



AFFRONT TO JUSTICE

DEATH PENALTY
IN SAUDI ARABIA

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AFFRONT TO JUSTICE

DEATH PENALTY IN SAUDI ARABIA

The rate of executions in Saudi Arabia is one of the highest in the world. Amnesty International has recorded more than 1,800 executions in the last 28 years, but the real figures may be much higher. The statistics reveal disturbing patterns of discrimination of vulnerable individuals. Many of those executed, almost half of the recorded total, were foreign nationals, mostly migrant workers from poor and developing countries. Saudi Arabian juvenile offenders and women have also been among those sentenced to death, also after court proceedings that failed to satisfy international standards of fair trial.

Saudi Arabia raised hopes for change when it began introducing legal and judicial reforms in 2001, but this hope is now turning to disappointment. Amnesty International's records show that the number of executions in 2007 exceeded 100 for the first time since 2000. Here again, the real figures may be much higher. In December 2007, the UN General Assembly called for a global moratorium on executions, but the Saudi Arabian authorities have refused to conform. They must do so right now. The gross unfairness and discrimination described in this report only underline the inherent cruelty and inhumanity of the death penalty. It must become a thing of the past.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW

www.amnesty.org

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GLOSSARY

CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
CERD	UN International Convention on the Elimination of Racial Discrimination
CERD Committee	UN Committee on the Elimination of Racial Discrimination
CGL	Court of Grievances Law (2007)
Convention against Torture	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	UN Convention on the Rights of the Child
<i>diya</i>	Compensation or blood money
Fatwa	Religious edict
<i>hudud</i>	Law of fixed punishments
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Lawyers Code	Code of Law Practice (2001)
LCP	Law on Criminal Procedure (2001)
NHRC	National Human Rights Commission
NSHR	National Society for Human Rights
<i>qisas</i>	Law governing retribution for murder and bodily mutilation
Shari'a	Islamic law
SJC	Supreme Judicial Council
<i>ta'zir</i>	Discretionary punishments for offences with no fixed punishments under <i>hudud</i> or <i>qisas</i>
UN Safeguards	UN Safeguards guaranteeing protection of the rights of those facing the death penalty

1/INTRODUCTION

On the morning of 4 April 2005, six young Somali nationals were taken from their prison cells in Jeddah, western Saudi Arabia, and beheaded in public. Announcing the executions, the Saudi Arabian Ministry of Interior stated that the six had been convicted of robberies, and that their executions were ordered in October 2004. The news of the executions shocked the men's relatives in Somalia and Europe. The relatives were under the impression that the six men, who were arrested in 1999, had been sentenced to five-year prison terms and flogging. The relatives had failed to obtain official confirmation of the sentences, and became increasingly anxious when the expected release date had come and gone and there was still no sign of the men. They approached Amnesty International in 2004 but no further information could be obtained until the announcement of the executions. Amnesty International then learnt that the six prisoners were themselves unaware of the death sentences until the very morning of their executions. The six had escaped war-torn Somalia in search of a better life only to fall victim to Saudi Arabia's relentless use of the death penalty. Their families were unable to recover their bodies for burial.

The case of the six Somalis is only one of many to illustrate the stark horror of the death penalty in Saudi Arabia. In defiance of a growing international trend towards abolition of the death penalty, and despite Saudi Arabia's membership of the UN Human Rights Council, the country's authorities continue to apply the death penalty frequently and execute, on average, at least two prisoners each week. The sentences follow a harsh, largely secretive and grossly unfair process that imposes excessive suffering on the condemned and their families. It is a shocking reality. Every year scores of people are executed, often following a conviction for non-violent or vaguely worded offences in summary trials in which they have little or no opportunity to defend themselves and almost no protection against miscarriage of justice. Under Saudi Arabian law and judicial practices, judges have great discretionary power and can impose a death sentence even on children, for a wide range of offences, including acts that are not considered serious crimes in most other countries. Poor foreign migrant workers, such as the six Somali nationals, comprise a large proportion of those executed. All too often, they receive no legal defence, are unable to follow court proceedings, which are conducted in Arabic, and face insuperable difficulties in mounting legal appeals. Those who are executed are usually beheaded, often in public. Married people, who are convicted of adultery, may be executed by stoning. The dead body is in some cases crucified.

The rate of executions in Saudi Arabia has risen sharply in the last two years. In 2000, Amnesty International recorded 123 executions in Saudi Arabia. The annual total then fell under 100 until the end of 2006, which saw around 39 executions. In 2007 a new surge took

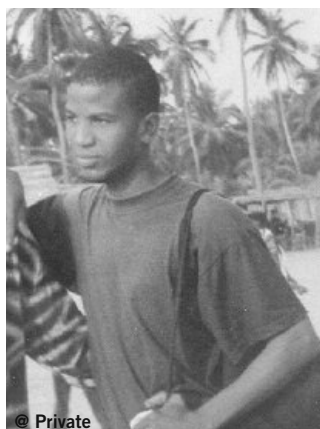
The country's authorities continue to apply the death penalty frequently and execute, on average, at least two prisoners each week.

the total number of executions to at least 158, a fourfold increase from the previous year, and at least 62 others were executed in the first five months of 2008 alone.¹

The authorities justify their continuing fixation with the death penalty on various grounds. They argue that it is provided for under Islamic Shari'a law, although they recognize that Shari'a also makes wide provision for pardon and clemency. The authorities also assert that the death penalty is a strong deterrent against crime and mention the relatively low rate of reported crime in the country. They have not yet produced clear statistical information to support this claim. In the meantime, the great body of criminological research that has been undertaken in other states and internationally has failed to produce any convincing data to indicate that the death penalty is an effective deterrent against crime. In practice, Amnesty International's research into the use of the death penalty in Saudi Arabia shows its discriminatory basis. This most extreme punishment is carried out disproportionately against foreign nationals, and almost exclusively these are nationals of poor and developing countries.

The government has introduced several much anticipated human rights initiatives in recent years. The new initiatives include long overdue legal reforms relating to criminal court procedures and the role of lawyers, a restructure of the court system and a revision of the status of judges. In addition, the government has also established two national organizations with specific mandates to promote and protect human rights and has begun to co-operate more actively with the UN's human rights mechanisms. It has also allowed greater public debate on various human rights issues within Saudi Arabia.

Amnesty International was among those who hoped that these reforms signalled a real change for the future. It appeared as if the legal and judicial changes that have been introduced since 2001 in particular would lead to a fairer, more effective and more humane system of justice and to greater conformity of Saudi Arabian law and practice with international human rights law and standards. In practice, the legal reforms and other measures have had virtually no impact on Saudi Arabia's use of the death penalty. Indeed, as the figures show, there has been a marked rise in executions since the end of 2006.



SULIAMON OLYFEMI

Suliamon Olyfemi, a Nigerian national, has been sentenced to death after facing unfair trial in 2004-5 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 translation 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 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 is now at risk of imminent execution as he has exhausted all levels of appeal.

A high proportion of those executed in Saudi Arabia are foreign nationals from poor and developing countries. They make around half of all those that are known to have been executed in the past 23 years. The implication, clearly, is that the death penalty is used disproportionately and that the Saudi Arabian authorities effectively discriminate on national or ethnic grounds when carrying out executions. Those who are most likely to face execution are often poor and come from countries that also use the death penalty or whose governments simply fail to intervene adequately on behalf of their countries’ citizens when they are sentenced to death in Saudi Arabia. Amnesty International has no record of any executions of European or North American nationals.

Wealth and influence are important factors also among Saudi Arabian nationals who are sentenced to death. It appears that prisoners with influential families or other connections are more likely to escape execution, unlike those who are poor and come from marginalized communities. In short, the death penalty is not only applied unfairly and in a secretive manner, it is discriminatory and is used against those who are least able to access their rights. It is little more than a macabre lottery whose consequences, for many, are lethal.

Amnesty International has been documenting the Saudi Arabian authorities’ extensive use of the death penalty for over a quarter of a century.² This report is the latest evaluation, made in light of the legal, judicial and human rights changes that have been introduced in recent years in the country.

The report details cases of death row prisoners on whose behalf Amnesty International has campaigned. It also includes testimonies of former detainees, some of whom have been under sentence of death. The report uses the large body of statistics collected by Amnesty International since 1980, as well as information provided by the Saudi Arabian authorities to the UN mechanisms for the protection of human rights. National media coverage of the death penalty in Saudi Arabia has also been monitored and assessed. Amnesty International has sought clarification from the authorities of virtually all the cases cited in this report, but rarely received a response. The response that did arrive was very limited.

Amnesty International has also repeatedly sought to send a delegation to Saudi Arabia in order to seek further information and to discuss its concerns about the death penalty and other human rights abuses with the government, but without success.

Amnesty International has responded to the recent sharp increase in the number of executions with various forms of action.³ It is publishing this report as part of its efforts to persuade the authorities to reconsider their current approach to capital punishment.

Amnesty International is also urging the authorities to take concrete steps to reduce and ultimately end the use of this essentially cruel, inhuman and degrading punishment, and to bring their practice into conformity with the growing worldwide trend against the use of the death penalty. Amnesty International hopes too that this report will stimulate wider debate about the death penalty within Saudi Arabian society and lend encouragement and support to those working to promote greater awareness and adherence to international human rights within the country.

As a member of the UN Human Rights Council, Saudi Arabia should be taking a lead in promoting wide understanding of and adherence to the universal human rights set out in the Universal Declaration of Human Rights of December 1948. The government was an active participant in the discussions which led to the adoption of the Declaration, although Saudi Arabia remains one of the few states in the world that has yet to become party to the two main international human rights covenants to derive from the Declaration.

This report focuses on the aspects of the criminal justice process that facilitate and perpetuate frequent use of the death penalty despite recent legal reforms. The report also highlights the use of the death penalty primarily against foreign workers, women, children and the poor. In light of the overwhelming evidence indicating that executions regularly follow grossly unfair trials, Amnesty International is calling on the authorities to:

- declare an immediate moratorium on executions as called for by the UN General Assembly in December 2007;
- bring the law and judicial practices in Saudi Arabia into line with the UN Safeguards guaranteeing the protection of the rights of those facing the death penalty, particularly the rights to effective defence and appeal and the right to seek clemency;
- review and amend or appeal Saudi Arabia's vague laws on crime and punishment in order to reduce progressively the number of capital offences and with the aim of restricting judges' discretion in the use of the death penalty;
- review the cases of all prisoners currently under sentence of death with the aim of immediately commuting the sentences or offering them a new and fair trial without resort to the death penalty;
- prohibit unequivocally the use of the death penalty against those aged under 18 at the time of the commission of the crime; and
- set up an independent and impartial commission to offer women and foreign nationals the opportunity to lodge complaints against any discriminatory practice that may have facilitated imposition of the death penalty on them.

LEGAL AND HUMAN RIGHTS INITIATIVES

Saudi Arabia has introduced a number of significant legal and human rights reforms since 2000. Some of the legal reforms introduced over the last eight years include the Law on Criminal Procedure (LCP) and the Code of Law Practice (Lawyers Code), both enacted in 2001, and the Law of the Judiciary and the Court of Grievances Law (CGL), which were both introduced in October 2007.⁴ The LCP represents a comprehensive codification of the criminal justice process from arrest of suspects to the final stages of trials. It is a positive step forward in comparison with previous laws, such as the Statute of Principles of Arrest, Temporary Confinement and Preventive Detention in force since November 1983. This Statute failed to provide even the most basic human rights safeguards, such as protection from arbitrary arrest, torture or indefinite detention without charge or trial. It also failed to ensure that people who were arrested and accused received prompt and fair trials.⁵

The LCP limits the period of detention without trial to a maximum of six months, prohibits torture and other bodily or moral harm to those under arrest and provides that detainees may seek legal counsel and defence. The Lawyers Code explicitly recognizes the important role of lawyers in the criminal justice process and consolidates many of the safeguards introduced by the LCP. As this report shows, both the LCP and the Lawyers Code require further reinforcement if they are to conform to international human rights law and standards. However, both contain provisions that, if implemented in practice, could reduce significantly the secrecy that has long surrounded the criminal justice system. This secrecy undermines the safeguards that should be available to people facing the death penalty.

The Law of the Judiciary and CGL were heralded as major judicial reforms and modernization initiatives by Saudi Arabia's Head of State King Abdullah Bin 'Abdul 'Aziz Al- Saud. The Law of the Judiciary, which replaces the Judicial Law issued in July 1975, provides for a new court structure, with a Supreme Court at the highest level, appeals court at the intermediate level and courts of first instance at its base. The latter consist of specialized courts, namely General Courts, Criminal Courts, Courts of Personal Status, Commercial Courts and Labour Courts. The new structure aims to replace the current court hierarchy, which consists of Summary Courts, General Courts, Courts of Cassation and the Supreme Judicial Council. Under the Law of the Judiciary, the Supreme Court is the last appeal authority, a role hitherto assumed by the Supreme Judicial Council (SJC). The latter has been allocated responsibility for supervising the organization of the judiciary, including the appointment of judges and their promotion and disciplinary aspects. The SJC also supervises judicial operations, formerly undertaken by the Ministry of Justice, whose functions have been significantly reduced under the Law of the Judiciary to financial and administrative management of the courts. The Law of the Judiciary sets out the rules governing the profession of judges, including their recruitment, inspection, promotion and discipline. It proclaims the independence of judges but effectively leaves them under the control of the executive branch of the government, prompting concern that the new structure may fail to overcome the deep-seated secrecy and unfairness of the criminal justice process, despite the introduction of the LCP and the Lawyers Code. Article 17 of the Law of the Judiciary provides, however, that appeals judgments are to be issued after a hearing involving the parties concerned; if implemented in practice, this could help to challenge the secrecy that surrounds appeals, particularly in capital cases.

The CGL, which replaces the Law of Board of Grievances issued in May 1982, reforms the Board of Grievances, which acted as an administrative court with jurisdiction to consider complaints against the state and its public services. Under the new law, an administrative judicial system has been stipulated to run somewhat in parallel to the criminal court system established under the Law of the Judiciary. It stipulates the establishment of a hierarchy of courts comprising a Supreme Administrative Court, Administrative Courts of Appeal, and Administrative Courts. The Court of Grievances system, however, is under the direct control of the executive branch. Significantly, it could have a role in hearing complaints about alleged miscarriages of justice, including in death penalty cases.

