

*A Perverse and Ominous Enterprise:  
The Death Penalty and Illegal Executions in Saudi Arabia*



*A cleaner washes Deera Square, Riyadh, where public executions take place*  
*Photo Credit: Sage M. Park*

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## SUPPORT FOR THE REPORT

**Alberto Costa MP (UK Parliament, Conservative)**

**Prof. Lord Paul Alton of Liverpool KCSG, KCMCO (UK House of Lords, Member of the International Relations Committee)**

*"Whenever the UK Government is challenged about its apparent indifference to Saudi Arabia's appalling track record of egregious human rights violations, it justifies its silence by claiming that it uses its significant economic and security ties to exert back channel pressure. Serial executions - including those of children - and the punitive treatment of anyone who dares to challenge the authoritarianism that lies behind the regime's behaviour, underlines how back channel influence is too often a self-serving piece of deceptive fiction. Helena Kennedy's hugely important report spells out what we can do to make clear that while children are executed and the rule of law is disregarded it cannot be a case of business as usual with Saudi Arabia."*

**Stella Creasy MP (UK Parliament, Labour)**

*"In a world so divided, it has never been more important to stand up for human rights and for due process and the fair rule of law - no nation can be above these principles, nor can any other overlook them however powerful those who abuse them are. The UK Government must challenge Saudi Arabia on this situation as a matter of urgency and call for a moratorium on executions given these concerns."*

**Baroness Vivien Stern CBE (UK House of Lords, Co-Chair of the All-Party Parliamentary Group on the Abolition of the Death Penalty)**

*"I welcome this timely and important report on the shocking level of use of the death penalty in Saudi Arabia. Following China and Iran, Saudi Arabia executed the highest number of people in 2018. These executions occurred alongside multiple human rights abuses in terms of arrests, prosecutions, trials, appeals and the methods used to carry out the death penalty. Too little is done by the international community to bring Saudi Arabia to account for its human rights abuses and it is hoped that this report will stimulate further action."*

**Lord Michael Cashman CBE (UK House of Lords)**

*"These continuing executions in Saudi Arabia should cause the deepest concern in every country that considers itself civilised. It is truly appalling."*

**Bianca Jagger, Goodwill Ambassador for the Council of Europe and campaigner against the death penalty**

*"This Report presents the horrific extent of the human rights abuses by the Kingdom of Saudi Arabia and its total disregard for international standards and laws. This appalling use of the death penalty against children and anyone who opposes the regime is indicative of its ruthless authoritarianism."*

**Hon. Fabio Massimo Castaldo (Vice-President of the EU Parliament)** Sr. Castaldo MEP has addressed a parliamentary question to the EU Parliament in light of the Report, concerning the EU's stance on the widespread use of the death penalty by Saudi Arabia against political opponents, human rights defenders, clerics, activists, and children.

**Senator Emma Bonino OMRI, CdrLH (Member of the Senate of the Republic, Italy; former Minister of Foreign Affairs of Italy and former EU Commissioner)**

*"Baroness Kennedy's report on the death penalty in Saudi Arabia presented at the House of Commons in London paints a chilling picture. In addition to the 134 people who were executed only in the first half of 2019, including dissidents, political prisoners, and many minors, here are at least 24 others who are at imminent risk of execution. We cannot continue to turn a blind eye, and accept the normalization of state violence as a form of government in Saudi Arabia".*

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# A Perverse and Ominous Enterprise: the Death Penalty and Illegal Executions in Saudi Arabia

## A. Introduction:

1. So far this year, the authorities of the Kingdom of Saudi Arabia (Saudi Arabia) are known to have carried out at least 134 executions. Of these, 37 were political activists killed *en masse* on 23 April 2019 following lengthy periods of detention in solitary confinement, subjection to torture, and grossly unfair trials. Many of the 37 were members of Saudi Arabia's Shia minority who were arrested and ultimately executed for their participation in protests in the country's Eastern Province. Six were children<sup>1</sup> at the time of their alleged offences. As at 20 July 2019, at least 24 individuals had been identified as being on death row or otherwise at imminent risk of unlawful execution for non-violent or protest-related crimes (though there is reason to believe there are many more). Three of these were children at the time of their alleged offending.
2. I have been asked<sup>2</sup> to prepare this report and legal opinion considering the evidence concerning the recent<sup>3</sup> and prospective use of the death penalty by Saudi Arabia; to comment on the legality and implications of such executions; and to make recommendations to address the violations being committed.
3. Saudi Arabia's recent use of the death penalty should be viewed in the context of systemic and egregious human rights violations, including the widespread use of arbitrary arrest and detention (particularly since late 2017) to target political opponents and silence dissent, and the well-documented and indiscriminate use of airstrikes to

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<sup>1</sup> That is, a person under the age of 18: Convention on the Rights of the Child, adopted by the UN General Assembly 20 November 1989, Resolution 44/25, acceded to by Saudi Arabia 26 January 1996, Art. 1. The terms 'child' and 'minor' are used interchangeably in this report.

<sup>2</sup> By the Arab Organisation for Human Rights in the UK (AOHR), a London-based NGO, which undertakes human rights work on behalf of victims and their families. The AOHR has been working with victims and families from Saudi Arabia who have requested that this report is produced, and provided information for the report.

<sup>3</sup> In broad terms, the focus of the report is on those who have been executed in 2019, those who are currently on death row awaiting execution, and those who are in detention in Saudi Arabia and at risk of having the death penalty imposed. However, I also refer to information relating to earlier executions where appropriate.

target civilian populations in Yemen since 2015. It should also, of course, be seen in the context of the extrajudicial execution of journalist Jamal Khashoggi at the Saudi consulate in Istanbul on 2 October 2018. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has recently concluded that this was a premeditated murder for which Saudi Arabia bears state responsibility, and that a number of high-level Saudi officials including Crown Prince Mohammed bin Salman are personally implicated. Accordingly, she has determined that the killing was a clear violation of Jamal Khashoggi's right to life, and that the gruesome circumstances also amounted to a violation of the prohibitions on torture and on enforced and involuntary disappearances.<sup>4</sup> Whilst this context is important, this report focuses on those who have recently been executed in Saudi Arabia itself, who are currently on death row in Saudi Arabia, or who are at real risk of being sentenced to death. In particular, this report draws attention to the plight of political activists and minors who have been executed or are the subject of threatened executions.

4. In preparing this report, a number of persons directly affected by recent and threatened executions have been interviewed, including relatives and lawyers of victims. Whilst some are prepared for information and quotes to be attributed to them as set out below in Section F, a number wish to remain anonymous due to concerns for their safety and that of their family members. The individuals interviewed are willing to assist the international fact-finding mission which is the subject of Recommendation 4 below, as well as the relevant Special Procedures of the UN Human Rights Council. Information and assistance have also been provided by the Arab Organisation for Human Rights in the UK (AOHR), the European-Saudi Organisation for Human Rights (ESOHR),<sup>5</sup> the Cornell Centre on the Death Penalty Worldwide (Cornell), and others. In addition, open-source material has been consulted as set out in the footnotes to this report.

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<sup>4</sup> *Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr Jamal Khashoggi*, UN Docs A/HRC/41/CRP.1 (19 June 2019).

