali Mohammed al-Nimr, Dawoud Hussain al-Marhoon, and Abdullah al-Zaher have all been kept in solitary confinement for considerable stretches of their imprisonment, without justification or reason.

¹⁴ Supra note 4 at 318.

¹⁵ United Nations Treaty Collection, “11. Convention on the Rights of the Child”, UNTC [Online]. (Available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en-title=UNTC-publisher=#23 [Accessed 29 Oct 2015]).

¹⁶ Lawyers’ Rights Watch Canada, “Wrongful conviction and arbitrary detention of lawyer Waleed Abu al-Khair”, Lawyers’ Rights Watch Canada [Online], 22 Jan 2015. (Available at: <http://www.lrw.org/ws/wp-content/uploads/2015/01/Waleed.al.Khair.29.Jan.2015.pdf> [Accessed 29 Oct 2015]), p. 3.

¹⁷ Amnesty International, “Public Statement: Saudi Arabia: Counter-terror law continues to provide legal cover to silence dissent a year on”, Amnesty International [Online], 02 Feb 2015. (Available at: <https://www.amnesty.org/download/Documents/MDE2300122015ENGLISH.pdf> [Accessed 29 Oct 2015]).

¹⁸ United Nations Treaty Collection, “11. Convention on the Rights of the Child”, UNTC [Online]. (Available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en-title=UNTC-publisher=#23 [Accessed 29 Oct 2015]).

6. Torture and Cruel, Inhuman and Degrading Treatment

According to the KSA's state party report, Royal Decree No.M/2 of 28/7/1435 prohibits torture or degrading treatment in any place,¹⁹ pursuant to Article 37(a) of the CRC. Furthermore, Article 40(2) (b) (IV) ensures that no child should be compelled to give testimony or to confess guilt.

Nevertheless, the KSA continues to allow interrogators to use methods of torture with impunity to coerce juveniles into signing confessions which are often in a foreign language. Furthermore, methods of execution are often constitute horrific forms of abuse and amount to degrading treatment, including beheading, stoning and beheading combined with 'crucifixion'.

There are also reports that KSA authorities are using potentially lethal force against children. On Wednesday, 16 November 2011, security forces fired bullets on two motorcycles in Riyadh Street in Qatif ridden by two children, Ali Jaafar Murar (17 years) and Salih Mahdi Murar (13 years) which led to injuries and were taken for treatment at the Central Hospital of Qatif and then to prison in Dammam. In May 2011, a juvenile Mujtaba Ali al Safwani was arrested. His family searched for him for more than a week after that they found out that he was being held in prison in Dammam.

i. Case Study: Ali Mohammed al-Nimr

Following his arrest, Ali was subjected to unsystematic beatings, such as random blows and beatings; systematic beatings, targeting areas of previous injuries; burns with cigarettes; electric shocks; and suspension torture. After days of torture, without access to a lawyer, Ali was made to sign a confession which he could not read and which was not explained to him. Ali had been held incommunicado for 3 months, much of which was spent in solitary confinement. During this time he was repeatedly beaten to the point of suffering broken bones.

ii. Case Study: Dawoud Hussain al-Marhoon

Dawoud was transferred to a juvenile offenders' facility where he was held incommunicado for nearly two weeks. After refusing to spy on his fellow protesters, Dawoud's hands and feet were severely beaten, he was forced to lie on his stomach before being trampled and was repeatedly hit in the leg where he had been shot by security forces. At least one of his interrogations lasted for 18 hours. After enduring such treatment, Dawoud was forced to sign a blank document which would later contain his confession. After being moved to another prison, Dawoud suffered electrocution to different body parts, was hung upside down and was also tied to a chair and beaten.

iii. Case Study: Abdullah al-Zaher

Upon arrest Abdullah was beat with the Saudi security forces weapons and continued to suffer at the hands of the officers at the Awwamiyya city police station, though he was beaten with wire iron all over his body so that the effects were visible.

¹⁹ Supra Note 4 at 318.

Due to the torture he suffered Abdullah lost a significant amount of weight and continues to have visible signs of his mistreatment at the hands of Saudi security officers, including a significant deviation in his nose.