In addition, two official human rights organizations have been established: the National Society for Human Rights (NSHR) and the National Human Rights Commission (NHRC). The NSHR was set up by the authorities in 2004 as a quasi non-governmental organization whose function was to co-operate with international human rights organizations and “stand against injustice, abuse, violence, torture and intolerance”.⁶ It is reported to have visited prisons and investigated a number of human rights-related complaints. Its first annual report, covering 2006, touches on many human rights issues raised by Amnesty International over the years, but fails to allude to the question of the death penalty.⁷ In 2005, the NHRC was established as a government body responsible for examining human rights issues and co-ordinating with UN human rights mechanisms and international human rights organizations on behalf of the government.

In recent years, the government has increased its co-operation with international human rights mechanisms. In October 2002, it permitted the UN Special Rapporteur on the independence of judges and lawyers to visit Saudi Arabia, where he met government officials, judges, lawyers and prisoners.⁸ This was followed by a similar visit by the UN Special Rapporteur on violence against women in February 2007. In another move that expressed Saudi Arabia’s apparent interest in issue of human rights, the country was elected to the UN Human Rights Council for a three-year term in 2006, extending until 18 June 2009. Announcing its candidacy for election, the government wrote to the UN Secretary-General on 19 April 2006 confirming its commitment to “the defence, protection and promotion of human rights” and promising to actively co-operate with international organizations in the field of human rights and fundamental freedoms.

Although Saudi Arabia participated in the 1948 debate that led to the Universal Declaration of Human Rights, it is one of the few states yet to become party to the two main international human rights treaties that derive from the Universal Declaration of Human Rights: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Saudi Arabia is party to four international human rights treaties: the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). However, when becoming party to the CRC, CERD and CEDAW the government entered significant reservations and declarations that limit the enjoyment of the rights enshrined in these treaties. In addition, the country’s record of reporting on its implementation of the four treaties to their respective treaty monitoring bodies has been poor or inconsistent, with reports generally submitted late or not at all.

2/DEFYING THE WORLD

“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 maintain security, arrest the criminals and apply Allah’s rules against anyone who aggresses against the innocent, sheds their blood, violates their honour, or steals their possessions and at the same warns anyone tempted to carry out such actions that the Shar’ia punishment will be his fate.”⁹

The Ministry of Interior routinely issues statements such as this when announcing executions. They reflect a long-standing government policy that is founded on the conviction that severe punishment is the principal means to tackle crime. This policy has translated into an accumulation of laws and practices that allow for the death penalty to be imposed and carried out with complete disregard for the rules and restrictions advanced by the international community to regulate and minimize its use.

SCOPE OF THE DEATH PENALTY

In 1971 the UN General Assembly called on states to restrict the use of the death penalty with the ultimate aim of abolishing it.¹⁰ The message was reaffirmed by UN General Assembly Resolution 32/61 in 1977:

“[T]he main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for the death penalty that may be imposed with a view to the desirability of abolishing this punishment.”¹¹

This appeal was backed up by the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (UN Safeguards), which call for a reduction of offences punishable by death to only the most serious crimes.¹² These have been clarified in several UN resolutions, including Commission on Human Rights Resolution 2005/59, which calls on states to ensure that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences. It also demands that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice, expression of conscience or sexual relations between consenting adults, and that it should not be a mandatory sentence. Today, the death penalty is seen by most states as a violation of basic human rights and a total of 137 states have abolished it in law or in practice. Sixty-eight

countries retain its use, but far fewer actually carry out executions. In 2007, for example, executions were carried out in only 24 countries. Moreover, most countries that retain the death penalty have restricted its use. Only a very few, including Saudi Arabia, continue to use the death penalty regularly.

The authorities have not only failed to pursue the objectives set out by the UN and reduce the scope of the death penalty, they have in fact expanded it to include offences with no lethal consequences that clearly do not fall under the category of “most serious crimes”. Capital offences include murder, manslaughter, drugs-related crimes, adultery, sodomy, apostasy, terrorism-related crimes, as well as any cases in which the defendant is found to be “corrupt on earth”.¹³

Offences are regulated by a mixture of Shari’a rules and government-legislated laws, most of which are vague and are thereby particularly open to abuse. The Shari’a-based rules that provide for the use of the death penalty are *qisas* (retribution), *hudud* (divinely prescribed fixed offences and punishments, singular: *hadd*) and *ta’zir* (discretionary punishments for offences that have no fixed punishment under *hudud* or *qisas*).

The death penalty under *hudud* is invoked in at least three circumstances: apostasy, adultery by a married person (in which the sentence is carried out by stoning), and rebellion and highway robbery (a generic reference to violent criminal acts against persons and property and generation of fear in the community). In the case of highway robbery, the punishment is death followed by crucifixion if the crime resulted in the murder or death of the victim. However, the distinctions between these different 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*. Although either category carries the death penalty, under *qisas* the offender can escape execution if relatives of the murder victim pardon him, in which case the death penalty is dropped; in the case of highway robbery and rebellion, the state authorities may still carry out the execution even if the relatives pardon the offender, as *hudud* offences are considered a divine punishment and are not subject to a pardon.¹⁴ The death penalty can be also invoked by the judge under *ta’zir*, on the grounds of the severity of the act or the character of the offender. Executions of people on charges of practising magic or “witchcraft” are examples of *ta’zir* rulings.

Pardon by relatives of victims may or may not be subject to payment of diya (compensation or blood money). As the state is entitled to pursue public action against the offender even when the offender is forgiven by the relatives of the deceased, particularly when the murder is considered a *hudud* and not *qisas* offence, pardons by victims’ relatives must be certified by courts of law.¹⁵

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 Makkah, a Pardon and Reconciliation Committee was founded by the late governor, Prince Abdulmajeed Bin Abdul Aziz, in around 2001. It 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 local, regional or national level. The *diya* 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.

There has been a noticeable increase in the number of pardons under *qisas* since 2000. For example, Amnesty International recorded seven pardons in 2000, 14 pardons in 2005, 15 in 2006 and 24 in 2007. The government appears to be progressively encouraging the use of the pardon mechanism to commute death sentences in *qisas* cases.

HADI SAIIEED AL-MUTEEF

Hadi Saieed Al-Muteef, a Saudi Arabian national, was arrested in 1994. Three years later he was sentenced to death on a vague charge relating to comments he made that were deemed contrary to Islam and Shari'a. Amnesty International considers him to be a prisoner of conscience. The National Human Rights Commission suggested in a letter to Amnesty International dated 13 January 2007 that his death sentence had been commuted to a prison sentence while a complete pardon was being considered for him. However, reports received by Amnesty International suggest that he remains under a sentence of death and at risk of execution. He continues to be held in Najran Central Prison in south western Saudi Arabia.



The system of pardon is separate from pardons or amnesties granted by the King, which are often issued on occasions such as the end of the holy month of Ramadan. However, royal pardons rarely include amnesties for capital offences, and when they do they are invariably limited to prisoners who are nationals of countries in Europe or North America.

The scope of the death penalty was affected by the introduction of two new laws in the late 1980s. One vaguely worded law relates to sabotage and "corruption on earth". It is based on Fatwa No. 148, which was issued in August 1988 in response to mounting political opposition activities, some of which were violent. The use of the term "corruption on earth", in the absence of any clear definition, opens the way for the death penalty to be invoked even when offences do not result in lethal consequences and are not related to terrorism.

Another vaguely worded religious edict is Fatwa No. 138 Issued by the Council of Senior 'Ulama and approved by the government in March 1987, it has extended the death penalty to drugs-related offences. It makes the death penalty mandatory for drug smugglers, importers and recidivist distributors while containing no definition of "drugs" or any limitation of the death penalty to a particular substance. The introduction of the law has been one of the main factors to put Saudi Arabia among the world's most prolific executioners.¹⁶ The Law's vague scope has been maintained in a law on drugs issued by Royal Decree No.39 of 10 August 2005, which states in its Article 37 (1) that the death penalty may be imposed for:

Amnesty International's statistics show that Saudi Arabian governments have executed at least 1,839 people since 1980.

- "1. Trafficking in drugs and narcotics.
2. Receiving drugs and narcotics from a trafficker.
3. Bringing in, importing, exporting, processing, producing, converting, extracting, growing or receiving drugs and narcotics in cases other than those licensed under this law.
4. Complicity in committing any of the acts stipulated under the previous paragraphs.
5. Circulating drugs and narcotics for the second time by selling, donation, distribution, delivery, reception or transportation under the condition that an established previous ruling has been pronounced indicting him for circulation for the first time.
6. Circulation for the first time if he has been indicated for committing one of the acts stipulated in paragraphs 1,2 and 3 of the Article."

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 June 2007.¹⁷ However, no empirical evidence has been produced to show that the death penalty has a unique deterrent effect on crime, including drugs-related crime. Indeed, the most recent comprehensive survey of research findings on the relation between the death penalty and another serious crime, homicide, which was originally conducted for the UN in 1988 and concluded that:

*"...it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment."*¹⁸

It has been virtually impossible for Saudi Arabian civil society or the judiciary to openly discuss the issue of the death penalty, let alone challenge the government's stance. Lack of freedom of expression and the secret and summary nature of the criminal justice process system continues to stifle public debate. However, there are signs that the sharp increase in executions witnessed since the beginning of 2007 may cause this to change.



'ISSA BIN MUHAMMAD 'UMAR MUHAMMAD

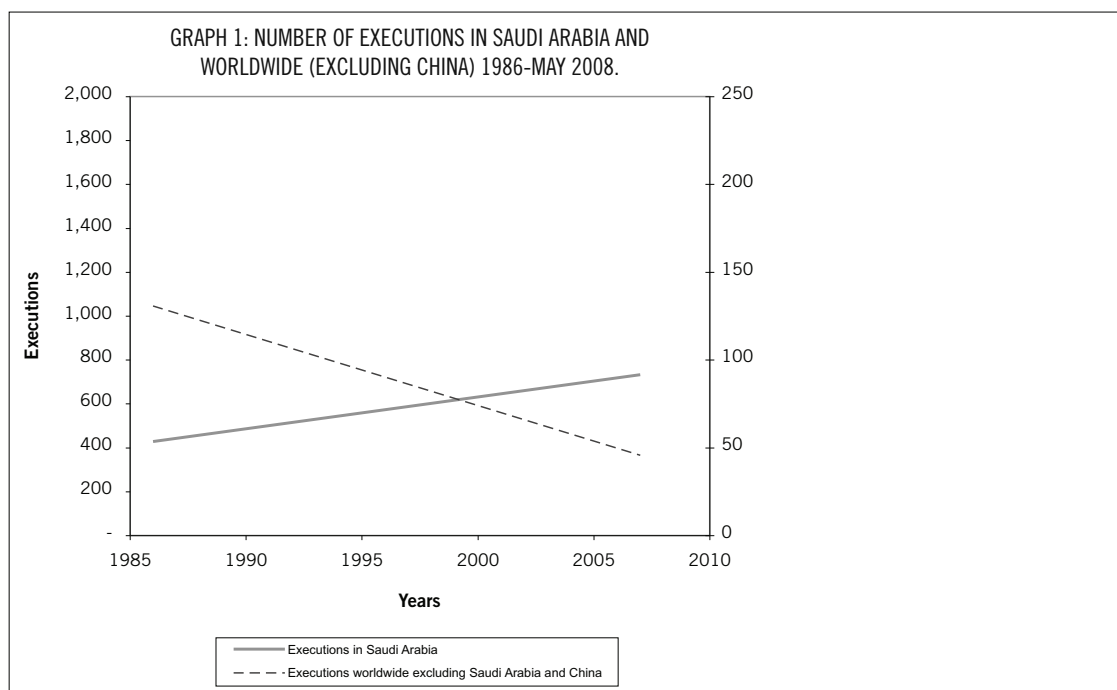
Five young men were sentenced to death by the Madina General Court in February 2008 after being arrested in 2004 and convicted on robbery and assault charges. All were held in incommunicado detention following their arrest and allegedly subjected to beatings in order to force them to confess to the charges. According to the judgment, the offences that they committed amounted to acts of "corruption on earth". Two of the five – Sultan Bin Sulayman Bin Muslim al-Muwallad, a Saudi Arabian national, and 'Issa Bin Muhammad 'Umar Muhammad, a Chadian national (*pictured, left*)– were aged 17 at the time that the alleged offences were committed. The other three men sentenced to death were Sultan Bin Khalid Bin Mahmud al-Maskati, aged 23, a Jordanian national, Yusef Bin Hassan Bin Salman