<sup>5</sup> A Berlin-based NGO, to whom I am grateful for the information and materials provided.



## B. Executive summary:

5. The evidence reviewed demonstrates frequent and heavy-handed recourse to the death penalty by Saudi Arabia in recent months. At least 149 people were executed in 2018, with at minimum 46 remaining on death row at the end of the year. It seems that many of those 46 individuals have now been executed, with at least 134 death sentences having been carried out between 1 January and 20 July 2019 alone.<sup>6</sup> Should executions continue at this rate, the 2019 death toll will far exceed all previous recorded totals.
6. A large number of deeply disturbing themes emerge from the evidence relating to the 2019 executions.<sup>7</sup> A significant proportion of those executed were political dissidents, and a number were children at the time of their alleged offending. Three were women. Many were arraigned on ill-defined charges of 'espionage' and 'terrorism' pursuant to unacceptably vague and broad laws. These, and many others, had been convicted only of non-violent or non-lethal crimes. Victims were frequently held incommunicado for prolonged periods and tortured, and the domestic proceedings against them were characterised by gross violations of the right to a fair trial. Some of those killed had been the subject of international media attention and/or communications by the Special Procedures of the UN Human Rights Council. In one particularly alarming case, an individual had been designated as 'no longer at risk' by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on the strength of assertions by the Saudi Arabian authorities, before ultimately being killed in the mass execution which took place on 23 April 2019. The mode of killing, too, is shocking. Executions are usually by way of public beheading, and have increasingly taken place *en masse*. In some cases, the mutilated bodies of those killed have been left on public display for extended periods, rather than being disposed of swiftly and with dignity. I was informed by those representing families that the remains of the deceased were routinely not returned to them, and they were frequently not even told where their loved ones had been buried.

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<sup>6</sup> It is likely that even these figures are underestimated since, as noted below, trials and appeal processes in Saudi Arabia generally take place in secret, and death sentences are not consistently communicated or reported, even after they have been carried out.

<sup>7</sup> Though it was clear that many of these themes are nothing new, and also applied to other executions that have taken place in recent years.

7. Each of these features connotes a grave violation of international human rights norms. Most pressingly, the execution of persons who were minors at the time of their alleged offences, or for the exercise of the right to freedom of opinion and expression, or following unfair trials, amounts to a clear violation of the right to life itself. Further, the mode of killing is frequently inconsistent with international law, rendering the execution arbitrary and in breach of the prohibition on cruel, inhuman or degrading treatment or punishment.
8. Dozens more are currently at imminent risk of execution, in circumstances where their killing would be clearly unlawful. As at 20 July 2019, the ESOHR had identified and obtained permission to release the names of 24 people on death row for protest or drug-related offences. These individuals include Salman al-Awda, a prominent, progressive cleric; Awad al-Qerni, and Hassan Farhan al-Maliki, also well-known moderate clerics and academics; and Ali al-Omari, a television presenter and writer who has used his broadcasts to support women's rights. They were among the victims of a 'wave' of arrests of at least 60 political activists which took place in September 2017. Their cases are particularly striking as they, amongst others, are being singled out for execution for speaking out against the Saudi government and highlighting human rights abuses being perpetrated in the kingdom. Execution of any of these 24 people would amount to a flagrant violation of international human rights norms, and must be prevented at all costs.
9. It is important to note that Saudi Arabia's recent excessive use of the death penalty comes in the midst of a concerted campaign against human rights defenders and political activists, in which large numbers have been arbitrarily detained, often under the guise of 'counter-terrorism'. In September 2017, as noted above, the Saudi Arabian authorities arrested more than 60 such individuals. Domestic proceedings against a number of them are ongoing. In May and June 2018, some 17 human rights defenders and political dissidents were detained, many of them notable women's rights campaigners. It is understood that domestic proceedings against 12 women are ongoing (with a further woman and two men believed to be in detention awaiting charge). In

April 2019, the Saudi Arabian authorities arrested at least 14 journalists, academics and family members of women's rights campaigners. These cases have been characterised by long periods of detention without charge, and the use of torture in order to procure information and elicit forced confessions. The domestic proceedings have been marred by the wholesale violation of due process norms including denial of access to legal assistance, denial of defence rights, and trial in secret before an institutionally compromised and partial judiciary. The Saudi Arabian authorities are known to have sought the imposition of the death penalty in several of these cases.

10. It is therefore likely that there are many more individuals who are currently on death row awaiting execution, or who have been arbitrarily detained and are at risk of having the death penalty imposed upon them, who have not been named in this report. A consistent theme which emerged from the interviews and research conducted in preparing this report was that Saudi Arabia does not make comprehensive, reliable or up-to-date information available on these matters. This is in itself a cause for concern, as it seriously undermines international scrutiny and thus erodes the protections that can be afforded to detained and at-risk individuals.
11. In light of the findings set out in this report, the Saudi authorities must immediately declare an official moratorium on the use of the death penalty with a view to its eventual abolition (Recommendation 1). Secondly, in order to ensure effective scrutiny, the Saudi authorities must immediately publish adequate information about the number and identities of persons on death row (Recommendation 2). Thirdly, Saudi Arabia must immediately release the remains of all those who have been executed to their families (Recommendation 3).
12. Further, an international fact-finding mission should be convened by an independent and politically neutral organisation. The fact-finding mission must be given immediate and unfettered access, as an absolute minimum, to all those who are on death row awaiting execution (Recommendation 4).



13. This report has been communicated to relevant international actors, including the EU Parliament, and the following Special Procedures of the UN Human Rights Council:

- a. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions;
- b. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;
- c. The UN Working Group on Arbitrary Detention;
- d. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;
- e. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- f. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association;
- g. The UN Special Rapporteur on freedom of religion or belief;
- h. The UN Special Rapporteur on the situation of human rights defenders; and
- i. The UN Special Rapporteur on the independence of judges and lawyers.

14. This report is directed, in particular, to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions; the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the UN Special Rapporteur on the situation of human rights defenders. They are called upon to investigate the matters set out herein,

and to demand that Saudi Arabia remedy all past violations and take steps to prevent all prospective violations. The Saudi authorities are called upon to engage constructively and transparently with the relevant mandate holders (Recommendation 5).

15. Other countries must condemn Saudi Arabia's use of the death penalty, and call upon Saudi Arabia to comply with the above recommendations. Should it fail to do so, the use of targeted sanctions ought to be considered, members of the G20 should decline to attend the 2020 summit in Riyadh, and the UN General Assembly should consider suspending Saudi Arabia's membership of the UN Human Rights Council (Recommendation 6).

### C. Legal framework:

16. Saudi Arabia is obliged to apply international law which it has agreed to respect. Thus, Saudi Arabia is bound to respect the rights and protections set out in the Universal Declaration on Human Rights (UDHR)<sup>8</sup> as adopted by the General Assembly. Further, although Saudi Arabia is not a party to the International Covenant on Civil and Political Rights (ICCPR),<sup>9</sup> it has acceded to the Arab Charter on Human Rights (the Arab Charter)<sup>10</sup> as a founding member of the League of Arab States. The Arab Charter in its preamble “reaffirms the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights”. Saudi Arabia has also acceded to the Convention on the Rights of the Child (CRC)<sup>11</sup> and the Convention Against Torture (CAT).<sup>12</sup> Accordingly, Saudi Arabia’s laws, and its application of those laws in practice, must be compatible with each of these instruments.
17. Further, Saudi Arabia is bound to observe fundamental human rights standards by reason of the operation of customary international law.