7. Problems associated with difficulty in establishing juvenility for migrant workers

a. Migrant workers, trafficking and forged documents

Migrant workers and foreign nationals who travel to the KSA with forged documents to obtain employment are often not able to establish their juvenility through reliance on genuine documents providing their date of birth when facing sentences of death.

i. Case study: Rizana Nafeek

Rizana Nafeek travelled to Saudi Arabia from Sri Lanka when she was 17 years old, but falsified her passport to reflect that she was 23 in order to obtain work. Soon afterwards, a baby in her care died. Despite genuine documents proving that she was 17 years old at the time of the commission of the crime, and pleas from the Government of Sri Lanka to halt the execution, Rizana was executed on 9 January 2013 by beheading.

There have also been reports of other juveniles held and sentenced to death in similar circumstances, including at least one Pakistani national.

Although Reprieve is not aware of concerns about birth registration for Saudi nationals,²⁰ there are real concerns that high numbers of children are being trafficked to Saudi Arabia to work under forged documents will be at a significant disadvantage if they are caught up in the criminal justice system.

b. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

In 2010 the KSA ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. However, reports suggest that children continue to be routinely trafficked into the KSA, becoming victims of forced labour, while it fails to adequately investigate and prosecute suspected offenders.²¹

²⁰ UNICEF, Innocenti Research Centre, 'Birth Registration: Right from the Start' (2002) Innocenti Digest, No.9, page 12, available at http://www.childinfo.org/files/birthregistration_Digestenglish.pdf

²¹ US Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, (July 2015), pages 295-297, available at <http://www.state.gov/documents/organization/245365.pdf>

**CONFIDENTIAL ANNEX TO REPRIEVE AND ESOHR SUBMISSION TO THE
COMMITTEE ON THE RIGHTS OF THE CHILD**

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APPENDIX – *Justice Crucified: The Death Penalty in Saudi Arabia*, Reprieve, October 2015



REPRIEVE

Justice Crucified: The Death Penalty in Saudi Arabia

Executive Summary

- **72% of those facing execution in Saudi Arabia were sentenced to death for non-violent offences, including attendance at political protests and drug offences.**
- **69% of those executed in the past year had been sentenced to death for non-violent offences.**
- **Among those facing execution are prisoners who were sentenced to death as children, such as Ali Mohammed al-Nimr and Dawoud Hussain al-Marhoon.**
- **The use of torture to extract ‘confessions’ is widespread – Reprieve has identified specific cases where prisoners have been beaten to the point of suffering broken bones and teeth.**
- **Execution methods include beheading, stoning, and beheading combined with ‘crucifixion’.**

Reprieve has confirmed the presence of at least 171 people¹ currently facing execution in the Kingdom of Saudi Arabia. Of the 224 estimated to have been executed since January 2014, Reprieve has been able to identify 62.² Our examination of the Saudi death row population has found that **the vast majority of death sentences handed down are for non-violent offences.** In addition, many convictions are unsafe due to alarming violations of due process, especially the **use of torture to extract ‘confessions’** – Reprieve has identified several specific cases of this in the current death row population, but this is likely to be just the tip of the iceberg. Finally, the **use of horrific forms of execution including beheading and ‘crucifixion’, and stoning,**³ sees the Kingdom violate the most basic prohibitions against cruel and unusual punishment.

Saudi Arabia’s capital punishment system flouts international law and human rights principles at the very moment when a Saudi diplomat has been [appointed](#) to head a key UN Human Rights panel.

Many Western governments, notably the UK and the US, have to date (14 October 2015) been reluctant to condemn these abuses. The US has expressed concern over the planned ‘crucifixion’ of Ali Mohammed al-Nimr, but refused to either condemn it or call for it to be halted.

Meanwhile, although the UK has finally disbanded its bid to provide services to the Saudi prison system they are still forging ahead on formal agreements to support the prison, police and legal systems of Saudi Arabia. As it is these

¹ Reprieve has sought an official figure reflecting all those on death row, but this has not been forthcoming. The real figure could well exceed 171. See the section on ‘methodology’ for more information.