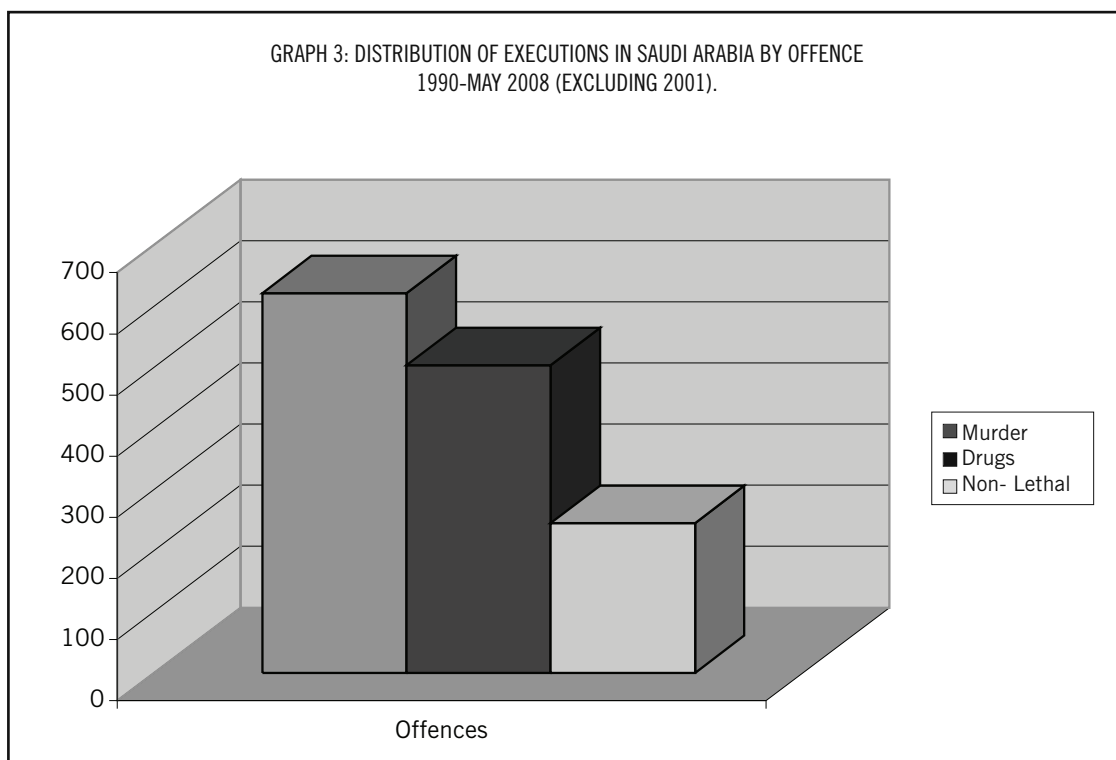
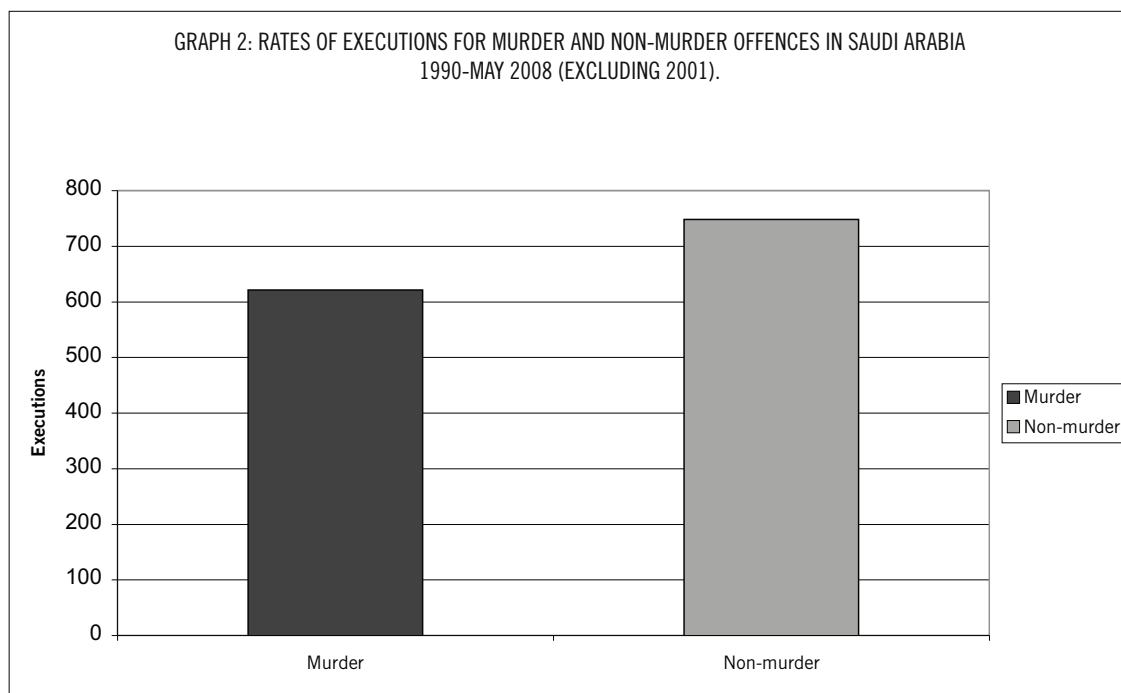
al-Muwallad, also aged 23, and Qassim Bin 'Ali Bin Ibrahim al-Nakhli (*pictured, right*), aged 22, both Saudi Arabian nationals. Two other men, both juveniles, were also accused in the trial and were sentenced to flogging and imprisonment. The case is subject to a review by the Court of Cassation and they too remain at risk of being sentenced to death and executed.

SCALE OF EXECUTIONS

Amnesty International's statistics show that Saudi Arabia has executed at least 1,839 people since 1980. Although this is no more than a conservative estimate, it represents an average of one execution every five or six days over the past 28 years. The rate of executions significantly increased after the government extended the death penalty to drug and terrorism-related offences in 1987 and 1988 respectively.¹⁹ This increase is in stark contrast to world trends, as shown in graph 1 below.²⁰

Saudi Arabia has executed at least 220 people between January 2007 and May 2008. The authorities have ignored calls from the former UN Commission on Human Rights and the UN General Assembly in 1997 and 1998 urging the institution of a moratorium on executions, with a view to bringing about its eventual abolition.²¹





There are other very disturbing statistics. In the past 18 years, Saudi Arabia has executed more people for non-lethal offences than for murder. Amnesty International's statistics show that at least 748 people were executed on charges that did not have lethal consequences, compared to 621 who were convicted of murder. Of the 748 non-lethal charges, 503 were drug-related while the other 245 non-lethal charges included witchcraft, sexual offences, assaults and robberies (see graphs 2 and 3).

The case of 'Abdullah Bin Muflih Bin Jabir al-Qahtani is only one example. At dawn on 11 April 2008, 'Abdullah Bin Muflih Bin Jabir al-Qahtani, aged 35, was collected by a group of soldiers and officers from his cell in al-Hair Reform Prison in the capital Riyadh. Hours later a fellow inmate heard the news of his fate announced by the Ministry of Interior as follows:

*"With Allah's help 'Abdullah Bin Muflih Bin Jabir al-Qahtani was arrested for possession and dealing in drug pills for the second time. Following investigation of the accusations against him and transfer to court, ... a ruling was issued proving his drug dealing and sentencing him to death as a ta'zir punishment. His sentence was ratified by the Court of Cassation and the Supreme Judicial Council, and a Royal order, No 2109/MB dated 11/3/1429 [19 March 2008], was issued for the implementation of what has been legitimately decided. The execution of 'Abdullah Bin Muflih Bin Jabir al-Qahtani was carried out today... 11 April 2008..."*²²

No further details were given. According to Amnesty International's information, 'Abdullah Bin Muflih Bin Jabir al-Qahtani was sentenced to death for possession and possibly distribution of about 15 Captagon pills and for having previously committed a similar offence.²³ Before his arrest, he was reportedly homeless, slept on the streets and relied on public generosity for his food. Having such low social status, he was ill-equipped to convince the court and authorities that the death penalty was disproportionately severe for his offence.

CHILD OFFENDERS ON DEATH ROW

Eighteen-year-old Dahayan Rakan al-Subai'i was beheaded on 21 July 2007 in the Governorate of Taif in western Saudi Arabia. He was around 16 at the time that the crime of which he was convicted was committed. The Ministry of Interior's announcement of Dahayan Rakan al-Subai'i's execution stated that he was convicted of murder, that his sentence had been upheld by the Court of Cassation and the Supreme Judicial Council, and that a royal order for his execution had been issued.²⁴ In May 2007 Amnesty International made urgent appeals on his behalf, calling for his execution to be prevented and for the death sentence imposed on him to be lifted because he was a juvenile offender. However, Amnesty International received no response from the authorities.²⁵

He was not the only juvenile offender to be executed. Eleven days earlier, citing a statement by the Ministry of Interior, Reuters news agency reported:

"A Saudi man was beheaded by the sword on Tuesday after being convicted of murder, bringing to 103 the number of executions announced by the ultra-conservative kingdom this

year. Moeid bin Hussein Hakami was executed in the southern town of Jizan after he was convicted of murdering a child whom he had attempted to rape, the interior ministry said in a statement carried by SPA state news agency. He had lured the boy into the backyard of an abandoned house to sodomize him, but he ended up killing the child as he tried to stifle his voice with his hand, the ministry added”.

The Ministry's statement failed to disclose two shocking aspects of the case, notably that Moeid bin Hussein Hakami was aged 13 at the time of the crime of which he was convicted. He was only 16 at the time of his execution. In addition, his parents were not informed in advance of his execution and have been reportedly denied disclosure of his place of burial. He was denied access to his parents throughout most of his imprisonment; when his father complained he was reportedly detained by the authorities and ordered to keep quiet about the case. Following the execution, in January 2008, the father took the unusual step of lodging a case before the Board of Grievance (the Administrative Court) seeking redress, with the support of a lawyer and the media.²⁶

The use of the death penalty against juvenile offenders is prohibited under customary international law and as a peremptory norm of general international law.²⁷ It is also prohibited under Article 37(a) of the CRC, which states 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.”

Even though Saudi Arabia is a state party to the CRC, it does not have unequivocal safeguards preventing the use of the death penalty against children. Judges have the power to decide the age of majority for children and thereby the age of criminal responsibility, and such level of discretion can have serious consequences. The Committee on the Rights of the Child said it was

*“deeply concerned that judges have the discretionary power which is often when presiding over criminal cases involving children, to decide that a child has reached the age of majority at an earlier age, and that as a consequence capital punishment is imposed for offences committed by persons before they have reached the age of 18. The Committee is deeply alarmed that this is a serious violation of the fundamental rights under Article 37 of the Convention”.*²⁸

Following Saudi Arabia's submission of its first report in 2001, the Committee on the Rights of the Child recommended that Saudi Arabia “take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons while under 18.”²⁹ However, despite this, seven years later the government has taken no measures to comply with this recommendation and the death penalty continues to be imposed on juvenile offenders.

Ra'id, from the city of Taif, for example, was convicted of murder in 2003 and was sentenced to death despite being under 18 at the time of the crime. In 2005, after intervention by tribal

3/THE LEGAL PROCESS: SECRET, SUMMARY AND UNFAIR

The secret and summary nature of the criminal justice process contravenes numerous fundamental international fair trial standards and routinely flouts the rights of the accused. The nature of the process is a key reason for the continued proliferation of death sentences in Saudi Arabia.³² Article 14 of the ICCPR provides for a range of minimum guarantees for fair trial.³³ Safeguard 5 of the UN Safeguards establishes these guarantees as baseline protection, stating:

“Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, whose mandate includes consideration of the death penalty, has observed:

“[P]roceedings leading to the imposition of capital punishment must conform to the highest standards of independence, objectivity and impartiality of judges and juries, as found in the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account. The proceedings must guarantee the right to review of both the factual and the legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case at the first instance. The defendant’s right to seek pardon, commutation of sentence or clemency must also be ensured.”³⁴

Despite the welcome improvements introduced or envisaged by the LCP, the Lawyers Code, and the Law of Judiciary and CGL, they all fail to provide strong and unequivocal rights for the accused in capital trials. These shortcomings, examined in more detail below, are further aggravated by the long-standing and systematic practice of disregarding the rights of suspects.

They remain too distanced from Safeguard 4 of the UN Safeguards, which states that “capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”

LACK OF PRE-TRIAL DEFENCE RIGHTS

“I was prevented from informing my family about my whereabouts after my sudden disappearance following my arrest. My family did not know anything about my ordeal and whether I was alive or dead ... I claimed my rights as [a] prisoner as stipulated in the Code of Criminal Procedures issued by Royal Decree No M/39 of 28 July 1422, which include my right to appoint a lawyer, my right to see a representative from the embassy of my country, and other numerous rights which have no value in reality, and [are] not worth the price of the paper [they are] written on.”³⁵

A foreign national resident in Saudi Arabia, who was arrested in 2004 and remains in a prison in Riyadh, appealing for help in 2007.

The introduction of the LCP and the Lawyers Code in 2001 reflected a rising awareness of the right to legal assistance for the accused. This right is addressed in Article 4 of the LCP and supported by Articles 35, 64, 116 and 119 of the same code.³⁶ Articles 13 and 19 of the Lawyers Code safeguard against lawyers being penalized simply for defending their clients and require courts, investigating bodies and other official authorities to co-operate with defence lawyers. This is a step in the right direction, particularly for ensuring respect for the principle of equality of arms, which is an important safeguard for guaranteeing an effective right to defence.

However, it is undermined by shortcomings in the LCP and Lawyers Code that compromise other rights of those facing capital punishment. These include weak or vaguely worded safeguards, lack of provisions to tackle secrecy, lack of pre-trial independent judicial supervision over arrest and detention, government control of the lawyers’ profession, and lack of safeguards concerning issues of gender and ethnicity.

Article 69 of the LCP gives the investigator unqualified rights to investigate the suspect in the absence of his or her lawyer. It states:

“The accused, the victim, the claimant in respect of the private right of action and their respective representatives or attorneys may attend all the investigation proceedings. The Investigator may, however, conduct the investigation in the absence of all or some of the abovementioned, whenever that is deemed necessary for determining the truth. Immediately after the necessity has ended, he shall allow them to review the investigation.”

Alarming, the law gives almost unfettered discretion to the investigator to deny a suspect access to a lawyer, rather than restricting such a denial to exceptional circumstances for a minimum, legally defined, period. Principle 18(3) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that the right of access to legal counsel may not be suspended or restricted other than in exceptional

The law gives almost unfettered discretion to the investigator to deny a suspect access to a lawyer.

circumstances, specified by law or regulation, “when it is considered indispensable by a judicial or other authority in order to maintain security and good order”. The right to have access to a lawyer of one’s own choosing at all stages of criminal proceedings is crucial for protecting a detainee’s rights, as reflected in Principle 1 of the UN Basic Principles on the Role of Lawyers.³⁷

The negative implication of Article 69 of the LCP is compounded by Article 119, which legalizes incommunicado detention for up to 60 days:

“In all cases, the Investigator shall order that the accused may not communicate with any other prisoner or detainee, and that he not be visited by anyone for a period not exceeding sixty days if the interest of the investigation so requires, without prejudice to the right of the accused to communicate with his representative or attorney.”

The former UN Commission on Human Rights repeatedly reminded states that “prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture.”³⁸ The UN Special Rapporteur on torture has recommended that incommunicado detention should be made illegal.³⁹

Most guarantees in the LCP are expressed vaguely and fail to make the arresting and investigating authorities responsible for ensuring their effective implementation. For example, Article 4 stipulates that the accused has the right to seek the assistance of a lawyer, but does not indicate how that right can be exercised in practice – for example, by allowing detainees to telephone their family, friends or a law firm or by demanding that the arresting authorities notify detainees’ lawyers and families of their arrest.