#### The right to life:

18. The UN Human Rights Committee’s *General Comment No. 36*<sup>13</sup> is amongst the most important, comprehensive and up-to-date statements of the content of the right to life.

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<sup>8</sup> Universal Declaration of Human Rights, adopted by the UN General Assembly 10 December 1948, Resolution 217(III)A.

<sup>9</sup> International Covenant on Civil and Political Rights, adopted by UN General Assembly 16 December 1966, Resolution 2200A (XXI).

<sup>10</sup> Arab Charter on Human Rights, adopted by the League of Arab States 22 May 2004.

<sup>11</sup> Convention on the Rights of the Child, adopted by the UN General Assembly 20 November 1989, Resolution 44/25, acceded to by Saudi Arabia 26 January 1996.

<sup>12</sup> Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, adopted by UN General Assembly 10 December 1984, Resolution 39/46, acceded to by Saudi Arabia 23 September 1997.

<sup>13</sup> UN Human Rights Committee, *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc CCPR/C/GC/36 (30 October 2018) (hereafter *General Comment No. 36*).

It summarises the Committee's key jurisprudence and observations on the right, along with that of other well-recognised sources under international law.

19. The starting point is that UDHR provides, at Art. 3, that "*Everyone has the right to life, liberty and security of person*". The right to life is a foundational and universally recognised right, applicable at all times and in all circumstances, including during armed conflict or other public emergency. It is a norm of *jus cogens* and is therefore protected by customary international law as well as by international and regional treaties, and domestic legal systems.
20. The right to life has two aspects. The first, of particular importance for present purposes, is that every person has a right to be free from the arbitrary deprivation of life. The second is that there must be an effective investigation and accountability where there is reason to believe that there has been an arbitrary deprivation of life.
21. Although the right to life is foundational and inheres in every human being,<sup>14</sup> it is not absolute. International law does not enumerate specific grounds upon which or circumstances in which deprivation of the right to life is authorised, but rather requires that deprivations of life must not be arbitrary.<sup>15</sup> This is reflected in Art. 5 of the Arab Charter as follows:

"Article 5:

1. *Every human being has an inherent right to life.*
2. *This right shall be protected by law. No one shall be arbitrarily deprived of his life."*

22. In the particular context of imposition of the death penalty (by those countries which have not yet abolished it), deprivation of life may be arbitrary in a number of circumstances.

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<sup>14</sup> *General Comment No. 36*, para 10; see also Preamble to the UDHR.

<sup>15</sup> *General Comment No. 36*, para 10.

23. Deprivation of life that lacks a basis in domestic law or flies in the face of domestic procedure is, as a rule, arbitrary in nature. For example, a death sentence issued following legal proceedings conducted in violation of domestic laws of criminal procedure or evidence will generally be both unlawful and arbitrary.<sup>16</sup>
24. Further, even if a deprivation of life is authorised by domestic law, it will nonetheless be arbitrary if it is inconsistent with international law. Here, the notion of ‘arbitrariness’ is not to simply be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of unreasonableness, lack of necessity and disproportionality.<sup>17</sup> Accordingly, international law imposes a number of conditions which strictly regulate the imposition of the death penalty. Having reviewed *General Comment No. 36* and the underlying jurisprudence, I consider that these conditions broadly fall into three categories: (a) restrictions on the nature of the conduct to which the death penalty can be applied as a sanction; (b) institutional and procedural safeguards which must be satisfied before the death penalty can be applied; and (c) restrictions on the manner in which any execution may be carried out.
25. As to the first broad category, which defines and delimits the nature of the conduct for which the death penalty can be imposed:
- a. Any substantive ground justifying deprivation of life must be prescribed by law, and defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.<sup>18</sup> In particular, the UN Human Rights Committee has stressed that the use of the death penalty cannot be based on vaguely

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<sup>16</sup> *General Comment No. 36*, para 11.

<sup>17</sup> *General Comment No. 36*, para 12; see also UN Human Rights Committee, *General Comment No. 35 on Article 9 of the International Covenant on Civil and Political Rights, on the right to liberty and security of person*, UN Doc CCPR/C/GC/35 (23 October 2014), para 22; Communication No. 1134/2002, *Gorji-Dinka v Cameron*, Views adopted on 14 March 2005, para 5.1; and Communication No. 305/1988, *Van Alphen v The Netherlands*, Views adopted on 23 July 1990, para 5.8.

<sup>18</sup> *General Comment No. 36*, para 19. Consequently, defences to homicide offences, such as self-defence, must be clearly defined and delimited.

defined criminal provisions,<sup>19</sup> the operation of which are not reasonably predictable, or whose application to the convicted individual depends on subjective or discretionary considerations.<sup>20</sup> Similarly, adherence to the principle of *nulla poena sine lege* and non-retroactivity, as enshrined in Art. 11(2) of the UDHR,<sup>21</sup> is vitally important in the context of capital punishment.<sup>22</sup> In other words, strict adherence to what have been described as the ‘formal requirements’ of the rule of law<sup>23</sup> must generally be observed before any recourse to the death penalty can be justified as a matter of international human rights law.

- b. The death penalty may only be imposed in respect of ‘the most serious crimes’. This is reflected and reinforced in the Arab Charter, Art. 6 of which provides that “*Sentence of death may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence*”. The words ‘the most serious crimes’ must be read restrictively<sup>24</sup> and appertain only to crimes of extreme gravity involving intentional killing.<sup>25</sup> Crimes not resulting directly and intentionally in death can never serve as the basis for imposition of

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<sup>19</sup> *General Comment No. 36*, para 38. See also UN Human Rights Committee, *Concluding Observations on the third periodic report of Algeria*, UN Doc CCPR/C/DZA/CO/3 (12 December 2007), para 17; and UN Human Rights Committee, *Concluding Observations on the third periodic report of Cameroon*, UN Doc CCPR/C/79/Add.116 (November 1999), para. 14.

<sup>20</sup> *General Comment No. 36*, para 38. See also UN Human Rights Committee, *Concluding Observations on the second periodic report of the Democratic People’s Republic of Korea*, UN Doc CCPR/CO/72/PRK (27 August 2001), para 13; and *SW v UK* (1995) 21 EHRR 363, para 36.

<sup>21</sup> Art. 11(2) states: “*No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*”

<sup>22</sup> *General Comment No. 36*, para 38

<sup>23</sup> See generally Lon Fuller, *The Morality of Law* (Yale University Press, revised ed. 1969), esp. Chapter 2.

<sup>24</sup> *General Comment No. 36*, para 35; see also Communication No. 1132/2002, *Chisanqa v. Zambia*, Views adopted on 18 October 2005, para 7.4.