² This number refers to the people that Reprieve has confirmed knowledge of having been executed since 1 January 2014. Reprieve has again been unable to get an official figure and the number is likely to be much higher. The UN has put the figure at 224:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487&LangID=E>

³ Stoning is authorised by law in Saudi Arabia. People have been sentenced to death by stoning but Reprieve has been unable to verify whether or not it has been used in recent years due to the opaque nature of the Saudi judicial system: <http://www.trust.org/item/20130927160132-qt52c/>; <http://new.spectator.co.uk/2014/06/witness-to-a-stoning/>

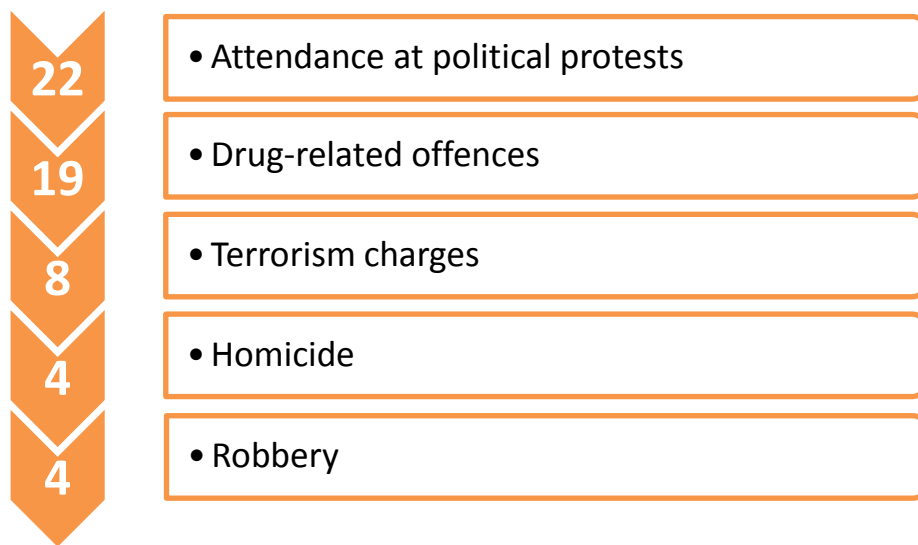
systems which will be responsible for the beheading and crucifixion of Ali al-Nimr, this leaves the UK Government at risk of complicity in such abuses.

The numbers

The Saudi Government’s refusal to provide official figures, and the opaque nature of the country’s justice system, makes it hard to produce a definitive picture of the Saudi death row population. However, through methods detailed below, Reprieve has been able to identify the alleged offences of 57 of the 171 people thought to be currently facing execution.

Of that 57, only 28% have been sentenced to death for alleged violent crimes. The remaining 72% received their death sentences for alleged non-violent offences, consisting of drug offences and political protest.

Breakdown of offences of those facing execution

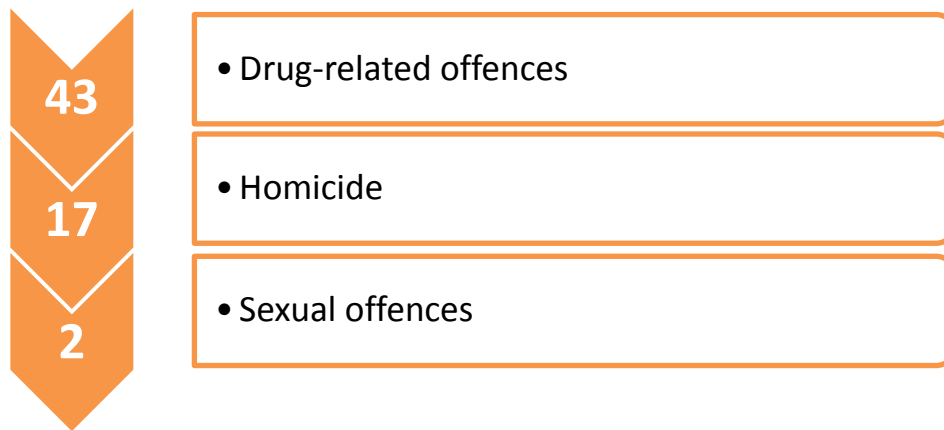


22 people are currently on death row in Saudi Arabia for offences relating to anti-Government protests. They have been convicted of ‘corrupting the earth’, for protesting against the government, a charge which carries the death penalty. In some cases, they have also been accused of weapons offences – for which there is often no evidence – but it is the charges relating to their opposition to the Government, rather than allegations of any violence, which result in them receiving the death penalty.

Reprieve has also confirmed details of 62 people who have been executed since the beginning of 2014.

Of the 62, only 31% were convicted of violent crimes. The vast majority, 69%, were sentenced to death and executed for non-violent, alleged drugs offences.