One of the many reasons that access to a lawyer is crucial is to protect detainees from torture and other ill-treatment, and to seek redress when such abuse happens. The UN Economic and Social Council has affirmed that anyone facing the death penalty should be provided with “adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases”.⁴⁰

The UN Special Rapporteur on the independence of judges and lawyers recommended that the government of Saudi Arabia:

*“take steps to ensure the provision of legal representation to those that do not have access to it. This can be achieved, for example, through the creation of an office of public defenders, or the establishment of a referral system for lawyers who are willing to provide representation without charge, or the provision of financial resources to enable the securing of legal services.”*⁴¹

Another notable shortcoming of the LCP is the absence of any guarantee of the presumption of innocence – a cornerstone of any fair trial. In the context of Saudi Arabia, this principle is of paramount importance given the primacy accorded to confessions (including televised

confessions) as evidence, even when these have been obtained under duress, deception or torture.⁴² In many cases, such “confessions” have preceded executions. The accused is not asked at any stage to plead guilt or innocence, and in such cases the detainee is effectively presumed guilty rather than innocent when facing trial, and conviction is typically secured on the basis of the “confession”.⁴³

Over the years, Amnesty International has documented the role of confessions as the principal factor behind the secrecy of pre-trial detention and the denial of the right of the accused to legal assistance before trial. In May 2007, for example, more than a dozen detainees were shown on prime-time television “confessing” to having made plans to attack oil installations and other government institutions, an offence which incurs the death penalty in Saudi Arabia. No information was provided about how the “confessions” were obtained, whether the accused had legal assistance, or whether there had been a trial. The case of Abdel Aziz al-Migrin, Ahmed Abdel Aziz al-Migrin, Khaled al-Kurdi and Mohamed Ali Hassan Zein remains shrouded in secrecy and they may be at imminent risk of execution.⁴⁴

In another case, Mohammed Kohail, a 23-year-old Canadian national, was convicted in March 2008 of the murder of a Syrian boy on the basis of a “confession” made as a result of torture. He was allegedly punched and kicked by his interrogators. He was tried together with Mehanna Sa’d, aged 22, a Jordanian national, who was also sentenced to death. Muhammad Kohail’s brother, 17-year-old Sultan Kohail, was tried as a juvenile in the same case by a court that has no jurisdiction to impose the death penalty and was sentenced to one year imprisonment and flogging in April 2008. However, the case is not final and may still be referred to retrial by a court that could sentence Sultan Kohail to death.

The foreign detainee in prison in Riyadh, quoted above, described the interrogation techniques used to force his confession:

“I was held in solitary confinement in a cell measuring approximately 2x1 metres... I was subjected to bad and degrading treatment by those in charge. Most of the time I was taken for interrogation in the middle of the night while blindfolded and shackled and was kept like that throughout the session of interrogation which lasted for hours.”⁴⁵

The Special Rapporteur on the independence of judges and lawyers has stated that “reliance on confessional evidence exacerbates the problems of prolonged detention, placing pressure on the investigator to obtain a confession from the accused”.⁴⁶ While Articles 2 and 35 of the LCP prohibit torture and Article 102 requires that interrogators should not affect the will of the accused in making a statement, they do not eliminate the incentive for using illegal means to obtain confessions.⁴⁷ Consequently, confessions continue to play a key role in the judicial process. Article 162 of the LCP states:

“If the accused at any time confesses to the offence of which he is charged, the court shall hear his statement in detail and examine him. If the court is satisfied that it is a true confession and sees no need for further evidence, it shall take no further action and decide the case. However, the court shall complete the investigation if necessary.”

The accused is not asked at any stage to plead guilt or innocence and the detainee is effectively presumed guilty rather than innocent when facing trial.



A demonstration against the risk of executions of Mohamed Kohail and his brother Sultan Kohail organized by the United Canadian Youth, March 2008.

By contrast, not a single provision in the LCP renders void statements obtained under torture, duress or deception. This breaches Article 15 of the Convention against Torture, which states:

*“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”*⁴⁸

The LCP also contains no provision for judicial supervision of arrest and pre-trial detention, leaving defendants under the sole supervision of the Ministry of Interior. This area of the administration of justice is controlled by multiple and diverse arresting authorities and the Bureau of Investigation and Prosecution, the majority of which are part of the Interior Ministry. Article 26 of the LCP lists these authorities and states:

“The proceedings relating to criminal investigation shall be conducted by the following persons, each within his jurisdiction:

1. *Members of the Bureau of Investigation and Prosecution within their jurisdiction*
2. *Directors of police and their assistants in the various provinces, counties and districts*
3. *Public security officers, secret service officers, passport officers, intelligence officers, civil defence officers, prison directors and officers, border guard officers, special security forces officers, national guard officers and military officers, each in accordance with their specified duties and with respect to crimes committed within their respective jurisdictions*
4. *Heads of counties and chiefs of districts*
5. *Captains of Saudi ships and airplanes, with respect to crimes committed on board*
6. *Heads of centres of the Bureau for the Promotion of Virtue and Prevention of Vice, with respect to matters falling within their jurisdiction*
7. *Employees and other individuals who have powers of criminal investigation pursuant to special regulations*
8. *Entities, commissions and other persons who have been assigned to conduct an investigation pursuant to the regulations."*

Indeed, no mention of judicial supervision there. The LCP, in fact, contains only one reference to the involvement of judges at the detention stage, in Article 123:

"If the accused is referred to a court, his release if detained or detention if not under arrest shall be within the jurisdiction of the court to which he has been referred. If lack of jurisdiction is determined, the court rendering the judgment of lack of jurisdiction shall have jurisdiction to consider the release or detention request, pending the filing of the case with the competent court."

The Bureau of Investigation and Prosecution and the Ministry of Interior, through its multitude of arresting authorities, exercise total control of detainees without any judicial scrutiny. The LCP empowers them in some cases to hold suspects and detainees for up to six months before referring them for trial or releasing them.⁴⁹ In practice, even this lengthy period is not respected. A former detainee, who was held from 2003 to 2006 before being released without charge or trial, wrote to Amnesty International in June 2007:

*"After one year and three months in detention, including four months in solitary confinement, I protested, asking for trial or release... As a result, I was subjected to cruel punishment. They shackled my feet on a 24-hour basis for three weeks and put me in a small cell with no air conditioning. Every time I complained they... [gave me] electric shocks which affected me psychologically and I continue to suffer as a result."*⁵⁰

The LCP provides a complaint mechanism for detainees, but this mechanism seems to be limited to addressing the arresting and investigating authorities themselves and does not

provide for access by detainees or their representatives to judges or other independent oversight.⁵¹ The UN Special Rapporteur on the independence of judges and lawyers observed:

“The provisions contained in the Law on Criminal Procedure allowing for periods of detention of up to six months are of great concern. International law requires that persons deprived of their liberty by arrest or detention be brought promptly before a judge or other officer authorized by law to exercise judicial power. They shall be entitled to trial within a reasonable time. The initial bringing of the detainee before the court is not for the purposes of trial, as preparations for this may take longer. The right to be brought before a court enables the accused to challenge the lawfulness of his continuing detention, and for the court to ensure that the accused’s rights have been respected, including that of access to a lawyer. The accused in Saudi Arabia has the right to challenge his detention when he appears for trial, but the Special Rapporteur fails to see how this right can have any value if the accused can only exercise it after a long period of detention.”⁵²

The Lawyers Code is significantly undermined by the Ministry of Justice’s strong control over the legal profession. Most notably, the Ministry has the power to license and discipline lawyers.⁵³ Evidence of this has been shown in the case of lawyer Abdul Rahman al-Lahim, defence counsel in the case of the “Girl from al-Qatif” who, despite being a victim of gang-rape, was sentenced to flogging and imprisonment. Abdul Rahman al-Lahim strongly criticized the punishment that was imposed on his client, prompting wide media coverage in Saudi Arabia and internationally. In response, the trial court ordered that his licence to practice as a lawyer be withdrawn even though the LCP and the Lawyers Code contain no provisions empowering judges to take such action. Subsequently, in December 2007 he appeared before a Ministry of Justice disciplinary committee, and his licence was restored after the hearing. Defence lawyer of Canadian national Muhammad Kohail also had his licence to practice withdrawn on the orders of a trial judge in March 2008; it was subsequently returned to him without the matter being referred to the disciplinary commission of the Ministry of Justice. Such control by the executive authorities and interference by judges undermine the independence and credibility of lawyers and the legal profession, and may deter lawyers from taking on such cases, in violation of the UN Basic Principles on the Role of Lawyers. Principle 24 states:

“Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.”

Principle 28 states:

“Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.”⁵⁴

UNFAIR TRIALS WITHOUT A MEANINGFUL APPEALS PROCESS

In provisions relating to trial hearings, the LCP refers to the right of the accused to be represented by a defence lawyer, to have a public hearing, and to appeal against the court's verdict and sentence. However, trial hearings are narrow in scope, predominantly secretive and fail to meet international standards, particularly in relation to the UN safeguards required in death penalty cases. Article 140 of the LCP emphasizes the presence of the defendant but not his or her legal representative:

"In major crimes, the accused shall personally appear before the court, without prejudice to his right to seek legal assistance. As to other crimes, he may be represented by a representative or an attorney for his defence. In all cases, the court may issue an order for the personal appearance of the accused."

Article 137 of the LCP states:

"An accused person who is arrested in flagrante delicto shall be promptly, without prior notice, brought before the court. If he asks that court to grant him a grace period in order to prepare his defence, the court must grant him sufficient time".⁵⁵

Other articles of the LCP provide that the accused must be given adequate opportunity to prepare a defence and that the accused or their representative are allowed to respond to charges by the prosecution.⁵⁶ None of these provisions explicitly requires that the defence is represented by a competent lawyer provided, if necessary, by the state. Similarly, none of the provisions reflects the imperative of legal assistance to defendants who require it. The implication is that trials can go ahead without legal assistance to the defendant even when the defendant is facing a possible death sentence.

By contrast, Article 157 of the LCP makes the presence of the public prosecution obligatory during the hearing.⁵⁷ The court may also allow the prosecutor to amend the charge sheet at any time during the proceedings. This makes preparation of defence potentially difficult, and may serve to undermine equality of arms, which is an essential component of the right to a fair trial.

The LCP has formally recognized the importance of legal defence in the delivery of justice, but in practice the role of lawyers remains limited and sporadic. In general, trials continue to be held without defence lawyers. According to information obtained by Amnesty International, where lawyers have participated in trial hearings, their role has been more that of observer than defence lawyer. They are often not given the opportunity to speak let alone to mount a vigorous challenge to the evidence presented against their client, a fundamental element of a meaningful defence.

International law requires that, in principle, trials of adults should be held in public.⁵⁸ However, neither the LCP nor the Lawyers Code guarantees the right to a public hearing. Article 155 of the LCP has contradictory provisions:

“Court hearings shall be public. The court may exceptionally consider the case or any part thereof in closed hearings, or may prohibit certain classes of people from attending those hearings for security reasons, or maintenance of public morality, if it is deemed necessary for determining the truth.”

In reality, Article 155 of the LCP adds nothing to Article 33 of the 1975 Statute of the Judiciary, which states that “court hearings are public except if the court decides otherwise on grounds of public morals, respect for the family or for the protection of public order”. The vagueness of Article 33 of the Statute has in practice achieved the opposite of its apparent aim: it made secret trial hearings the rule and public hearings the exception, with sporadic and cursory access by lawyers and restricted members of the public.

Many international instruments include an exception to the demand for public hearings. The exceptions are normally limited to reasons of morals, public order or national security in a democratic society, the interest of the private lives of the parties, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.⁵⁹ Commenting on Article 155 of the LCP, the UN Special Rapporteur on the independence of judges and lawyers stated that:

“The public nature of court hearings is essential for a fair trial and for ensuring the democratic accountability of the legal system. The Special Rapporteur is concerned that the ability to close court hearings in circumstances where it is deemed necessary for determining the truth, as specified in article 155 in the Code on Criminal Procedure, is too broad in scope and undermines the transparency of the court system.”⁶⁰

In general, trial hearings continue to be held behind closed doors in Saudi Arabia. The defendant must respond to questions by judges, the police or representatives of the Bureau of Investigation and Prosecution relating to his or her confession or statement. Such confessions or statements are usually given during incommunicado detention, often under duress or torture. This appears to be the practice even when the defendant has been fortunate enough to obtain representation by a lawyer through their family or, in the case of foreign nationals, their consulate.

For example, a prisoner who was executed in the first half of 2007 was held incommunicado for nine days after his arrest, during which he was reportedly tortured until he “confessed”.⁶¹ He was then transferred to a prison where he was held with other prisoners and allowed family visits. A few months later he was brought before a court and a lawyer appointed by the family was allowed to attend the hearing. According to reports, the judge asked the defendant about his purported confession and the defendant said it was extracted from him by torture. The judge apparently noted this. To Amnesty International’s knowledge, however, no investigation of the allegation of torture was carried out and the confession is believed to have been accepted as evidence of the defendant’s guilt.⁶² The entire hearing reportedly took no more than half an hour. The lawyer was apparently not given the opportunity to speak, but was able to hand in a written plea. No other hearings were known to have taken place or otherwise held in strict secrecy. About a year after the arrest, the prisoner was executed, apparently with no prior warning to his family.

In this case, as in most others, the level of secrecy meant that very little information was divulged about any appeal process or outcome. The LCP provides for the right of appeal for all parties concerned in any case, and makes appeal mandatory in cases of sentences of death, stoning and *qisas* involving bodily mutilation (Articles 9-12 and 193-205). The LCP also provides for the right of prisoners to ask for review or reconsideration of their case under certain conditions, including instances when the judgment is based on a previous judgment that was nullified (Articles 206-208).

The process of appeal is detailed in Articles 193-205, including timing and formalities. However, unrealistic demands and secrecy render the process almost meaningless, and give the accused little real access to the procedures or, indeed, a fair hearing. The accused is given 30 days from receiving the judgment to lodge an appeal. The judgment should be put in the convicted prisoner's court file within 10 days of the announcement of the verdict and sentence (Article 194). The 30-day deadline starts the moment the ruling is put in the file. According to Article 194 of the LCP, the onus is on the prison authorities to ensure that convicted prisoners are able to collect a copy of the verdict and can hand in a "memorandum of appeal". If the prison authorities fail to ensure this, the person surrenders their right of appeal.

According to Article 195, the appeal is submitted automatically in death penalty cases but it is unclear who should do this or how. Article 196 of the LCP stipulates that when the convicted person obtains a copy of the verdict, they must prepare a memorandum containing details of the case, the grounds on which the judgment was based, and the grounds for the appeal. The person must then submit the memorandum to the court that issued the verdict. It is difficult to understand how a convicted person who has no legal training, is often not represented by a lawyer, and is sometimes illiterate or not capable of speaking or writing Arabic, could lodge an appeal, let alone an effective one.

The first court to examine the appeal, as stipulated in Article 197, comprises the same judges who issued the original ruling. The other authorities that may be concerned with appeals are Courts of Cassation and the Supreme Judicial Council (SJC), which is the final approver in cases involving sentences of death, stoning and bodily mutilation.