<sup>25</sup> *General Comment No. 36*, para 35; see also ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, 25 May 1984, para. 1.



the death penalty, even though they may be very serious in nature<sup>26</sup> (for example, attempted murder, corruption and other economic and political crimes, robbery, rape, and drug offences).<sup>27</sup> States are under an obligation to ensure that their criminal laws do not allow for the imposition of the death penalty for crimes which do not qualify as ‘the most serious crimes’.<sup>28</sup> Where a death sentence has been issued for a crime not qualifying as a ‘most serious crime’, it should be revoked and the convicted person resentenced in accordance with law.<sup>29</sup>

c. The UN Human Rights Committee has made unambiguously clear that “[u]nder no circumstances can the death penalty ever be applied” as a sanction against conduct the very criminalisation of which offends international law. For example, the imposition of the death penalty for adultery, homosexuality or apostasy will always be arbitrary. And likewise, the application of the death penalty in consequence of an individual’s exercise of their right to freedom of opinion or expression (for example, forming or joining political opposition groups, or offending a head of state) will always amount to a violation of this peremptory norm of international law.<sup>30</sup> Here, there is a clear overlap between respect for the right to life and the state’s duty to uphold and protect the rights enshrined in Arts. 18, 19 and 20 of the UDHR:<sup>31</sup> respectively, the right to freedom of thought, conscience and religion; the right to freedom of opinion and expression; and the right to freedom of peaceful assembly and association.

d. Similarly, the death penalty must never be imposed pursuant to laws which are themselves discriminatory, and it must not be applied in a discriminatory manner

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<sup>26</sup> *General Comment No. 36*, para 35; see also UN Human Rights Committee, *Concluding Observations on the second periodic report of Iran*, UN Doc CCPR/C/79/Add.25 (3 August 1993), para 8.

<sup>27</sup> *General Comment No. 36*, para 35.

<sup>28</sup> *General Comment No. 36*, para 35; see also UN Human Rights Committee, *General Comment No. 6 on Article 5 of the International Covenant on Civil and Political Rights, Equality and non-discrimination*, UN Doc CRPD/C/GC/6 (9 March 2018) para 6.

<sup>29</sup> *General Comment No. 36*, para 35.

<sup>30</sup> *General Comment No. 36*, para 38.

<sup>31</sup> As well as the equivalent rights in Arts. 24, 30 and 32 of the Arab Charter.

in practice.<sup>32</sup> Here there is an important intersection between the right to life and Art. 2 of the UDHR (and Art. 3 of the Arab Charter). Art. 2 of the UDHR provides that: *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs ...”*. Similarly, Art. 3(1) of the Arab Charter prohibits discrimination: *“Each State party ... undertakes to ensure to all individuals within its territory and subject to its jurisdiction the right to enjoy the rights and freedoms recognised herein, without any distinction on grounds of race, colour, sex, language, religion, opinion, thought, national or social origin, property, birth or physical or mental disability”*.<sup>33</sup>

26. It should be stressed, at this juncture, that international human rights law also strictly prohibits the use of the death penalty against children, including anyone who was under the age of 18 at the time of their alleged offending. The UN Human Rights Committee has made clear that this means that anyone who was under 18 at the time of an alleged offence, whether or not they had legally attained majority at that time, *“can never face the death penalty for that offence, regardless of their age at the time of sentencing or at the time foreseen for carrying out the sentence”* (emphasis added).<sup>34</sup> This is recognised in Art. 37(a) of the CRC, to which Saudi Arabia is a party.<sup>35</sup> It should be noted that Art. 7(1)

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<sup>32</sup> General Comment No. 36, para 44.

<sup>33</sup> See also Art. 3(2) of the Arab Charter, which requires state parties to take positive steps to ensure *“effective equality in the enjoyment of all the rights and liberties established”* therein and to ensure protection against discrimination.

<sup>34</sup> General Comment No. 36, para 48; see also UN Committee on the Rights of the Child, *General Comment No. 10 (2007) on Children’s rights in juvenile justice*, UN Doc CRC/C/GC/10, (25 April 2007), para 75. In addition, the UN Human Rights Committee has said that if there is doubt as to whether a person was over 18 at the time the crime was committed, he or she is entitled to the benefit of the doubt such that the death penalty cannot be imposed: *General Comment No. 36*, para 48.

<sup>35</sup> Art. 37(a) states: *“States Parties shall ensure that: (a) 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”*. Art. 6 of the CRC is also important. This recognises in general terms *“that every child has the inherent right to life”* and requires states to *“ensure to the maximum extent possible the survival and development of the child”*.

of the Arab Charter (which provides that “*sentence of death shall not be imposed on persons under 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime*”), is out of step with international law insofar as it allows for the imposition of the death penalty on minors, or on adults who were minors at the time of offending. It should also be noted that Saudi Arabia reportedly enacted a new Law on Juveniles in August 2018, which provides that persons under the age of 15 may only be sentenced to a maximum of 10 years imprisonment in cases where they might otherwise be sentenced to death, except for crimes automatically punishable by death under Shariah law.<sup>36</sup> Although this law represents a step in the right direction, it too is inconsistent with international law in that it still contemplates the imposition of the death penalty: (a) on children between the ages of 15 and 18, and (b) on any person regardless of age where capital punishment is mandated by Shariah law.<sup>37</sup>

27. As to the second category of restrictions, which set out the institutional and procedural requirements which must be satisfied before the death penalty can be imposed:

- a. It hardly needs to be said that the death penalty, once carried out, is irrevocable and irreparable. It is therefore vital that any conviction which might or does result in the imposition of the death penalty is unimpeachably safe, and states must create the institutional conditions in which this can be achieved. They must carefully guard against arbitrary deprivations of the right to life by “*organi[sing] all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life*”, and by strictly ensuring full compliance with all relevant legal provisions and protections.<sup>38</sup>

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<sup>36</sup> Amnesty International, ‘Saudi Arabia: Decision to spare teenager’s life must be followed by abolition of death penalty for all juveniles’, 17 June 2019 (<https://www.amnesty.org/en/latest/news/2019/06/saudi-arabia-decision-to-spare-teenagers-life-must-be-followed-by-abolition-of-death-penalty-for-all-juveniles/>). See also para 40 below regarding crimes which carry mandatory death sentences, or *Hadd*.

<sup>37</sup> UN Press Releases, ‘UN experts call on Saudi Arabia to halt death sentences on children’, 29 October 2018, (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23795&LangID=E>).

<sup>38</sup> *General Comment No. 36*, para 19.

- b. The safety of the conviction must also be secured by adhering strictly to due process rights. The death penalty may not be imposed unless the person's guilt has been established beyond reasonable doubt<sup>39</sup> by a competent, independent and impartial tribunal,<sup>40</sup> following a trial in which he has enjoyed all of the procedural protections required by international law.<sup>41</sup> In particular, criminal convictions based on information procured by torture or cruel, inhuman or degrading treatment of interrogated persons may never form the basis for imposing the death penalty.<sup>42</sup> As an aside, I note that where the person convicted was him or herself subjected to such torture or cruel, inhuman or degrading treatment, he or she is additionally protected by the fact that states should refrain from executing persons who have in the past suffered serious human rights violations.<sup>43</sup> The content of the prohibition against torture or cruel, inhuman or degrading treatment, and of the right to a fair trial, are considered in more detail below.
- c. Further, in all cases potentially involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence (including any mitigation) must be considered by the sentencing court. This is in to ensure that any imposition of the death penalty is appropriate and proportionate, and applied in a fact-sensitive way. Consequently, mandatory death sentences that leave domestic courts with no discretion on whether or not to impose the death sentence are inherently arbitrary in nature.<sup>44</sup>

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<sup>39</sup> General Comment No. 36, para 43.