Breakdown of offences of those executed since January 2014



Data and Methodology

Reprive has developed an extensive database of people facing the death penalty around the world. The data has been obtained through desk research by Reprive; Reprive in-country Fellows; investigation and outreach trips by Reprive staff and Fellows and information shared by our partner organisation, [Justice Project Pakistan](#). Sources of information include lawyers, prisoners, family members, governments, media and academic sources, legal databases, and other NGOs.

Reprive has assembled data of 171 people facing execution in the Kingdom of Saudi Arabia. Due to the secretive nature of the Saudi legal and political systems, we have been unable to gather a definitive figure for the entire Saudi death row population. Reprive therefore suspects that the actual figure is much higher.

Reprive has ascertained the alleged offences of 57 of the 171 people we have identified as facing execution.

Reprive has collected information on 62 people executed from January 2014 to the current date (14 October 2015). Again it should be highlighted that the actual figure is likely to far exceed this: the UN has estimated that 224 people have been executed during this period.

Ali Mohammed al-Nimr

Concerns about Saudi implementation of the death penalty are exemplified by the pending case of Ali Mohammed al Nimr.⁴ On 14 February 2012, at the age of 17, Ali was arrested for participating in an anti-governmental protest in the eastern district of Qatif of Saudi Arabia. Two years later he was sentenced to death by 'crucifixion' by Saudi Arabia's widely criticized Specialized Criminal Court (SCC). Ali's conviction was based solely on a fabricated statement he was tortured into signing that was used as an alleged confession. Ali is now facing imminent execution. If his execution

⁴ We refer to Mr al Nimr as 'Ali' in this report in order to differentiate him from his uncle, Sheikh al Nimr, the Shia cleric who has been at the forefront of the Shia protests, and who is also under a death sentence.

is permitted to go ahead, Ali will be decapitated and his body will be displayed on a cross in a public place for 3 days.

Dawoud Hussain al-Marhoon

A second Saudi juvenile is facing death by beheading for his role in pro-democracy protests. Dawoud al-Marhoon was 17 when he was arrested without a warrant by Saudi security forces in May 2012. He was released the same day on the basis that he would spy on activists. Due to



Ali was sentenced to death for 'crimes' committed when he was 17 years-old

Dawoud's non-compliance with this demand he was arrested again eight days later. He was tortured and made to sign a 'confession' that was later relied on to convict him. At the beginning of October 2015, the Specialized Criminal upheld Dawoud's conviction, and sentenced him to death by beheading.

The facts of Ali and Dawoud's cases are shocking. However, far from being unique, their stories are indicative of the unaccountable and flawed capital punishment system of Saudi Arabia.

The following report will outline the trends that Reprive has observed in the use of the death penalty for non-violent crimes as well as the routine use of torture in order to extract confessions. It will also examine the UK's bid to provide services and support to the Saudi prisons system, and the relative lack of Western condemnation of the Saudi death penalty system.

The Death Penalty for Non-Violent Crimes

Reprive's research indicates that the vast majority of people sentenced to death and executed in Saudi Arabia are convicted on the basis of non-violent alleged offences, mostly relating to protests and drugs.

Various international legal principles forbid implementation of a death sentence on anyone but the perpetrators of the most extreme crimes.⁵ The UN has stipulated that 'the most serious crimes' only applies to lethal crimes or others with extremely grave consequences.⁶ Vulnerable drug mules and protesters exercising their right to freedom of speech clearly do not fit this definition.

The range of non-violent offences that can draw the death penalty in Saudi Arabia is vast and includes blasphemy, apostasy, corruption, witchcraft, sorcery, sabotage, robbery, distribution and/or consumption of alcohol, theft, sexual practices such as adultery, sodomy and homosexuality and drug-related crimes.

⁵ The International Covenant on Civil and Political Rights provides that in countries which have not abolished the death penalty, such as Saudi Arabia, the death penalty may be imposed only for the most serious crimes.

⁶ <http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm>

Ali has not been charged with, nor convicted of, involvement in any lethal offence. Indeed, it appears that Ali was convicted of the 'crime' of "Betraying the Guardian and breaking loyalty from him". This 'crime' appears to be based primarily on allegations that Ali took part in protests demanding greater freedoms in the wake of the Arab Spring.