Under Articles 195 and 199 of the LCP, both the court of first instance and the Court of Cassation consider the appeal without a hearing and in the absence of the parties concerned, unless they decide otherwise. The only exception is under Article 205 of the LCP, which provides that in cases where the Court of Cassation decides to judge the appeal itself, it should announce its verdict in the presence of the appellants. There is, however, no provision for hearings at which appellants or their representatives appear before either the Court of Cassation or the SJC. The appeal process fails to contain sufficient guarantees to allow a meaningful appeal that both reviews the findings of the court and ensures that conviction and sentence are reviewed by a higher tribunal.⁶³ It should be noted, however, that the Law of the Judiciary contains an important provision, which could significantly improve the appeals process. Article 17 of the law provides that courts of appeal can look into appeals against ruling by courts of first instance after hearing the parties concerned. Until this is implemented in practice, the appeal procedure remains a secretive review process with scant input from the convicted prisoner.

THE RIGHT TO APPEAL

Article 14(5) of the International Covenant on Civil and Political Rights holds that “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.” This right applies to every convict, regardless of the seriousness of the offence. The right to review ensures that there will be at least two levels of judicial scrutiny of a case, the second of which is by a tribunal higher than the first. The review by a higher court must be a genuine examination of the issues in the case.

Appeal proceedings must observe the rights to a fair and public trial.⁶⁴ Such rights include the right to adequate time and facilities to prepare the appeal, the right to legal counsel, the right to equality of arms, the right to a hearing before a competent, independent and impartial tribunal established by law within a reasonable time, and the right to a public and reasoned judgment within a reasonable time.

The LCP and Law of the Judiciary do provide a better insight into the appeal process and make appeal mandatory for those facing capital charges. But the secrecy shrouding the process together with the unrealistic demands placed on the accused and the lack of access to counsel at all stages seriously undermine the meaningfulness of the appeal.

There are many examples of the persistence of old practices. In 2003, the government announced the arrest of four people for politically motivated killings in al-Jouf in northern Saudi Arabia. The names and details of the prisoners were not disclosed. No other information was revealed about the case until 1 April 2005, when local people woke up to the sight of the crucified bodies of the four men. The men had been executed the previous day. The Ministry of Interior announced that they had been convicted of highway robbery and corruption on earth and sentenced to death. Any trial or appeal that may have taken place remains a secret.

MUSTAFA IBRAHIM

On 2 November 2007, Mustafa Ibrahim, an Egyptian national, was executed in Riyadh. According to the Ministry of the Interior’s announcement of the execution, he was convicted of practising sorcery and witchcraft. He was arrested in May 2007 in Arar, where he worked as a pharmacist, and accused of apostasy for allegedly having degraded a copy of the Qur’an.⁶⁵ He was apparently reported to the police by witnesses who claimed they had seen him degrade a copy of the Qu’ran by taking it with him to the toilet. Very little is known about his trial. Upon learning of his conviction and sentence in June 2007, Amnesty International wrote to the authorities expressing concern and seeking clarification of reports that he was at risk of execution. To date, however, there has been no reply.

EXCESSIVE DISCRETIONARY POWERS OF JUDGES

The excessive power enjoyed by judges in Saudi Arabia was made evident in the 2006 gang-rape case of the “Girl from al-Qatif”. In this case, a court in al-Qatif sentenced the rape victim, a young woman, to a flogging of 90 lashes. Her male companion, who was also gang-raped during the incident, was sentenced to receive 90 lashes. The men who had attacked them were tried alongside their two victims and, upon being convicted, received prison sentences ranging from one to five years in addition to floggings of 80 to 1,000 lashes. The young woman who was raped and her lawyer openly criticized the court ruling, to the attention of the international media. The judges were apparently angered by the publicity and upon review (appeal) of the case increased the sentence imposed on the rape victims to 200 lashes and six months’ imprisonment and, as mentioned above, reportedly ordered the withdrawal of their lawyer’s licence. The court also increased the sentences of those convicted of the rape.

The two rape victims were convicted because, although unmarried, they were found to have been in each other’s company prior to the rape. Under the rules of Shari’a applied in Saudi Arabia, it is an offence (*khilwa*) for unmarried men and women who are not immediate relatives to be alone together. At the start of the trial, the young woman who had been raped was not even aware that she was being regarded as a suspect on the grounds of *khilwa*. The case generated shock and anger among human rights activists, lawyers and journalists in Saudi Arabia and worldwide. The outrage was partly generated by the sentences handed down to the rapists, which were perceived as extremely light given the gravity of the offence. The sentences were compared to those handed down in another case, where the offenders were convicted of sexual harassment, not rape, and received prison terms ranging from six to 12 years, in addition to flogging.

Judges have excessive discretionary powers in the categorization of offences and imposition of the death penalty.⁶⁶ As Chapter 2 of this report explains, the discretion is known as *ta’zir* for offences that do not fall under *hudud* or *qisas*. Judges have discretion to choose to apply *hudud* or *ta’zir*. 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.

Judges also have the power to categorize offences and use a *hudud* punishment for a non-*hudud* offence when they cannot meet the standards of proof required for *hudud*, such as a freely given confession. In such cases, the punishment open to judges is unlimited. They can and do impose the death penalty and sentences of flogging by thousands of lashes.⁶⁷

Under *hudud*, flogging is limited to a maximum of one hundred lashes and the death penalty is limited to a specific number of offences. However, judges have the power to impose the death penalty on an offender considered to be “corrupt on earth”. This concept is so flexible that it can be applied to any offence, for example, practising magic, charlatanism or sorcery. In one case, the defendants were found guilty of assaults and theft and were sentenced to death. The judges reasoned their decision by giving the following definition of *ta’zir*:

“ta’zir [punishment] must match the crime and should not have an upper limit even if it means death, because the greatest wisdom in criminal legislation is deterrence”. The offenders were juveniles, and the crimes of which they were convicted did not have lethal consequences. Still, the judges argued that their offences amounted to “corruption on earth” and imposed the death penalty as a ta’zir punishment.⁶⁸

The extensive powers that judges enjoy are open to manipulation by the government in its attempts to extend the use of the death penalty in pursuit of its penal policy. As this report highlights, government ministries dominate the judiciary – the Ministry of Interior controls the pre-trial detention stage and the Minister of Justice has the power to interfere directly in judicial matters, including pressing for the death penalty in particular cases. The Special Rapporteur on the independence of judges and lawyers has expressed concern over the issue:

“The Minister of Justice is able to request the General Panel of the Appellate Court, which decides on the organization and jurisdiction of the court and on the principles of law to be applied by the court, to reconsider its decision and, if still not acceptable, refer it to the SJC for consideration. This represents a significant pressure on the independence of the panel’s decision-making power as the panel. Also, in accordance with Article 120 of the Law on Criminal Procedure, the Minister of Justice is required to appoint more judges in cases where a unanimous decision to impose a death sentence could not be reached. The Special Rapporteur is concerned that this appears to allow direct interference in the judicial process. If a unanimous decision cannot be reached by three judges to impose the death sentence, as is required by law, the sentence cannot be imposed.”⁶⁹

There also have been instances when judges were instructed to issue tougher sentences. The Supreme Judicial Council “in its 47th session discussed the increase in the number of prisoners held in connection with drug offences... particularly those imprisoned several times for such crimes... [the SJC] considered the Ministry of Interior’s views on this subject and decided to send a general instruction/observation to the courts. All judges must increase the sentences against drug dealers...”⁷⁰

At face value, the Law of the Judiciary appears to assert the independence of judges and the judiciary and the SJC appears to have been made wholly responsible for judges and the judicial profession. However, the law suffers from the same shortcomings that currently subordinate the judiciary to the executive branch of government. Article 1 of the Law of Judiciary states that judges are independent, that they are subordinate only to Shari’a and the law, and that no one is entitled to interfere in the work of the judiciary. However, the composition and functions of the SJC undermine this. According to Article 5 of the Law of Judiciary, the SJC will be composed of 11 members. Nine of the members, including the president of the SJC, the President of the Supreme Court and seven judges, are appointed by the King. The remaining two members are a representative of the Ministry of Justice and the head of Investigation and Prosecution who, together with the President of the Supreme Court, are the only permanent members of the SJC. The seven judges, and the President of the SJC, are appointed for four years with the possibility of extension. The SJC exercises the functions of appointment, promotion, inspection and discipline of judges.

Judges have excessive discretionary power and are subordinate to the executive branch of government. This clearly contributes to the use of the death penalty in the country, which goes far beyond the limits and restrictions set by international standards. In 2006, the National Society for Human Rights called for restrictions on the excessive powers of judges in its first annual report.⁷¹

SABRI BOGDAY

Sabri Bogday, a Turkish man, married with one child, was sentenced to death on 31 March 2008. He was convicted on charges of apostasy following trial proceedings of which very little is known. He was arrested on 11 March 2007 in Jeddah, western Saudi Arabia, where he owns a barber shop. He was reported to the police to have insulted Islam and sworn at God in public. He was tried without a lawyer or an interpreter even though his knowledge of Arabic is apparently limited. He is held in Briman Prison in Jeddah and his case is said to be at the review stage before the Court of Cassation. If upheld, the case will be sent to the Supreme Judicial Council as the last appeal stage and Sabri Bogday will then be at imminent risk of execution.

5/DEATH BY DISCRIMINATION

Foreign nationals comprise a high and disproportionate number of those executed in Saudi Arabia, particularly poor migrant workers from developing countries in Africa and Asia. Executed women, including Saudi Arabian women, are also often poor. Both of these categories of victims are highly vulnerable to the death penalty. During their trial, they face discriminatory practices and an unfair and harsh judicial process, which places them in a particularly disadvantageous position. Legal reforms have not paid sufficient attention to the special vulnerability of these two groups, highlighting Saudi Arabia's failure to uphold its international obligations of non-discrimination under international human rights standards, particularly the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

FOREIGN WORKERS AND THE POOR

Amnesty International has recorded at least 1,695 cases of people who were executed by Saudi Arabia between 1985 and May 2008 as a result of its extensive use of the death penalty. Of them, 830 people were foreign nationals and 809 were Saudi Arabian nationals. The nationality of the remaining 56 is not known. In terms of population, the figures represent for Saudi Arabians a ratio ranging between approximately 224,000 and 4 million people per execution, while the ratio for foreign nationals ranged between 37,000 and 600,000 people per execution.

This disproportionate use of the death penalty on poor foreign workers is a long-standing problem in Saudi Arabia. Two main factors sustain this situation: foreign workers are particularly vulnerable to the secretive and summary nature of the criminal justice process, and they are much less likely to receive a pardon. The extent of their vulnerability varies according to their nationality, depending on the commitment and influence of their own countries in upholding the interests of their citizens who are at risk of execution in Saudi Arabia.

As this report shows, the secret and summary nature of the criminal justice process impacts harshly on anyone who comes into conflict with the law. But it is even harsher on poor foreign workers from distant countries who are often alone in a foreign land with no relatives to turn to for help and who often lack the language skills or other knowledge to understand the procedures against them. The situation is equally agonizing for their relatives who are often unable to discover the fate of their loved ones. In 2007, the mother of a prisoner sentenced to death wrote a letter of appeal to the King:

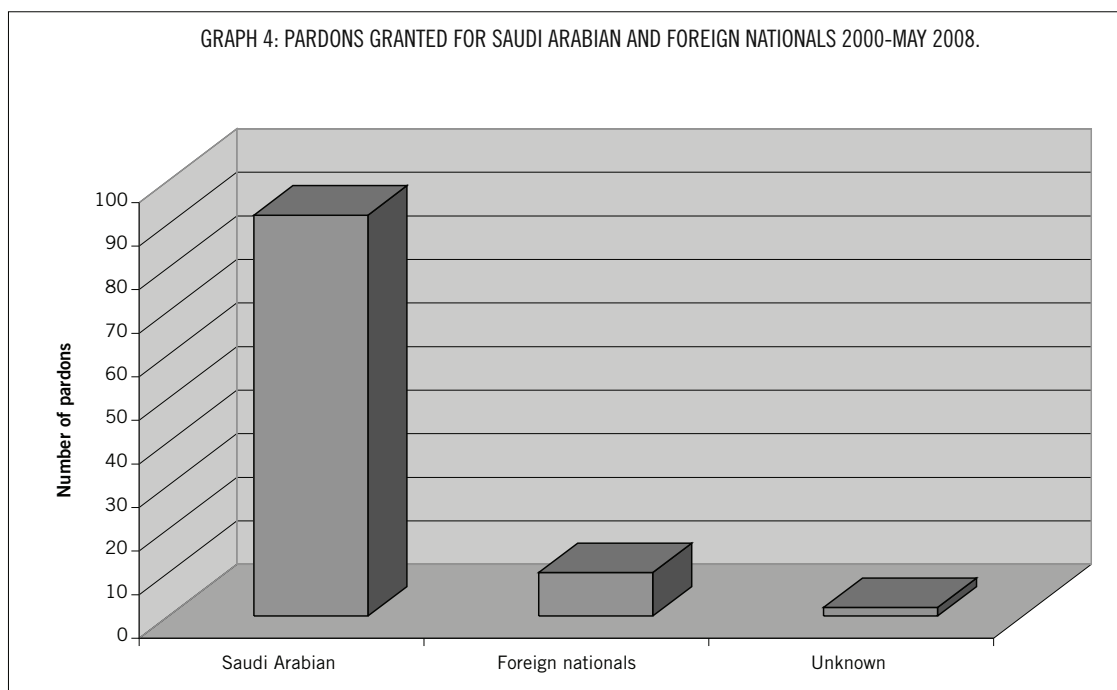
*"My son... being a poor, uneducated person and having no knowledge of Arabic, was unaware of the proceedings and was having no means or knowledge to defend himself and convince the court of his innocence...[He] is the sole bread winner of a large family consisting of myself who is sick and aged, his wife and his four-year-old daughter... [we] are solely dependent on him for our livelihood."*⁷²

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 LCP 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 states 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.

In theory, anyone under sentence of death for murder under *qisas* may appeal to the heirs of the victim for pardon and reconciliation and avoid execution. In practice, this option is available only for those able to influence the victim's relatives through power, money (or a combination of both), through kinship and friendship or by good fortune. This conclusion is based on Amnesty International's analysis of 104 cases of prisoners who have benefited

"My son... being a poor, uneducated person and having no knowledge of Arabic, was unaware of the proceedings and was having no means or knowledge to defend himself and convince the court of his innocence..."

The mother of a prisoner sentenced to death writing an appeal for clemency to King Abdullah of Saudi Arabia, 2007.



from pardon under this system since 2000. Amnesty International also examined media coverage of beneficiaries and victims involved in death penalty and stages of the pardon process in different parts of the country. Of the 104 cases analyzed, only 10 were foreign nationals. Ninety-two were Saudi Arabians, while the nationalities of two were unknown. The distribution of numbers is shown in graph 4 below.