<sup>40</sup> General Comment No. 36, para 45.

<sup>41</sup> General Comment No. 36, paras 41–42.

<sup>42</sup> General Comment No. 36, para 54.

<sup>43</sup> General Comment No. 36, para 49. This is a compassionate rather than a procedural requirement, and it is not absolute. Thus, states should refrain from executing persons who “*face special barriers in defending themselves on an equal basis with others, such as persons whose serious psycho-social and intellectual disabilities impeded their effective [defence]*”, persons who “*have limited moral culpability ... [or] diminished ability to understand the reasons for their sentence*”, and persons “*whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families*”.

<sup>44</sup> General Comment No. 36, para 37. See also Communication No. 1132/2002, *Chisanqa v Zambia*, Views adopted on 18 October 2005, para 7.4; Communication 1421/2005, *Larranaga v Philippines*, Views adopted on 24 July 2006, para. 7.2; and Communication 1077/2002, *Carpo v Philippines*, adopted on 6 May 2002, para 8.3.

28. The third broad category of restrictions relates to the way in which capital punishment is administered. Executions will be arbitrary if they are carried out in a manner not permitted by international human rights law (that is to say, even if all the conditions set out above have been satisfied). The prohibition on torture and cruel, inhuman or degrading treatment or punishment – both of the person sentenced to death and their family members – requires that individuals on death row and their families must be given timely notification about the date of their execution.<sup>45</sup> Relatives must be provided with information on the circumstances of the death of an individual,<sup>46</sup> and they must be given information on the location of the body, or the body itself if they so wish.<sup>47</sup> Further, the prohibition on torture and cruel, inhuman or degrading punishment connotes that unusual, painful or humiliating methods of execution – those which ‘shock the conscience of humanity’ – are unlawful. Thus, stoning,<sup>48</sup> beheadings,<sup>49</sup> and all forms of public execution<sup>50</sup> have been held to be contrary to international law in all circumstances.

The prohibition against torture and cruel, inhuman or degrading treatment:

29. Art. 5 of the UDHR states that “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*”, and Art. 8(1) of the Arab Charter similarly provides that “*No one shall be subjected to physical or mental torture or to cruel,*

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<sup>45</sup> *General Comment No. 36*, paras 40 and 56. See also UN Human Rights Committee, *Concluding Observations on the sixth periodic report of Japan*, UN Doc CCPR/C/JPN/CO/6 (20 August 2014), para 13.

<sup>46</sup> *General Comment No. 36*, para 56. See also Communication No. 1225/2003, *Eshonov v Uzbekistan*, Views adopted on 22 July 2010, para 9.10.

<sup>47</sup> *General Comment No. 36*, para 56. See also Communication No. 2120/2011, *Kovalev v Belarus*, Views adopted on 29 October 2012, para 11.10; and UN Human Rights Committee, *Concluding Observations on the initial report of Botswana*, UN Doc CCPR/C/BWA/CO/1 (24 April 2008), para 13.

<sup>48</sup> *General Comment No. 36*, para 40. See also UN Human Rights Committee, *Concluding Observations on the third periodic report of Iran*, UN Doc CCPR/C/IRN/CO/3 (29 November 2011), para 12.

<sup>49</sup> The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has said that “*Beheading as a form of execution is cruel, inhuman and degrading treatment and prohibited under international law under all circumstances*”: UN Press Releases, ‘UN rights experts urge Saudi Arabia to halt continuous stream of executions, many by beheading’, 9 September 2014, (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15004&LangID=E>).

<sup>50</sup> *General Comment No. 36*, para 40. See also UN Human Rights Committee, *Concluding Observations on the second periodic report of the Democratic People’s Republic of Korea*, UN Doc CCPR/CO/72/PRK (27 August 2001), para 13.

*inhuman or degrading treatment or punishment*". The prohibition is thus absolute; it is a peremptory norm of international law from which no derogation is possible.

30. Art. 1 of the CAT defines 'torture' as *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions"*. Paragraph 145 of the 'Istanbul Protocol' gives a non-exhaustive list of methods which inflict suffering on the victim and are capable of amounting to torture,<sup>51</sup> however international jurisprudence is clear that particular acts, or types of act, do not automatically count as torture. Rather, torture is the legal qualification of an event or behaviour based on a holistic assessment of the circumstances. This includes not just the nature of the act, but also by whom it was done, and whether it was done deliberately for a proscribed purpose such as interrogation or discrimination.<sup>52</sup>

31. The definition of 'cruel, inhuman or degrading treatment or punishment' is rather wider. Principle 6 of the Body of Principles states that:

*"The term 'cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses ... or of his awareness of place and the passing of time"*.

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<sup>51</sup> *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc HR/P/PT/8/Rev.1 (9 August 1999).

<sup>52</sup> Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary*, Oxford Commentaries on International Law, pp.75-77.



32. International law recognises that persons in detention are in a special position and require particular protection from violations of the right. The cardinal principle of the Body of Principles for the Protection of All Person under Any Form of Detention or Imprisonment (the Body of Principles)<sup>53</sup> is that *“All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”*; and principle 6 specifies that *“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment”*. This is because detainees are especially vulnerable and powerless, and because they are therefore susceptible to be pressured into giving unreliable information or false confessions. Principle 21 of the Body of Principles gives voice to these concerns as follows:

*“1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.*  
*2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”*

33. Art. 15 of the CAT additionally recognises that it is both specious and normatively wrong to rely on statements made under conditions of torture, making clear 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”*. Thus, criminal convictions based on information procured by torture or cruel, inhuman or degrading treatment of interrogated persons will always be regarded as unsafe and arbitrary as a matter of international law, and may never form the basis for imposing the death penalty: see above, paragraph 27(b).

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<sup>53</sup> *Body of Principles for the Protection of All Person under Any Form of Detention or Imprisonment*, adopted by the UN General Assembly 9 December 1988, Resolution 43/173. All states must abide by the Body of Principles, since it is a resolution of a general nature adopted by the UN General Assembly without distinction according to treaty obligations.

34. In addition to providing one of the key due process guarantees afforded under international law, the prohibition on torture and cruel, inhuman or degrading treatment or punishment regulates the way in which the death penalty is administered. It also protects against forms of punishment (including, in the case of the death penalty, methods of killing) which ‘shock the conscience of humanity’. This is set out above at paragraph 28.