Similarly to other protesters in Saudi Arabia, Ali appears to have been convicted of acts such as "attending a number of opposition protests, demonstrations and gatherings, and repeating opposition slogans." He was also charged with "explaining how to give first aid to protesters" and using his blackberry to encourage others to attend protests.

Aside from not fitting 'the most serious' definition, such actions would not even be considered a legal infringement in an overwhelming majority of countries. Saudi Arabia shows a persistent lack of respect for international human rights standards and continues to use and abuse the death penalty as a weapon of political oppression.

As can be seen from Reprieve's data, the majority of people facing execution in Saudi Arabia have been charged with drug-related offences. Many are vulnerable drug mules, the poorest of the poor who are often forced at gun point, or even drugged, into ingesting illegal substances to be carried into the Gulf region.

One such example is the case of Mohammad Afzal, a Pakistani mill worker who was offered attractive job prospects in the Kingdom and a chance to perform the Umrah, a pilgrimage to Mecca. Poor and uneducated, he had little idea of what was happening and happily followed the instructions of Mohammad Arshad, a supposed overseas employment agent. Afzal paid Arshad for a passport and visa before being taken to an unknown place in Mardan. There, Afzal was drugged and in his drowsy state was forced to ingest heroin capsules. Had one of the capsules burst inside his body, he would have died. Afzal was detained in a guarded building, starved for 3 days and then dropped off at an airport and forced to board a plane to Saudi Arabia. The father of 3 had never been on a plane before and had no history of personal consumption of illegal drugs. On April 24 2009, Afzal was sentenced to death by a Saudi court for drugs trafficking.

Torture

Saudi Arabia frequently employs interrogators to torture criminal suspects with impunity, forcing them to sign coerced confessions. These confessions are often the only evidence presented at criminal trials in Sharia courts, and judges typically do not appear interested in hearing about the circumstances under which the confessions were obtained. The following cases illustrate that the use of torture in the Saudi Arabian penal system is far from being an exceptional occurrence.

Yaser*, a Saudi national facing execution for his involvement in a political protest was sentenced to death on evidence from a confession obtained through torture. In detention he shows clear signs of torture, such as bruises on his face and broken teeth. In protest at his continuing detention and maltreatment he has started a hunger strike.

Ali was tortured into submitting to a confession that was written by a member of the Saudi General Investigation Directorate. The 'confession' simply tracked the charges that the prosecution brought against him. At the time of his 'confession', Ali had been held incommunicado for 3 months, much of which was spent in solitary confinement. During this time he was repeatedly beaten to the point of suffering broken bones.

Ali's conviction and death sentence, imposed for 'crimes' committed when he was only 17 years-old, were based exclusively on this fabricated statement which was obtained by torture. The UN human rights experts monitoring the case released a statement stressing that "confessions obtained under torture are unacceptable and cannot be used as evidence before court."

Ali explicitly requested that the security forces responsible for his torture be brought to court. His request was refused and no independent and impartial investigation into his claim of torture has been held, in contravention of international law.

Dawoud, who was arrested for protesting and for refusing to act as a spy for the Saudi government, was detained in solitary confinement before being tortured into making a 'confession'. His hands and feet were severely beaten, he was forced to lie on his stomach before being trampled by his torturers and was repeatedly hit in the leg where he had been shot by security forces during demonstrations in January 2012. On being moved to another prison, Dawoud continued to be abused. He suffered electrocution to different body parts, was hung upside-down and was also tied to a chair and beaten. Throughout Dawoud's detention, he has been verbally abused and humiliated with prison guards repeatedly insulting his and his family's religious beliefs.

Moheem*, a foreign national who is facing execution told a similar story of being tortured until he agreed to sign a 'confession' written in Arabic, a language which he does not understand. According to the data that Reprieve has assembled, 78% of the death row population in Saudi Arabia are foreign nationals. Therefore on top of the concern that people charged with death eligible offences are tortured in order to extract a confession, the majority will not even understand the significance of what they are signing.

* Real names concealed for security purposes

Saudi Arabia continues to use torturous methods to execute people. Beheading, sometimes followed by 'crucifixion', is still common; stoning remains authorised by law as a punishment.⁷ These methods violate the U.N. Convention Against Torture, and the fact that many are carried out in public squares breaches the right of all human beings to dignity at the hands of the state. Many of those currently facing execution are expected to be killed by public beheading followed by crucifixion, whereby their headless bodies will be hung up for three days as an example to others.