For those seeking pardon, access to power is key: whether to the King and members of the ruling family or to senior government officials such as government ministers, governors of provinces, the Committee for Pardon and Reconciliation, or to elder tribal leaders. Such influential figures have often changed the minds of relatives who wished to see the person convicted of the death of their loved one executed.

One example is the case of a father who pardoned without *diya* the prisoner who caused the death of his son. He had been adamant that he wanted the execution to proceed but was eventually convinced otherwise, according to the newspaper *Arab News*:

*"More than 16 elders from many tribes and Sheikh... who represented the office of Prince Abdul Aziz ibn Fahd offered SR15 million [approximately US\$4 million] in cash for the family in return for forgiveness. A blank check was also offered but nothing short of punishment would satisfy the father. But under the direction of Makkah Governor Prince, Abdulmajeed Bin Abdul Aziz, the Clemency and Reconciliation Committee did its best to gain the consent of the family to pardon the killer."*⁷³

Money is a key factor in securing pardons. *Diya* varies from requests for a mosque to be built in the name of the murder victim or demands that the family of the offender gives up its property to requests for payments of millions of riyals. Powerful figures may again undertake a crucial role, for example, by contributing funds, urging others to contribute, or negotiating down the *diya* – or by combining all three roles.

In the case of Ahmad from Najran region in western Saudi Arabia, who was pardoned in 2006, relatives of the murder victim asked for 15 million riyals (approximately US\$4 million) in *diya*. Following mediation by tribal elders and Prince Mish'al bin Abdul Aziz bin Saud, Prince of Najran, the *diya* was negotiated down to 2.5 million riyals (approximately US\$665,000).⁷⁴ The *diya* was paid and Ahmad was pardoned. By contrast, poor foreign workers rarely, if ever, have access to powerful Saudi Arabian figures or large amounts of money. Nor do they have the kinship and friendship links that can play an important role in pardons. Colonel Abdulrazaq, for example, who pardoned the person reported to have caused the death of his 18-year-old son Wa'il, said that he issued the pardon because the prisoner was a good friend of his late son and that the death was accidental. "I pardoned [him] so that I don't lose both of them."⁷⁵

Access to influential figures and money is also beyond the reach of most Saudi Arabian nationals from poor backgrounds. 30-year-old Abbas Bakhit Faraj was arrested in 2002 and was sentenced to death for his part in a murder of an Egyptian man. He was pardoned by the victim's family in exchange for *diya* of 4 million riyals, (approximately US\$1 million), but continues to be at risk of execution because he cannot raise the money. His 70-year-old

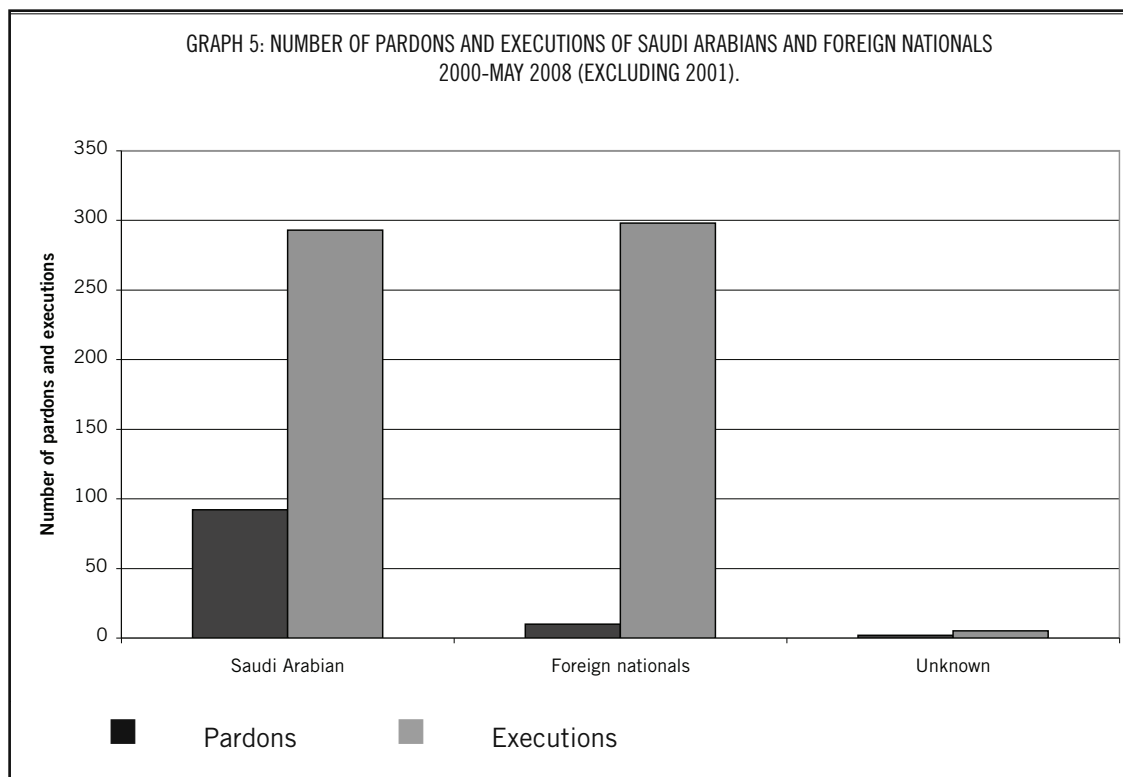
mother said, "The father is unable to follow up Abbas' case because of his old age. We don't... know how to get to donors."⁷⁶ Many poor families appeal to donors in order to raise the funds to secure a pardon for relatives facing the death penalty. *Al-Riyadh* newspaper appealed for donations in the case of Abbas Bakhit Faraj, but by March 2007 it had managed to raise only 7,000 riyals (US\$1,800). In January 2007, Amnesty International issued an urgent appeal on his behalf, calling on the authorities not to carry out the execution and to unconditionally commute his death sentence. Subsequently, Amnesty International received unconfirmed reports that the government had offered to pay the *diya*. However, Abbas Bakhit Faraj remains in al-Dammam prison. Similarly, Ahmad al-Bahrani, who was reportedly sentenced to death in connection with a murder, is believed to have received a pardon from relatives of the murder victim in exchange for *diya* of US\$1.6 million. He was unable to pay the first instalment by October 2006 and remained at risk of execution.⁷⁷ However, in February 2008, and minutes before his execution, he was pardoned in exchange for *diya* of 500,000 riyals (\$130,000).

The disadvantage of poor foreign workers is highlighted by the cases of the 10 foreign workers that were among the 104 cases studied by Amnesty International. In seven of the cases, the murder victim was not a Saudi Arabian national but of the same nationality as the offender. Two of these six were Filipino nationals who were convicted of the murder of two other Filipino nationals; negotiations for pardon were carried out by the Department of Foreign Affairs of the Philippines, which reportedly paid *diya* of 2 million pesos (US\$44,000) in one case and an undisclosed sum in the other. Two others were Yemeni nationals convicted in connection with the murders of one Yemeni and one Pakistani national. The remaining three were a Pakistani national convicted of murdering a person from Myanmar; an Ethiopian national convicted of murdering another Ethiopian; and a Sudanese national convicted of the murder of a fellow Sudanese.

Of the remaining three of the 10 pardoned foreign workers, one was a Palestinian woman convicted of murdering her Saudi Arabian husband, whom she reportedly married at the age of 13. She was pardoned in exchange for 3 million riyals (US\$400,000) and received a significant contribution from a woman who sympathized with her case. The second was a Yemeni man who was convicted of murdering a Saudi Arabian national and was pardoned minutes before his execution. The pardon was free. The third person was a Filipina national convicted in connection with the death of her employer. Her pardon was negotiated by the government of the Philippines, which reportedly paid *diya* of 28 million pesos (US\$612,000). Her case and that of the Sudanese national mentioned above were the only cases that saw the Saudi Arabian Minister of Interior reportedly mediate to reduce the sum of *diya*. The other eight pardons are not known to have had access to senior government officials, governors, tribal leaders or large sums of money.

The contrast between Saudi Arabian nationals and foreign nationals from poor countries becomes even sharper when the number of pardons is compared to the rate of executions: as the statistics known to Amnesty International indicate, approximately one pardon has been given for every four executions of Saudi Arabians compared to one pardon for every 30 executions of foreign workers, as shown in graph 5.

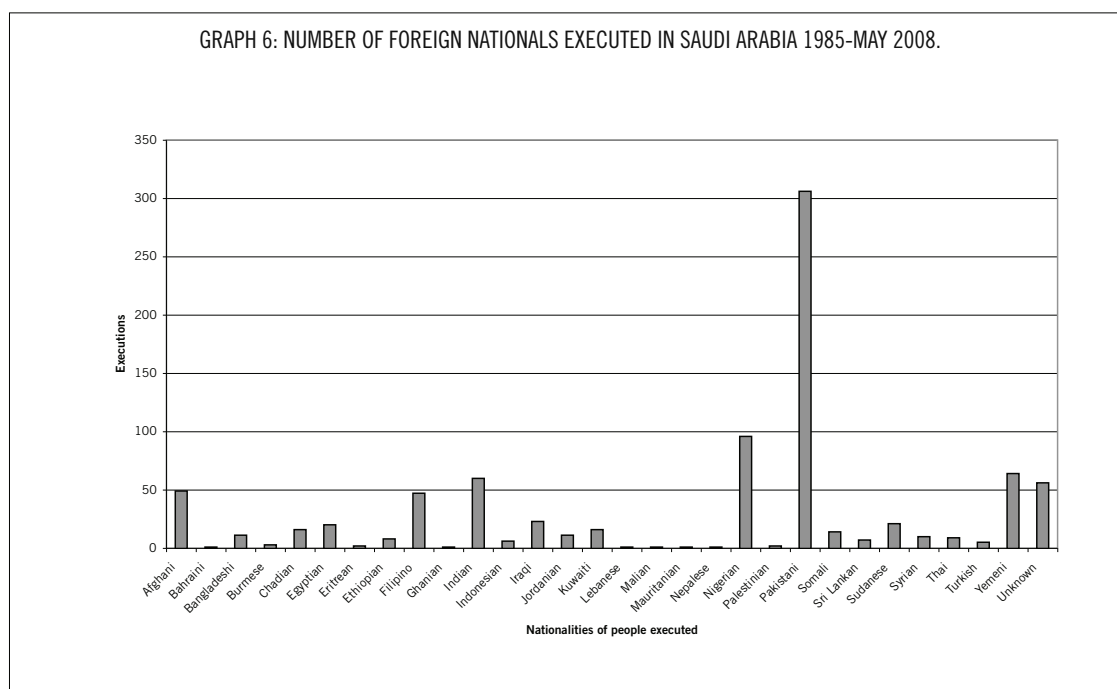
The disadvantages that foreign nationals face under death penalty in Saudi Arabia can be exacerbated by lack of interest or total disregard by their national governments in their ordeals.



The disadvantages that foreign nationals under sentence of death face in Saudi Arabia can be exacerbated by lack of interest or total disregard by their own governments in their ordeals when they come into conflict with the law. As graph 6 shows, executed foreign workers originate from at least 27 countries across Asia and Africa. Most of them came from poor countries and travelled to Saudi Arabia primarily in search of a better life. There are too many variables to explain precisely why certain nationalities appear to be more vulnerable to the death penalty in Saudi Arabia than others. However, the role of the defendant's own government appears to be an important factor.

As graph 6 illustrates, no nationals from Europe or North America are known to have been executed in Saudi Arabia.

This is not to suggest that nationals from Europe or North America have ever been sentenced to death in Saudi Arabia. In fact, a number of people from Europe and North America have been sentenced to death over the years, but they were all saved from executions with the help of interventions by their governments and the pressure of public opinion in their home countries. Poor labour supplier countries generally do not have the same degree of influence with the Saudi Arabian government as their counterparts in Europe and North America, and this works against the interest of their nationals when they are at risk of execution. However, the main factor influencing their failure to uphold the rights of their own citizens facing possible execution in



Saudi Arabia appears to be the countries' own attitude towards the death penalty and whether they are themselves retentionist. For example Pakistan, whose nationals top the list of foreign victims of executions in Saudi Arabia, carried out at least 135 executions in 2007, so it is unsurprising that it made little effort on behalf of Pakistani nationals under threat of execution in Saudi Arabia. Such disregard by their home governments, in addition to the other disadvantages poor migrant workers from Asia and Africa face under Saudi Arabia's criminal justice system, leaves them disproportionately vulnerable to execution. They are also the ones least likely to benefit from the pardon under *qisas*, as this report shows.

In 2003, the CERD Committee noted the disproportionate rate of executions of foreign workers and called on Saudi Arabia to "cooperate fully with the Special Rapporteur on extrajudicial, summary and arbitrary executions, who has requested information on several cases of migrant workers who have not received legal assistance and have been sentenced to death". Amnesty International is unaware of any such co-operation.

In its General Recommendation on Discrimination Against non-Citizens, the CERD Committee recommended that states "ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens."⁷⁸ The CERD Committee called on states to take account of the following possible indicators of racial discrimination:

- proportionately higher crime rates attributed to people belonging to racial or ethnic groups, in particular non-citizens;

- the number and percentage of people belonging to those groups who are held in detention;
- harsher or inappropriate sentences on people belonging to racial or ethnic groups, in particular non-citizens; and
- the potential indirect discriminatory effects of certain domestic legislation.⁷⁹

The cases and statistics presented in this report show that while the letter of the law in Saudi Arabia does not discriminate against poor foreign workers, the effects of the law are discriminatory because of the workers' disadvantaged position in the criminal justice system, especially with regard to punishment and the possibility of escaping the death penalty through a pardon.

WOMEN ON DEATH ROW

Saudi Arabia is one of very few states in the world which have a high rate of executions for women. Amnesty International's records indicate that at least 40 women have been put to death in Saudi Arabia since 1990. At least 40 per cent of the women executed were convicted of offences that had no lethal consequences, such as drug related offences. The rest were reportedly convicted of murder. The majority of the 40 women were poor workers from poor countries who came to Saudi Arabia in search of a better life. Women are particularly vulnerable to discrimination, including in the application of the death penalty. They face severe controls on their behaviour, which are imposed and policed by the state. For example, women are not allowed to go outside without being accompanied by a male guardian who is an immediate relative, such as a husband or a relative whom the women cannot marry. They must have the permission of a male guardian (*wali*) to marry or travel. These controls are discriminatory and violate other international human rights, such as the rights to freedom of expression, association and privacy. These legalized restrictions deny women (and sometimes men) fundamental rights such as the right to choice in marriage, and have an adverse impact on women's full participation in society.