The right to a fair trial:

35. International law provides a rich seam of protections intended to guarantee the right to a fair trial. The UDHR provides, so far as relevant:

*“Art. 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

*Art. 11(1): Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”*

36. The Arab Charter provides, so far as relevant:

*“Art. 13(1): Everybody has the right to a fair trial in which sufficient guarantees are ensured, conducted by a competent, independent and impartial tribunal established by law, in judging the grounds of criminal charges brought against him or in determining his rights and obligations. State Parties shall ensure financial aid to those without the necessary means to pay for legal assistance to enable them to defend their rights.*

*Art. 13(2): The hearing shall be public other than (except) in exceptional cases where the interests of justice so require in a democratic society which respects freedom and human rights ...*

*Art 16: The accused shall be presumed innocent until proven guilty at a lawful trial. During the investigation and the trial, the accused shall be entitled to the following minimum guarantees:*

- (1) To be informed promptly and in detail, in a language which he understands, of the nature and cause of the charge against him.*
- (2) To have adequate time and facilities for the preparation of his defence and to contact his relatives.*
- (3) To be tried in his presence in front of a judge and to defend himself or through legal assistance of his own choosing or with the assistance of his lawyer, with whom he can freely and confidentially communicate.*
- (4) To have free assistance of a lawyer to defend himself if he does not have sufficient means to pay for his defence, or if the interests of justice so require. To have the free assistance of an interpreter if he cannot understand or speak the language of the court.*
- (5) To examine, or have examined, the witnesses against him, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as the witnesses against him.*
- (6) Not to be compelled to testify against himself or to confess to guilt ..."*

37. The Body of Principles elaborate upon the above rights. Anyone who is arrested:

- a. *"Shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him" (principle 10);*

- b. Shall be informed of his rights promptly upon arrest and how to avail himself of them (principle 13);
  - c. Must be allowed to notify his family or other appropriate persons, and (if he is a foreigner) the relevant consular post, soon after his arrest and in any event within *“a matter of days”* (principles 15 and 16);
  - d. Must be allowed prompt, confidential and unimpeded access to legal assistance (principles 17 and 18); and
  - e. If charged with a criminal offence, the detainee *“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”* (principle 36).
38. Failure to abide by these protections may confer an arbitrary character on any sentence imposed, whether imprisonment<sup>54</sup> or the death penalty.<sup>55</sup>

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<sup>54</sup> The UN Working Group on Arbitrary Detention has identified this as the basis of one of the five legal categories of arbitrary detention, namely Category III. Category III applies *“When the total or partial non observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character”*: *Methods of work of the Working Group on Arbitrary Detention*, UN Doc A/HRC/36/38 (13 July 2017).

<sup>55</sup> See above, paragraphs 27(a) and (b).

#### D. The domestic framework: designation of crimes as capital crimes in Saudi Arabia:

##### Capital crimes in Saudi Arabia other than 'terrorism':

39. Saudi Arabian law provides for the imposition of the death penalty for a wide range of crimes. Such crimes are generally tried before the regular criminal courts, where more procedural and evidential protections are in place than before the Specialised Criminal Court (SCC) in Riyadh,<sup>56</sup> though still falling far short of what is required by international law (both in principle and in practice).<sup>57</sup> A further difficulty is that the circumstances in which the death penalty must or may be imposed are often unclear, since much depends on the interpretation of imprecise passages of the Quran, the hadith or *fatwas*, and jurists' approach to such interpretation appears to vary considerably.<sup>58</sup> This in itself is problematic, since it renders the rules and principles governing the imposition of the death penalty volatile and uncertain.

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<sup>56</sup> As to which, see below paragraphs 44-47.

<sup>57</sup> Before 2001, there was no statutory code of criminal procedure. This position was improved somewhat by the introduction of the 2001 Law of Criminal Procedure, promulgated by Royal Decree No. M/39 on 16 October 2001. Amongst other things, the 2001 Law of Criminal Procedure introduced, for the first time, the right to representation by a lawyer. However, it was not fully compliant with international human rights standards: see Mashood Baderin, 'A Comparative Analysis of the Right to a Fair Trial and Due Process under International Human Rights Law and Saudi Arabian Domestic Law', *International Journal of Human Rights*, vol.10(3) (September 2006), pp.241-284; and Salman al-Subaie, *The Right to a Fair Trial under Saudi Law of Criminal Procedure: A Human Rights Critique* (DPhil, University of London, 2013). These surveys of the extent of commonality between international human rights law, Shariah law in general, and Saudi Arabian domestic law (which is based on the application of Shariah law, or statutory law insofar as it is not inconsistent with the Shariah) are to be commended. They are amongst few such accounts, where the focus is on the actual provisions of Saudi Arabian law (as opposed to mere assumptions about the state of Saudi criminal procedure), and where the focus is on conventional criminal procedure as opposed to prosecutions for 'terrorist' offences before the SCC. It should be noted that the 2001 law has been amended by the 2013 Law of Criminal Procedure, promulgated by Royal Decree No. M/2 on 25 November 2013. It does not appear that the amendments are sufficient to eliminate the dissonance between international fair trial requirements and domestic criminal procedure: Amnesty International, *The State of the World's Human Rights 2017/18*, 22 February 2018, p.320; Human Rights Watch, *World Report 2018: Saudi Arabia*, 18 January 2018, 'Criminal Justice'; Human Rights Watch, *World Report 2019: Saudi Arabia*, 17 January 2019, 'Criminal Justice'. The Amnesty International report highlights the case of Said al-Sai'ari, who was executed on 13 September 2017 for murder. He had been sentenced to death by the General Court in Najran, which relied on a sworn statement by the victim's father that he 'believed that Said al-Sai'ari was responsible for the murder of his son', even though the victim's father had not been present at the crime scene. See also American Bar Association, *Saudi Arabia: Counterterrorism Court Targets Activists*, 24 May 2019, p.14.

<sup>58</sup> Cornell, *Death Penalty Database: Saudi Arabia*, 'Crimes and Offenders Punishable By Death'.

40. In general, ‘aggravated murder’<sup>59</sup> (which includes murder committed in the course of a robbery, in circumstances designed to render the victim helpless, or in circumstances that have the effect of spreading terror) is punishable by death as *Hadd* – that is, as a mandatory punishment derived from the Quran and hadith provided the evidentiary requirements stipulated by Shariah law are met. Since there is no element of judicial discretion if the conditions for execution as *Hadd* are met, application of the death penalty even in cases of aggravated murder is contrary international law. Non-aggravated murder<sup>60</sup> is generally punishable by death, though as *Qisas* – meaning that the victim’s family is entitled to elect between the imposition of the death penalty and the payment of compensation in the form of *Diyat*. Though there is an element of discretion here, it is not judicial but rather vests in the victim’s family, which is contrary to international law.<sup>61</sup> Non-intentional homicide offences<sup>62</sup> may also result in the death penalty.

41. Certain non-homicide offences, including adultery by married persons and homosexual relations, may be punishable by death as *Hadd*.<sup>63</sup> Others, including rape, robbery, burglary, apostasy, adultery by unmarried persons, drug-related offences and espionage, may result in the death penalty, albeit as *Ta’zir* – that is, on a discretionary basis.<sup>64</sup> Needless to say, use of the death penalty in any of these circumstances would be an affront to international law.

#### ‘Terrorism’ as a capital crime in Saudi Arabia:

42. It is harder still to assess the position relating to terrorism. The term ‘terrorism’ in Saudi Arabian law now covers an exceptionally wide range of conduct, not least as a result of

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<sup>59</sup> Cornell, *Death Penalty Database: Saudi Arabia*, text to nn.1-2.

<sup>60</sup> Cornell, *Death Penalty Database: Saudi Arabia*, text to nn.3-6.

<sup>61</sup> See *General Comment No. 36*, para 47, which states that “the families of crime victims [should not be afforded] a preponderant role in determining whether the death sentence should be carried out”.