⁷ See also p1, footnote 3.

Torture and Saudi Arabia’s Obligations under International Law

Saudi Arabia is a signatory to the U.N. Convention Against Torture (CAT). They signed the convention on September 23, 1997 and as such are subject to the following provisions.

Provision	Detail
Prohibition on the use of torture <i>Article 1</i>	The Convention emphatically and explicitly prohibits the use of torture which includes intentionally inflicting severe pain or suffering on a person for the purposes of obtaining a confession or information. ⁸
Mandatory impartial investigation on torture <i>Article 12</i>	Wherever there are reasonable grounds to believe that an act of torture has been committed, the relevant authorities must ensure a prompt and impartial investigation.
Evidence adduced from torture may be used against the accused <i>Article 15</i>	Any statement made as a result of torture shall not be invoked as evidence in proceeding except against a person accused of torture as evidence that the statement was made.

Even where the death penalty is not invoked, the form of punishment in many Saudi cases amount to horrific forms of abuse. Public flogging is commonly handed down as a prerequisite to being released from prison, even where full custodial sentences have been served: British grandfather Karl Andree, who has already spent one year in a Saudi prison, is facing 360 lashes for transporting homemade wine in his car; Raif Badawi, sentenced to ten years in prison, was also required to suffer 1,000 lashes for criticising the Saudi regime; and, approximately 100 men who have been imprisoned for “dancing and behaving like women”⁹ were collectively sentenced to thousands of lashes.

The majority of Saudi Arabia’s criminal law is not codified; much of what constitutes a crime, along with the requisite proof, and sentence are entirely up to a judge’s discretion.¹⁰ The lack of rule of law and independent oversight often leads to the arbitrary imposition of severe and even torturous punishments.

⁸ Definition of torture under CAT: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

⁹ <http://www.state.gov/j/drl/rls/hrrpt/2005/61698.htm>

¹⁰ <https://www.hrw.org/news/2010/01/14/saudi-arabia-criminal-justice-strengthened>

UK relations with Saudi Arabia

The British Government has clearly expressed its desire to promote human rights around the world, including in the Gulf States. In a speech to the Kuwaiti Parliament in February 2011 – the height of the ‘Arab Spring’ protests – David Cameron said:

For decades, some have argued that stability required highly controlling regimes, and that reform and openness would put that stability at risk. So, the argument went, countries like Britain faced a choice between our interests and our values. And to be honest, we should acknowledge that sometimes we have made such calculations in the past. But I say that is a false choice.

As recent events have confirmed, denying people their basic rights does not preserve stability, rather the reverse. Our interests lie in upholding our values—in insisting on the right to peaceful protest, in freedom of speech and the internet, in freedom of assembly and the rule of law. But these are not just our values, but the entitlement of people everywhere; of people in Tahrir Square as much as Trafalgar Square.”¹¹

However, the UK’s recent statements on oppressive measures by the Saudi Arabian Government have been somewhat muted. On Ali’s case, for example, the British Government at first refused to comment, before stating several days later that it intended to raise it ‘urgently’ with the Saudi authorities. While the French President called for the execution to be halted on September 24, the British Prime Minister did not make a similar comment until asked by the BBC, on October 4.¹² The USA has expressed ‘concern’ but not yet called for the execution to be halted, to Reprieve’s knowledge.

But concerns do not stop at an apparent reluctance to condemn the Saudi system: the British Government continues to enter into contracts and agreements with the Saudi police, prison and judicial systems meaning that the UK could end up being complicit in serious abuses.

¹¹ Quoted in the House of Commons’ Foreign Affairs Select Committee Report, ‘The UK’s relations with Saudi Arabia and Bahrain,’ 12 November 2013, p22