Although women in Saudi Arabia are increasingly speaking up for their rights they remain subject to severe forms of discrimination, particularly in the judicial system. The state has also failed to act to protect women from violence at the hands of their family or employers. This double failure to reform the law and protect women against domestic violence helps to explain the frequent resort to the death penalty against women.

UNNAMED WOMAN

A 39-year-old Indian woman, who lived in Had City but whose name is undisclosed, was arrested in 2005 and subsequently sentenced to death by stoning for alleged adultery. The mother of four children, she had been married to a Saudi Arabian man who died six years before her conviction. She was arrested after she gave birth to a baby girl. According to reports, she had no legal representation and has refused to object to the sentence. She may be at imminent risk of execution.

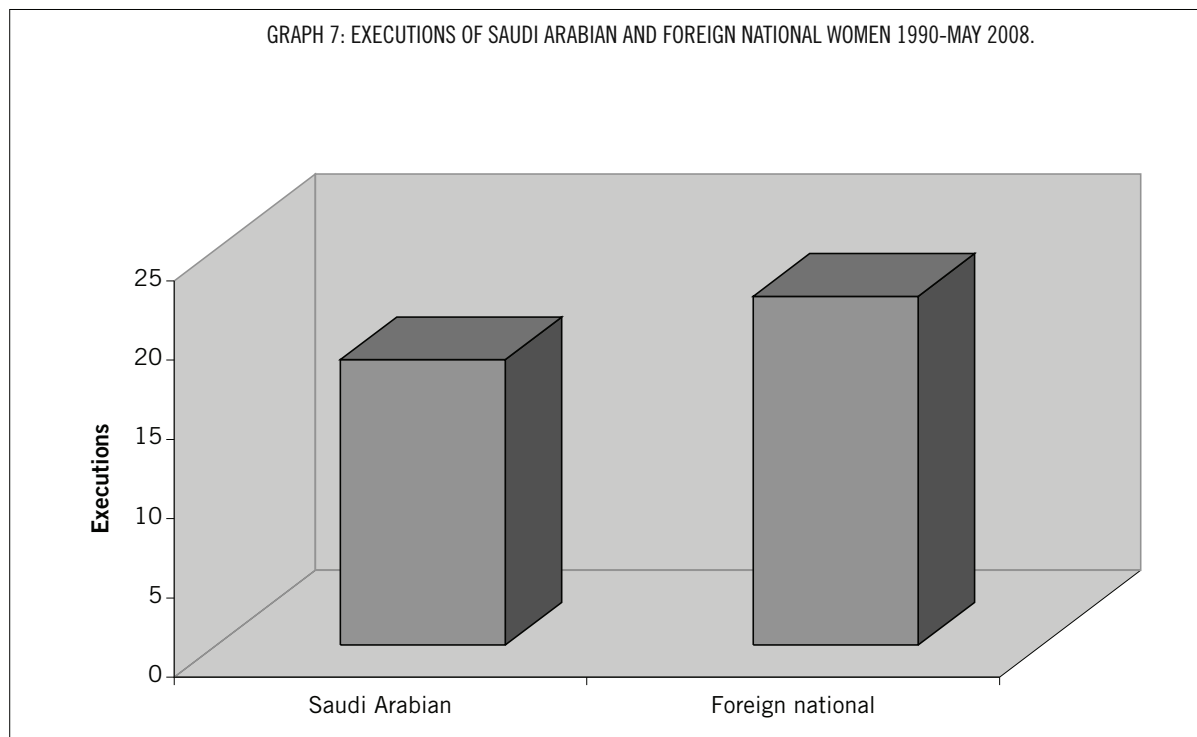
HALEEMA NISSA CADER

Haleema Nissa Cader, a Sri Lankan woman, was arrested in November 2005. According to press reports, she was sentenced to death in June 2007 by a court in Jeddah along with her husband, Indian national Naushad Nissa Cader, and a Sri Lankan man, K.M.S. Bandaranaike. They were convicted in connection with the murder of a woman during a robbery at her home. Their case is said to be at the appeal stage but no further details are known and they may be at imminent risk of execution.

Despite severe gender segregation in Saudi Arabian society, women who come into conflict with the law are arrested, interrogated and judged by men, in complete disregard of the intimidation, harassment and fear that this may involve and apparently in contravention of laws and practices rigorously enforced by the state.⁸⁰ Legal and judicial reforms such as the LCP, the Lawyers Code and the Law of the Judiciary, though generally positive, fail to recognize the special needs of women and do not ensure that women receive fair and impartial treatment when they come into conflict with the law. Articles 42, 52 and 53 of the LCP make provision for the presence of another woman when a female suspect is searched during a criminal investigation. However, the LCP does not require another woman's presence during arrest or interrogation. Such requirements are important everywhere, but particularly in Saudi Arabia. The Law of the Judiciary, while not explicitly ruling out the possibility for women to become judges, does not recognize the special needs for women in this regard. Similarly, the Lawyers Code, while not explicitly ruling out the possibility for women to practise law, does not acknowledge the need for women lawyers. Considering the existing degree of gender segregation, women should be actively encouraged to practice as lawyers and judges.

Such failures of the law to recognize the special circumstances and needs of women in Saudi Arabia are exacerbated by the prejudice ingrained within the all-male criminal justice process. Two cases that received unusually wide media coverage highlight this issue. Although these cases do not involve capital charges, they reflect the inherent prejudice that may affect death penalty cases. In the case of the "Girl from al-Qatif", described above, the woman victim was called to identify the suspects following their arrest. According to a press report, when she was brought into the police station to identify them, "they verbally attacked her, calling her names and saying that she was not an honourable woman". She apparently received hostile treatment when she appeared in court, and was reported to have said, "During my questioning in court I was scared and I confused the dates, [and] the judges said that I was lying."

The Minister of Justice, explaining the leniency of the sentence given to the perpetrators of the rape, told journalists that the woman "carried a bigger portion of the cause of the crime",⁸¹ implying that she was responsible for the crime because the man with whom she was initially found was not her immediate relative. The Minister reportedly added that the woman had accepted the verdict and sentence. However, she reportedly said: "The judges asked me if I was satisfied with the ruling. I never told them I was. Until this day I can't believe the ruling."⁸²



The second case is that of Fatima A, a 34-year-old mother of two children. Her brother used his power as her guardian to force her to divorce her husband, Mansur. Fatima's brother initiated the divorce case in August 2005 before the General Court in al-Jouf on the grounds that Mansur's tribe was of a lower status than Fatima's and that the husband had failed to disclose this before the marriage. This ground for divorce in Saudi Arabia is based on a rule known as *takafu'* or *kufu'* – the rule of parity of status between husband and wife. The court ruled in favour of a divorce, disregarding the couple's opposition and the fact that they were happily married with two children. The Court of Cassation, the final stage of appeal in such cases, upheld the ruling in January 2007. Such decision puts Saudi Arabia's criminal justice system in direct conflict with international human rights standards, particularly Articles 1, 2, 15 and 16 of CEDAW in relation to the definition of discrimination, obligations of state parties and eliminating discrimination in relation to marriage.⁸³

Foreign women workers face the same discriminatory judicial practices as Saudi Arabian women. They also face language difficulties and the reality of being alone in a foreign land with no relatives to turn to for help and support. These circumstances, almost certainly, impact on the likelihood of execution: 22 out of the 40 women executed in Saudi Arabia since 1990 were foreign workers.

The ratio of population for the two categories of victims reflects an alarming reality: for Saudi Arabian women, the ratio ranges between one execution for over four million women

(1:4,337,500) to a high ratio of 1:803,111. By contrast, the ratio for foreign women workers ranges between a low ratio of 1:238,225 and high ratio of 1:168,470.

Public outrage at the treatment of the two women was expressed by friends and relatives as well as by some Saudi Arabian news media. The cases involving foreign maids remain largely hidden because the women are away from their families and are subjected to strict employment conditions, strict gender segregation and severe restrictions on their freedom of movement.

SITI ZAINAB BINTI DUHRI RUPA

Siti Zainab Binti Duhri Rupa, a 38-year-old Indonesian domestic worker and a married mother of two, was arrested in September 1999 in connection with the murder of her female employer. She has since been detained in Medina Prison in the western province of Saudi Arabia. Siti Zainab Rupa had no legal representation at any stage of her trial and did not have access to a consular representative during the police interrogation. According to reports, the police suspected that she suffered from mental illness at the time of the interrogation. Siti Zainab Rupa is said to have “confessed” during police interrogation and was subsequently sentenced to death. Amnesty International drew the attention of the Saudi Arabian authorities to the UN Commission on Human Rights Resolution 2004/67, which urges states that still maintain the death penalty “not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person”.⁸⁴ In 2001, the government informed the then UN Commission on Human Rights that Siti Zainab Rupa was sentenced to death for the murder of her employer and that her fate will remain pending until the child of the murdered employer reaches the age of majority and decides whether to pardon her or ask for her execution. Amnesty International has no information on the age of the child or when he or she will reach the age of majority. The president of the National Human Rights Commission informed Amnesty International that the case of Siti Rupa had been referred for review to the relevant authorities but no other information has been received since. She remains at risk of execution.



6/CONCLUSION AND RECOMMENDATIONS

Saudi Arabia continues to make prolific use of the death penalty. It is a result of the country's harsh penal policy; its largely secret and summary criminal justice system; its discriminatory use of the death penalty against women and other vulnerable disadvantaged members of society; and its continued use of this most extreme form of punishment against juvenile offenders. All these practices defy international standards and trends on the death penalty.

The LCP, the Lawyers Code, Law of Judiciary and CGL reflect official awareness of some of the failures within the judicial system, but have not addressed the problems with sufficient rigour to guarantee effective rights to defendants in accordance with international fair trial standards, let alone the stringent standards required for people facing capital charges.

The law fails to position pre-trial detention firmly within an independent and impartial judicial process, leaving it under the control of the Ministry of the Interior and the numerous arresting authorities. It also fails to uphold the right to presumption of innocence, the right of detainees to have access to the outside world, the right of suspects to have effective legal assistance and interpretation facilities, and the right to judicial supervision to ensure meaningful exercise of the right to challenge the legality of detention. Some of these guarantees are provided with one hand and taken away with another, or are so vaguely worded as to be almost meaningless, or are absent altogether.

Defendants' rights are also seriously undermined at the trial and appeal stages. In fact, the LCP gives the impression that the purpose of court hearings is to question the accused who are presumed guilty. Perhaps the biggest weakness of the law is its failure unequivocally to disqualify confessions obtained by illegal means. This provides enormous incentive for lengthy incommunicado detention, torture and other ill-treatment, denial of access to legal assistance, and denial of judicial supervision over arrest and the investigation stage.

The discriminatory use of the death penalty on women and disadvantaged groups is sustained by the impact that the flawed criminal justice system has on these groups and the restrictions and exclusions they face. Being poor and alone in a foreign land with no relatives to turn to makes the secrecy and summary nature of the criminal justice process even harder to overcome.

Women continue to be arrested, interrogated and sentenced to death by men, despite being subjected to severe discriminatory forms of segregation in society at large. This not only

dismisses the consequences of harassment, intimidation and fear in terms of the delivery of justice, it also puts women at the mercy of an all-male judiciary that enforces rules, customs and traditions that discriminate against women as human beings in general.

With its continued use of the death penalty against children, Saudi Arabia remains in serious breach of its obligation under the CRC.

RECOMMENDATIONS

In light of these serious violations of international law and standards, Amnesty International reiterates its call to the Saudi Arabian government to declare a moratorium on executions.⁸⁵ Such a moratorium would provide the opportunity for the authorities to study the issue of the death penalty and bring Saudi Arabia into line with the international community on this form of punishment. As the former UN Commission on Human Rights stated, this would “contribute to the enhancement of human dignity and to the progressive development of human rights”.⁸⁶

In the meantime, the Saudi Arabian authorities should take immediate steps to bring the country’s legal and judicial practices into line with international standards. In particular, Amnesty International calls on the authorities to:

1. Bring the law on 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 capital trials when defendants do not have proper access to legal assistance.
2. Review and amend the vague laws on crime and punishment in order progressively to reduce the number of capital offences, 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.
3. Review the cases of all prisoners currently under sentence of death with the aim of commuting the sentences or offering them a retrial in accordance with the standards referred to above and without resort to the death penalty.
4. Declare null and void all verdicts imposing death sentences against persons who were under the age of 18 at the time of the crime and enact unequivocal laws prohibiting the use of the death penalty against such persons, as required under Article 37(a) of the CRC and called for by the Committee on the Rights of the Child in January 2006.

5. Set up an independent and impartial commission to offer women and foreign nationals the opportunity to lodge appeals against any discriminatory laws or practices that may have facilitated the imposition of the death penalty on them. Any verdicts arising from such discrimination should be declared null and void. In addition, the government should ensure that the judiciary lives up to its obligations under Article 7 of the Universal Declaration of Human Rights and the CERD.