<sup>62</sup> Cornell, *Death Penalty Database: Saudi Arabia*, text to nn.7-8.

<sup>63</sup> Cornell, *Death Penalty Database: Saudi Arabia*, text to nn.32 and 39.

<sup>64</sup> Cornell, *Death Penalty Database: Saudi Arabia*, text to nn.15-42.



the introduction of the Law on Terrorism and its Financing in 2014 (the 2014 law),<sup>65</sup> and its subsequent revision in 2017 (the 2017 law).<sup>66</sup> The 2014 law designated as ‘terrorism’ any act *“directly or indirectly intended to disturb the public order of the state, or to destabilise the security of society, or the stability of the state, or to expose its national unity to danger, or to suspend the basic law of governance or some of its articles, or to insult the reputation of the state or its standing, or to inflict damage upon one of its public utilities or its natural resources”*.<sup>67</sup> Further, ‘terrorism’ encompassed any attempt to change the system of government in Saudi Arabia or to *“[harm its] interests, economy, and national and social security”*.<sup>68</sup> A 2014 amendment to the 2014 law<sup>69</sup> extended the definition to include calling for atheism, calling into question the fundamentals of Islam,<sup>70</sup> and harming the unity and stability of Saudi Arabia by any means, including by contact with hostile elements or by promoting or participating in protests, sit-ins, meetings or ‘group statements’.<sup>71</sup> The 2017 law has now replaced the 2014 framework but is scarcely less broad and imprecise. Indeed, the 2017 law extended the definition of ‘terrorism’ further, to describing the King or Crown Prince in any way offensive to religion or justice.<sup>72</sup> Unsurprisingly, the 2014 and 2017 laws have been widely condemned as being objectionably broad, and as being ruthlessly and unapologetically

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<sup>65</sup> Promulgated by Royal Decree No. M/16 on 27 December 2013.

<sup>66</sup> Promulgated by Royal Decree on 1 November 2017.

<sup>67</sup> Art. 1 of the 2014 Law; and see *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, UN Doc A/HRC/40/52/Add.2, para 14.

<sup>68</sup> Art. 3 of the 2014 Law; and see *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, UN Doc A/HRC/40/52/Add.2, para 14.

<sup>69</sup> By way of regulations promulgated by the Ministry of Interior on 7 March 2014 (the 2014 regulations).

<sup>70</sup> Art. 1 of the 2014 regulations; and see *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, UN Doc A/HRC/40/52/Add.2, para 15.

<sup>71</sup> Art. 6 of the 2014 regulations; and see *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, UN Doc A/HRC/40/52/Add.2, para 15.

<sup>72</sup> Art. 30 of the 2017 law; and see *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, UN Doc A/HRC/40/52/Add.2, para 18.

aimed at the criminalisation of freedom of thought, religion, expression, assembly and association.<sup>73</sup>

43. The 2014 law did not specify that the death penalty was available for any of the offences stipulated therein, although the 2017 revision specifically introduced the death penalty in respect of three offences (namely (a) committing or financing a terrorist offence resulting in the death of one or more persons; and (b) kidnapping or detaining a person, or threatening to do so, in execution of a terrorist act, or (c) seizing or threatening to seize a means of public transport in execution of a terrorist act, where the offender used or brandished weapons).<sup>74</sup> However, a *fatwa* issued on 30 August 1988 stated that ‘terrorism’ was to be regarded as falling within the Quranic crimes of ‘waging war on Allah’ and ‘corruption on earth’, which carry the death penalty as *Hadd*.<sup>75</sup> The *fatwa* did not otherwise define ‘terrorism’ or state that the offence had to involve the death of one or more persons before the death penalty could be imposed. Accordingly, it appears that the death penalty can (and, as will be seen below, routinely has) been used wherever ‘terrorism’ is invoked as the basis of a conviction, regardless of the precise legal source of the offence with which an individual has been charged.
44. To compound these matters, cases relating to ‘terrorism’ are generally heard before the notorious SCC in Riyadh. The SCC has been repeatedly condemned for conducting flagrantly unfair proceedings against human rights defenders and political activists, typically passing grossly disproportionate sentences for their peaceful exercise of their right to freedom of opinion, religion and expression – including lengthy terms of imprisonment and the death penalty.<sup>76</sup>

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<sup>73</sup> *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, UN Doc A/HRC/40/52/Add.2, paras 16-20.

<sup>74</sup> Human Rights Watch, ‘Saudi Arabia: New Counterterrorism Law Enables Abuse’, 23 November 2017 (<https://www.refworld.org/docid/5a1803644.html>); ESOHR, ‘Law Expert Concludes that Saudi Arabia’s Recent 2017 Anti-Terror Law Falls Short of Fully Respecting Human Rights and fails to meet due process standards’, 6 August 2018 (<https://www.esohr.org/en/?p=1773>).

<sup>75</sup> Cornell, *Death Penalty Database: Saudi Arabia*, ‘Crimes and Offenders Punishable By Death’, text to nn.9-14.

<sup>76</sup> See for example UN Committee Against Torture, *Concluding Observations on the second periodic report of Saudi Arabia*, UN Doc CAT/C/SAU/CO/2 (8 June 2016); and *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, UN Doc A/HRC/40/52/Add.2.

45. In May 2019, the American Bar Association (ABA) released a report on the SCC's activities, based on relevant legislation, interviews with individuals familiar with proceedings in the SCC, as well as judgments of the court and other relevant case papers.<sup>77</sup> The ABA concluded that the SCC lacked independence and impartiality, and that the prosecuting authority was also institutionally compromised in that it was housed within the Ministry of Interior, alongside the investigating authority.<sup>78</sup> Further, the ABA found that the SCC has consistently applied Saudi Arabia's unacceptably broad 'counter-terror' legislation in order to convict individuals of offences clearly unrelated to terrorism, including peaceful reformers and human rights activists (including women's rights campaigners).<sup>79</sup> Similarly, such laws are repeatedly used to target Saudi Arabia's Shia minority, convicting them of 'terror' offences for calling for an end to anti-Shiite discrimination, and for participating in the anti-government protests that gripped the country's Eastern Province in the wake of the Arab Spring.<sup>80</sup>
46. On reviewing judgments and relevant case papers, the ABA identified a pattern of flagrant fair trial violations, including lengthy periods of pre-trial detention without charge, the denial of legal assistance (or preventing defence lawyers from effectively defending their clients), failing to investigate detainees' allegations of torture and ill-treatment, relying on information and confessions alleged to have been procured through torture, and secret trials conducted in camera. Indeed, in many of the cases reviewed by the ABA (and all of those which concerned Shia protestors), the convictions were based on the 'confessions' alone, without recourse to any other evidence whatsoever (even though such evidence should have been easy to obtain).<sup>81</sup> In concluding that Saudi Arabia's 'counter-terror' laws, and the SCC's application of them, were deliberately aimed at targeting human rights campaigners, political reformers, and Shia protestors, the ABA highlighted that: (a) the investigating authorities, and the SCC,

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<sup>77</sup> American Bar Association, *Saudi Arabia: Counterterror Court Targets Activists*, 24 May 2019.