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmaff/88/88.pdf>

¹² The first public UK Government statement which Reprieve is aware of was provided by the Foreign and Commonwealth Office (FCO) to BBC Radio 4’s ‘The World Tonight,’ on 21 September 2015, and consisted of a single sentence: “We continue to raise our human rights concerns with the Saudi authorities, including their use of the death penalty.” A statement provided to Reuters on 24 September was the first Reprieve is aware of to specifically reference Ali’s case, and consisted of the following, again from a FCO spokesperson: “We understand that Ali Mohammed Al Nimr’s legal process has finished and his final appeal has been denied. We will raise this case urgently with the Saudi authorities. The abolition of the death penalty is a human rights priority for the UK. The UK opposes the death penalty in all circumstances.” French President Francois Hollande demanded on 24 September that the execution be halted: <http://www.lefigaro.fr/flash-actu/2015/09/24/97001-20150924FILWWW00004-arabie-saoudite-hollande-defend-ali-al-nimr.php> UK PM David Cameron, asked by the BBC’s Andrew Marr for his message to the Saudi’s on the case, said “don’t do it.” <http://www.buzzfeed.com/laurasilver/cameron-sidesteps-questions-over-saudi-prison-bid#.sJbNy6m9P>

UK involvement in Saudi Arabian Security Services: *Just Solutions International*¹³

In August 2014, the British Government submitted a bid to provide services to the Saudi Arabian Prison Service. The bid was made by ‘Just Solutions international’ (JSi), described by the Ministry of Justice (MoJ) as the “commercial brand for the National Offender Management Service (NOMS).” NOMS is in turn a public agency of the MoJ. According to the Government, JSi’s aim was to “generate commercial income through the provision of advice and support to other governments on prison and probation issues.”¹⁴

The bid was “a £5.9m proposal to the Kingdom of Saudi Arabia, Ministry of Finance to conduct a training needs analysis across all the learning and development programmes within the Saudi Arabian Prison Service.”¹⁵

On 9 September, 2015, MoJ Minister Andrew Selous announced the Justice Secretary – now Michael Gove – “has decided that JSi should cease to operate.”¹⁶ JSi had been established under his predecessor, Chris Grayling, who had also overseen the Saudi bid. Mr Selous added, though, that the Saudi bid could not be aborted as the agreements are “so far advanced” that it could risk “significant financial penalties for cancellation” that would be “detrimental” to the British government’s wider interests.¹⁷

However, the Government was later forced to amend its initial explanation to Parliament on September 16, as follows:¹⁸

One project led by NOMS through JSi is sufficiently far advanced that the Government has decided withdrawing at this late stage would be detrimental to HMG’s wider interests. Under the JSi brand, NOMS submitted an initial bid to the Saudi Arabian authorities in August 2014, and a final bid in April 2015, to conduct a training needs analysis for the Kingdom of Saudi Arabia prison service staff, via ELM, an executive agency of the Saudi Ministry of Finance. ~~Following the submission of a final bid in April 2015, NOMS is now liable for financial penalties should the bid be withdrawn.~~ NOMS’s bid was signed off through the Foreign and Commonwealth Office Overseas

¹³ Legal blogger David Allen Green has extensively covered the JSi story, and provides a particularly useful round-up of the background here: <http://jackofkent.com/2015/09/the-story-of-the-unfortunate-moj-and-saudi-commercial-proposal/>

¹⁴ See Written Question – 223441, answered by MoJ Minister Andrew Selous on 17 March 2015: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-02-04/223441/>

¹⁵ Taken from the MoJ ‘Mid year report to Parliament, April to September 2014,’ p6, under the heading “Promote UK Growth”: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/391930/ministry-of-justice-mid-year-report-to-parliament-2014-15.pdf

¹⁶ See Written Question 5660, first answered on 9 September 2015 and subsequently corrected on 16 September 2015: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-07-06/5660/>

¹⁷ WQ 5660, as above

¹⁸ WQ 5660, as above

Security and Justice Assistance (OSJA) process, and was supported by UKTI and the British Embassy in Riyadh.(Editing in original)

In other words, the initial excuse for continuing the project – financial penalties – was simply false, the real reason seemingly being that the UK did not want to offend the Saudi Arabian government – the same government that deems it acceptable to ‘crucify’ juveniles.

Reprieve asked the UK Government to provide more details of how it arrived at the assessment that “HMG’s wider interests” outweighed the need to take a strong position against the unjust and excessive sentence handed down to Ali al-Nimr. Reprieve has also asked for clarification with regard to media reports suggesting that Mr Gove wished to drop the Saudi bid when shutting down JSi, but was overruled by other Government departments.¹⁹ After months of concerted pressure,²⁰ the UK government finally made a U-turn decision and announced that they will cancel the bid. While this development is welcome news, it still begs the question of why the contract was set up in the first place.