6. Invite the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Saudi Arabia.

ENDNOTES

- 1 Amnesty International, *Defying world trends: Saudi Arabia's extensive use of capital punishment* (Index: MDE 23/015/2001), p.5.
- 2 See Amnesty International, *Saudi Arabia: An upsurge in public executions* (Index: MDE 23/004/1993); *Saudi Arabia: Alarming increase in number of executions* (Indexes: MDE 23/001/1995, MDE 23/002/1995, MDE 23/003/1995 and MDE 23/006/1995); *Saudi Arabia: 100 executed – Time to stop the killing* (Index: MDE 23/16/1999); *Saudi Arabia: A Secret state of suffering* (Index: MDE 23/001/2000), pp. 12-13; and *Defying world trends: Saudi Arabia's extensive use of capital punishment* (Index: MDE 23/015/2001).
- 3 Amnesty international, *Fear of imminent execution* (Indexes: MDE 23/003/2006, MDE 23/005/2006, MDE 23/003/2007, MDE 23/006/2007 and MDE 23/015/007).
- 4 The LCP was issued by Royal Decree No. M/39 of 16 October 2001 and set to enter into force in May 2002. The Lawyers Code was issued by Royal Decree No. M/38 of 15 October 2001. Both the Law of Judiciary and the CGL were introduced by Royal Decree No. M/78, dated 19/9/1428 (1 October 2007).
- 5 For detailed analysis of the Statute of Principles of Arrest, Temporary Confinement, and Preventive Detention, see Amnesty International, *Saudi Arabia: A justice system without justice* (Index: MDE 23/02/2000), pp.3-5.
- 6 The NSHR objectives, listed in Article 2 of its Statute.
- 7 National Society for Human Rights, *The First Report on the human rights in the Kingdom of Saudi Arabia*, 1427, 2006, NSHR, Riyadh, 1427, 2006, Arabic, www.nshrsa.org/articles.php?ID=48
- 8 Several UN Special Rapporteurs have requested to visit the country but have yet to receive an invitation from the government: the Special Rapporteur on torture (requested to visit Saudi Arabia in 2006 and 2007); the Special Rapporteur on trafficking in persons (2005); the Special Rapporteur on extra judicial summary or arbitrary executions (2005); the Special Rapporteur on freedom of religion (2006), and the Special Rapporteur on freedom of expression and opinion. See Special Rapporteur on the independence of judges and lawyers: Report on the mission to the Kingdom of Saudi Arabia (20-27 October 2002), E/CN.4/2003/65/Add.3, 14 January 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/102/64/PDF/G0310264.pdf?OpenElement>
- 9 BBC, 19 August 2004.
- 10 In Resolution 2857 (XXVI) of 20 December 1971 on capital punishment, the UN General Assembly affirmed that “in order fully to guarantee the right to life, provided for in Article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries.”
- 11 Resolution 32/61, adopted on 8 December 1977, Resolutions and Decisions adopted by the General Assembly, (A/32//45), 1978, at 136.
- 12 Safeguard 1 of the UN Safeguards guarantees protection of the rights of those facing the death penalty, approved by UN Economic and Social Council Resolution 1984/50. It states: “In countries

which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.”

13 Amnesty International, *Defying world trends: Saudi Arabia's extensive use of capital punishment* (Index: MDE 23/015/2001), pp.2-3.

14 For details on offences of rebellion see ‘Abdulatif Bin ‘Abdullah Bin Muhammad al-Ghamdi “al-Awsaf al-Jurmiya Lihad al-Hiraba wama Yulhaqu Biha”, *Al-‘Adl magazine*, No. 5, Muharram 1421, pp.100-139.

15 Article 29 of the LCP states: “The complaint filed by the person harmed because of a crime shall be considered as a claim of private right of action, unless he expressly waives such right before the Investigator. The Investigator shall enter any such waiver into the record and shall have it witnessed. In case of defamation and *qisas*, such waiver shall be certified by the competent court.”

16 Amnesty International, *Defying world trends: Saudi Arabia's extensive use of capital punishment* (Index: MDE 23/015/2001), pp.8-9.

17 “Pardons hard to come by as executions mount in Saudi Arabia”, AFP, 8 June 2007.

18 Roger Hood, *The Death Penalty: A Worldwide Perspective*, Third Edition, Oxford University Press, p. 230.

19 Amnesty International, *Saudi Arabia: A justice system without justice* (Index: MDE 23/02/2000), pp.3-6.

20 Graph 1 excludes China because the sheer number of executions in China distorts the overall world trend and overshadows the reality of the executions in countries with smaller populations.

21 General Assembly Resolution 1997/12, Commission on Human Rights Resolution, E/CN.4/1997/150; General Assembly Resolution 1998/8, Commission on Human Rights Resolution, Fifty-fourth session, E/CN.4/1998/L.12.

22 Ministry of Interior statement carried by the Saudi Arabia Press Agency, 11 April 2008.

23 Captagon is a commercial name for a drug called fenetylline, a stimulant whose breakdown products include amphetamine but which is regarded as a lower risk to users than amphetamine. According to the Convention on Psychotropic Substances of 1971, amphetamines are regarded as schedule II drugs. (Schedule I includes drugs such as heroin, and schedules III and IV include milder drugs.) Governments control possession and trafficking of scheduled drugs through penalties. For example, in the United Kingdom, the maximum penalty for unauthorized possession of amphetamine is a five-year prison term and an unlimited fine. The maximum penalty for illegal supply is 14 years in prison and an unlimited fine.

24 See Saudi Arabian Press Agency report, 21 July 2007.

25 See Amnesty International, *Saudi Arabia: Death Penalty/Fear of imminent execution* (Indexes: MDE 23/019/2007, MDE 23/019/2007, MDE 23/030/2007).

26 His case has been covered in particular by the English daily *Arab News*, see for example issue dated 30 January 2008.

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

28 See Committee on the Rights of the Child concluding observations: Saudi Arabia, CRC/C/SAU/CO/2, January 2006, para. 32, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.SAU.CO.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.SAU.CO.2.En?OpenDocument)

29 Committee on the Rights of the Child, Concluding Observations: Saudi Arabia, CRC/C/15/Add.148, 22 February 2001, para. 28.

30 *Al-Watan*, 9 September 2005.

31 See Committee on the Rights of the Child concluding observations: Saudi Arabia, CRC/C/SAU/CO/2, January 2006, para.33.

32 Amnesty International, *Saudi Arabia: A justice system without justice* (Index: MDE 23/02/2000), pp.7-14.

33 See Article 14 of the ICCRP.

34 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/51/457, 7 October 1996, para.111.

35 Name withheld for fear of reprisal against the detainee.

36 Article 4 of the LCP states: "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 stages."

37 Principle 1 of the Basic Principles on the Role of Lawyers states: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings."

38 See Commission on Human Rights Resolution 2003/32: Torture and other cruel, inhuman or degrading treatment or punishment, 23 April 2003, para.14.

39 See Report of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, A/54/426, 1 October 1999, para. 42.

40 ECOSOC Resolution 1989/64, 24 May 1989, UN Doc: E/1989/INF/7, at 128.

41 UN Special Rapporteur on the independence of judges and lawyers, Report on the mission to the Kingdom of Saudi Arabia (20-27 October 2002), E/CN.4/2003/65/Add.3, 14 January 2003, para. 109(d)

42 For detailed analysis of the primacy of confessions as a means of evidence see Amnesty International, *Saudi Arabia remains a fertile ground for torture with impunity* (Index: MDE 23/004/2002), pp.6-12.

43 For more details on the weaknesses of the principle of presumption of innocence see Human Rights Watch, *Precarious Justice: Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia*, Volume 20, No 3(E), March 2008, pp.78-84.

44 See Amnesty International, *Saudi Arabia: Fear of executions* (Index: MDE 23/021/2007).

45 Name withheld for fear of reprisal against the detainee.

46 UN Special Rapporteur on the independence of judges and lawyers, Report on the mission to the Kingdom of Saudi Arabia (20-27 October 2002), E/CN.4/2003/65/Add.3, 14 January 2003. Para. 100.

47 Article 2 states: "No person shall be arrested, searched, detained, or imprisoned except in cases provided by law. Detention or imprisonment shall be carried out only in the places designated for such purposes and shall be for the period prescribed by the competent authority. An arrested person shall not be subjected to any bodily or moral harm. Similarly, he shall not be subjected to any torture or degrading treatment". Article 35 states: "In cases other than *flagrante delicto*, no person shall be arrested or detained except on the basis of order from the competent authority. Any such person shall be treated decently and shall not be subjected to any bodily or moral harm. 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". Article 102 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."

48 The value of this clause was recognized by the Saudi Arabian National Society for Human Rights, in its report, *The First Report on the human rights in the Kingdom of Saudi Arabia*, 1427, 2006, Riyadh, 1427, 2006 Arabic, www.nshrsa.org/articles.php?ID=48

49 Article 114 states: “The detention shall end with the passage of five days, unless the Investigator sees fit to extend the detention period. In that case, he shall, prior to expiry of that period, refer the file to the Chairman of the branch of Bureau of Investigation and Prosecution in the relevant province so that he may issue an order for extending the period of the detention for a period or successive periods provided that they do not exceed in their aggregate forty days from the date of arrest, or otherwise release the accused. In cases that require detention for a longer period, the matter shall be referred to the Director of the Bureau of Investigation and Prosecution to issue an order that the arrest be extended for a period or successive periods none of which shall exceed thirty days and their aggregate shall not exceed six months from the date of arrest of the accused. Thereafter, the accused shall be directly transferred to the competent court, or be released.”

50 Name withheld for fear of reprisal.

51 Article 38 states: “Any prisoner or detainee shall have the right to submit, at any time, a written or verbal complaint to the prison or detention centre officer and request that he communicate it to a member of the Bureau of Investigation and Prosecution. The officer shall accept the complaint and promptly communicate it [to the Bureau of Investigation and Prosecution] and provide the prisoner or detainee with an acknowledgement of receipt. The administration of the prison or detention centre shall designate a separate office for the member of the Bureau of Investigation and Prosecution as may enable him to follow-up the cases of the prisoners or detainees.”

52 See UN Special Rapporteur on the independence of judges and lawyers, Report on the mission to the Kingdom of Saudi Arabia (20-27 October 2002), E/CN.4/2003/65/Add.3, 14 January 2003, Para. 97.

53 See, for example, Articles 5 and 30 of the Code. Article 5 states that: “The application for registration shall conform to the form specified in the implementing regulations of this Code and shall be submitted to the ‘Lawyers Registration and Admission Committee’ that shall be formed as follows: (1) A deputy of the Ministry of Justice to be appointed by the Minister of Justice, as Chairman. (2) A representative of the Board of Grievances whose rank shall not be less than the rank of a Chief of a Court of class A, to be appointed by the Chairman of the Board of Grievances, as a member. (3) A lawyer who has been practicing law for a minimum period of five years, to be appointed by the Minister of Justice, as a member. The competent authority shall name a substitute in case of absence of a member of this committee. The term of membership of this committee shall be three years renewable for another term.” Article 30 states that: “The Public Prosecutor shall, either of his own accord or pursuant to instructions by the Minister of Justice or any court of law or the Board of Grievances or any of the committees referred to in Article 1 of this Code, initiate disciplinary proceedings against the said lawyer.”

54 See Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of offenders, 1990.

55 “Flagrante delicto” means “caught in the act”.

56 See Articles 160 and 170 of the Law on Criminal Procedure.

57 Article 157 of the LCP states: “In major crimes, the Prosecutor shall appear during the court hearings in connection with the public right of action, and the court shall hear his statements and decide the same. In other cases, he shall attend court hearings if summoned by the Judge or the Prosecutor finds reason to appear.”

58 Principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: “A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

59 See for example Article 14(1) of the ICCPR.

60 See UN Special Rapporteur on the independence of judges and lawyers: Report on the mission to the Kingdom of Saudi Arabia (20-27 October 2002), E/CN.4/2003/65/Add.3, 14 January 2003. Para. 103.

61 Name withheld to protect the family.

62 Article 12 of the Convention against Torture requires states to: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

63 See UN Special Rapporteur on the independence of judges and lawyers, Report on the mission to the Kingdom of Saudi Arabia (20-27 October 2002), E/CN.4/2003/65/Add.3, 14 January 2003. The Special Rapporteur on the independence of judges and lawyers stated in paragraph 21 of his report on his visit to Saudi Arabia that: "The Appellate Court, reviews the judgements of the lower court on the application of one of the parties, or automatically with respect to cases involving sentence of death, amputation, stoning, or *qisas* not involving death. If the court disagrees with the decision of the lower court, it is sent back to the lower court for reconsideration. If the lower court judge agrees with the opinion of the Appellate Court, he rescinds the judgement and rehears the case. If he disagrees he must inform the Appellate Court, which can then agree with the judge or set aside the decision and refer the case back to the lower court for consideration by a new judge."

64 Human Rights Committee General Comment 13, addresses equality before courts and the right to a fair and public hearing by an independent court established by law, 13 April 1984, para 17.

65 *Al-Hayat*, 7 May 2007.

66 See Amnesty international, *Defying world trends: Saudi Arabia's extensive use of capital punishment* (Index: MDE 23/015/2001), pp.8-11.

67 For more details on the punishment of flogging see Amnesty International, *Saudi Arabia remains a fertile ground for torture* (Index: MDE 23/004/2002), pp.16-18.

68 The identity of the defendant is withheld in fear of reprisal.

69 See UN Special Rapporteur on the independence of judges and lawyers, Report on the mission to the Kingdom of Saudi Arabia (20-27 October 2002), E/CN.4/2003/65/Add.3, 14 January 2003. Para. 85.

70 Supreme Judicial Council, One of the Supreme Judicial Council's Decisions, undated document numbered 13/T/1455.

71 National Society for Human Rights, *The First Report on the human rights in the Kingdom of Saudi Arabia*, 1427, 2006, Riyadh, 1427, 2006, Arabic, www.nshrsa.org/articles.php?ID=48

72 The name and details of the persons involved are withheld for fear of reprisal.

73 *Arab News*, 21 September 2004.

74 *Al-Watan*, 17 March 2006.

75 *Al-Riyadh*, 17 May 2001.

76 *Al-Riyadh*, 26 January 2007.

77 See Amnesty International, *Saudi Arabia: Fear of imminent execution* (Indexes: MDE 23/003/2006 and MDE 23/005/2006).

78 CERD Committee, General Recommendation XXX: Discrimination Against Non Citizens, 1 October 2004, paras.6-7.

79 CERD Committee on the Elimination of Racial Discrimination: General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 1.

80 See also Amnesty International, *Saudi Arabia: Gross human rights abuses against women* (Index: MDE 23/57/2000).

81 *Al-Watan*, 22 November 2006.

82 *Arab News*, 5 March 2007.

83 Saudi Arabia has entered a general reservation to CEDAW declaring that “In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.” The CEDAW Committee has stated specifically that Articles 2 and 16 are core provisions of the Convention. The Committee holds the view that Article 2 is central to the object and purpose of the Convention. Traditional, religious or cultural practice cannot justify violations of the Convention. The Committee is similarly convinced that reservations to Article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn. Accordingly, the committee has made the following specific comments in relation to reservations to these articles stating:

“The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of article 16, especially when a reservation has also been entered to article 2, claiming that compliance may conflict with a commonly held vision of the family based, inter alia, on cultural or religious beliefs or on the country’s economic or political status... States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn”. By entering reservations to such core articles of the Convention, states in the region are effectively denying women equality, which is the main purpose of the Convention. They are maintaining the situation where discrimination exists in law, customs, and practice and refute their obligations to take effective steps to eliminate discrimination and violence against women.

84 UN Commission on Human Rights Resolution 2004/67 of 21 April 2004, para. 4(c).

85 The question of the death penalty, ECOSOC resolution, 20 April 2001, E/CN.4/RES/2001/L.93, adopted 20 April 2001.

86 UN Commission on Human Rights Resolution 2001/68, 25 April 2001.