The UK and Saudi Arabia: A Special Understanding

The UK’s relationship with Saudi Arabia is wide ranging and extends beyond the recognised military and intelligence sharing between the two States. The UK Home Office and Ministry of Justice have both entered into memoranda of understanding with their Saudi counterparts to use British expertise to support the Saudi regime.

Theresa May, the UK Home Secretary, entered into a formal agreement in March 2015 to help modernise the Ministry of the Interior and will draw “on UK expertise in the wider security and policing arena” to achieve this.²¹ The existence of the MoU has been shrouded in secrecy and it is still unclear what the Home Secretary has actually committed the UK to doing. All that is known is that UK officials and police officers will be directed to share their expertise to support the Saudi justice system – the same system that has overseen the cases of Ali, Dawoud and Mohammad.

In September 2014, the Secretary of State for Justice, Chris Grayling, entered into a separate MoU with his Saudi counterpart in order to exchange “expertise on justice and legal matters.”²² It is unclear what this actually means as the details are not openly available to the UK public. However the Government’s recent revocation of

¹⁹ *Buzzfeed News* has reported that “Gove wanted to terminate the entire contract but this was blocked by other government departments who feared that it would damage relations with the Saudis.” See ‘Britain Seeks To Distance Itself From Saudi Prison Deal As Young Man Faces Execution By Crucifixion,’ 17 September 2015: <http://www.buzzfeed.com/alanwhite/britain-seeks-to-distance-itself-from-saudi-prison-deal-as-j>

²⁰ Reprieve’s letter to Michael Gove setting out these questions is attached in Annex I.

²¹ FCO Corporate Report: Saudi Arabia – Country of Concern

²² *Ibid.*

the JSi bid to support the Saudi prison system suggests that this “exchange of expertise” is somewhat inappropriate and damaging to the UK’s reputation as a human rights defender.

The MoUs with the Saudi government must be published immediately. Given the troubling human rights record of Saudi Arabia, and the impending executions of multiple non-violent offenders and political protesters, the true extent of the relationship between the UK and Saudi government is urgently needed.

Annex I: Reprieve’s letter of 14 September 2015 to Justice Secretary Michael Gove

Dear Secretary of State,

I am writing to you from legal charity Reprieve, which assists people facing the death penalty and severe human rights violations such as torture around the world. We are currently particularly concerned by Saudi Arabia’s plans to execute at least one juvenile who has been sentenced to death by ‘crucifixion,’ apparently on charges relating to anti-Government protests in the country.

I am writing to you because I am aware from the 9 September statement by your colleague, Andrew Selous, that the MoJ intends to continue with its bid to provide support to the Saudi prisons service. As you may be aware, Saudi prisons have a very poor human rights record. The juvenile case I have mentioned concerns Ali Mohammed al-Nimr, who is facing a death sentence handed down when he was just 17 years old. That sentence is in large part based on a ‘confession’ he was forced to sign following what he says were days of torture while in Saudi custody. The sentence will itself be carried out in the prison.

While we understand that the decision to make this bid was taken before you became Justice Secretary, and that there are now financial penalties attached, we nevertheless do not believe that the UK should be in any way supporting a system responsible for such extreme abuses.

We are also deeply concerned that the MoJ bid was “signed off through the Foreign and Commonwealth Office Overseas Security and Justice Assistance (OSJA) process,” given the huge amount of information already in the public domain regarding human rights abuses in the country.

To repeat, we are aware that this was not a decision you made, but you are now in a position to put it right, and we would urge you to stop this process from going ahead. Britain’s justice system has a strong reputation for fairness and decency, and we believe that to continue with this contract would sully that reputation, while sending the signal that Britain condones the abuses taking place in the Saudi system, and others like it around the world.

Do please let me know if you would find more information on the case I have mentioned useful – I very much look forward to hearing from you as soon as possible, given the urgency of the situation facing Ali Mohammed al-Nimr.

Yours sincerely,

*Maya Foa
Director, death penalty team
Reprieve*

Reprieve, PO Box 72054	T +44 (0)20 7553 8140	info@reprieve.org.uk
London UK, EC3P 3BZ	F +44 (0)20 7553 8189	www.reprieve.org.uk

Chair: Ken Macdonald QC
Patrons: Alan Bennett, Julie Christie, Martha Lane Fox, Gordon Roddick, Richard Rogers, Ruth Rogers, Jon Snow, Marina Warner and Vivienne Westwood



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