<sup>78</sup> American Bar Association, *Saudi Arabia: Counterterror Court Targets Activists*, 24 May 2019, pp.7-8.

<sup>79</sup> American Bar Association, *Saudi Arabia: Counterterror Court Targets Activists*, 24 May 2019, pp.9-10 and 12-14.

<sup>80</sup> American Bar Association, *Saudi Arabia: Counterterror Court Targets Activists*, 24 May 2019, pp.10-12.

<sup>81</sup> American Bar Association, *Saudi Arabia: Counterterror Court Targets Activists*, 24 May 2019, pp.10-11 and 16.

had routinely failed to deal with genuinely terrorist activity within Saudi Arabia, and (b) the SCC's sentencing practices were clearly disproportionate, discriminatory, and sectarian.<sup>82</sup>

47. These fundamental concerns are consistent with those raised by, amongst others, the UN Committee Against Torture and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. They are plainly credible, and in my view *prima facie* render any sentence of death passed by the SCC arbitrary and contrary to international law.

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<sup>82</sup> American Bar Association, *Saudi Arabia: Counterterror Court Targets Activists*, 24 May 2019, pp.14-19.

## E. The available evidence concerning recent executions in Saudi Arabia:

49. This section sets out the available information concerning recent executions in Saudi Arabia, focussing on those that have taken place in 2019. The information was obtained from interviews conducted with certain family members of victims of recent and threatened executions, from lawyers representing them, from various NGOs, and from open-source material.
50. It is noted first, that whilst Saudi Arabia has consistently ranked amongst the most frequent users of the death penalty, its execution rate increased markedly in the aftermath of the Arab Spring. Executions had been at a relative low of at least 27 in 2010, increasing to 82, 79 and 79 in 2011 to 2013 respectively. In 2015, seemingly as those who had participated in Arab Spring protests reached the end of the criminal justice process, executions rose sharply to at least 158. There were at least 146 executions in each of 2016 and 2017, and 149 in 2018 (with 46 remaining on death row as at the end of the year).<sup>83</sup> It is also evident that Saudi Arabia's recourse to executions, which was already excessive on any measure, has intensified alarmingly in recent months. Many of the 46 individuals on death row at the end of 2018 appear to have been executed in the course of 2019; by the end of June, at least 122 death sentences were known to have been carried out,<sup>84</sup> and as at 20 July this number had risen to 134 according to updated information obtained from the ESOHR. It is important to stress that even these figures are likely to underestimate the true numbers of executions, since trials and appeal processes frequently take place in secret, and death sentences are not consistently communicated or reported, even after they have been carried out.
51. It should be noted that 55 of the 134 people known to have been executed by 20 July this year were convicted of non-violent drug-related offences, rather than intentional homicide.<sup>85</sup>

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<sup>83</sup> Cornell, *Death Penalty Database: Saudi Arabia*, text to nn.4-24.

<sup>84</sup> Cornell, *Death Penalty Database: Saudi Arabia*, text to nn.4-6; and ESOHR, 'Bloody rise in Saudi Arabia: 122 executions in the first half of 2019' 8 July 2019 (<https://www.esohr.org/en/?p=2371>).

<sup>85</sup> According to information received from the ESOHR.

52. Many others have been executed merely for protest-related offences, or for peacefully exercising their right to freedom of opinion and expression. Of those executed so far in 2019, 37 were killed *en masse* on 23 April 2019. The state-operated Saudi Press Agency named them as: Ahmed Hassan Ali al-Rabee; Ahmed Hussein Ali al-Aradi; Ahmed Faisal Hassan al-Darwish; Jaber Zuhair Jaber al-Marhoon; Hussein Hassan Ali al-Rabee; Hussein Ali Jassim al-Humaidi; Hussein Qassem Ali al-Abboud; Hussein Mohammed Ali al-Musallam; Haidar Mohammed Ibrahim al-Leif; Khaled Hamoud Jawir al-Faraj; Khaled al-Tuwaijri; Salem Abdullah Awad al-Amri al-Harbi; Saeed Mohammed Saeed al-Scafi; Salman al-Qureish; Suleiman al-Harbi; Sulaiman al-Harbi; Abbas Haji Ahmed al-Hassan; Abdulaziz Hassan Ali al-Sahawi; Abdulkareem al-Hawaj; Abdullah Salman Saleh al-Asrij; Abdullah Adel Hassan Aujan; Abdullah Hani Abdullah al-Tarif; Aziz Mahdi Abdullah al-Rafi al-Amri; Ali Hussein Ali al-Ashour; Ali Hussein Ali al-Muhanna; Fadel Hassan Abdul Karim Badad; Mujtaba al-Sweikat; Mohammed Hussein Ali al-Ashour; Mohammed Saeed Abdul-Rasool al-Khatam; Mohammed Ayed Mohammed al-Namlan al-Qahtani; Mohammed Abdul Ghani Mohammed Attieh; Mohammed Mansour Ahmed al-Nasser; Mustafa Ahmed Abdullatif Darwish; Muntader Ali Saleh al-Sobaiti; Munir Abdullah Ahmed al-Adam; Hadi Yousef Reda al-Hazim; and Yousef Abdullah Awad al-Amri.<sup>86</sup>

53. This mass execution is considered in some detail, since it exemplifies a large number of extremely disturbing themes arising out of Saudi Arabia's recent use of the death penalty. All of the 37 individuals were convicted of vague and ill-defined charges relating to 'terrorism'. Overall, the vast majority (33) were members of Saudi Arabia's Shia minority who were arrested and ultimately executed for their participation in protests in the country's Eastern Province in 2011-12. They had been held in detention centres for prolonged periods, in some cases up to six years, and there was credible evidence that they had been subject to lengthy periods of solitary confinement and torture.<sup>87</sup> 11 had been convicted of 'spying for Iran', as well as 'supporting protests' and 'spreading the

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<sup>86</sup> Saudi Press Agency Press Release, 23 April 2019 (<https://www.spa.gov.sa/viewstory.php?lang=ar&newsid=1916236>).

<sup>87</sup> Amnesty International, 'Saudi Arabia 37 killed in killing spree', 23 April 2019 (<https://www.amnesty.org.uk/press-releases/saudi-arabia-37-killed-chilling-execution-spree>); and Human Rights Watch, 'Saudi Arabia: Mass Execution of 37 Men', 24 April 2019 (<https://www.hrw.org/news/2019/04/24/saudi-arabia-mass-execution-37-men>).



Shia faith', after an unfair mass trial before the SCC in 2016.<sup>88</sup> 14 were convicted of 'terrorism' by the SCC in a grossly unfair mass trial in 2017, on the grounds of their participation in protests in the town of Awamiya, including 'attendance at anti-government gatherings' and 'chanting anti-State slogans'; they were also convicted of 'cybercrimes' in the form of 'saving messages on mobile phones that incite attendance at protest'.<sup>89</sup> Court records showed that all of these 14 men reported to the SCC that they had been tortured and forced into giving confessions, but the SCC failed to order any investigation into the allegations, and the High Court upheld the death sentences passed.<sup>90</sup> This in itself is not only a failure to comply with the obligation to conduct effective investigations into allegations of torture and mistreatment, but also appears to represent a gross failure to act objectively and impartially.<sup>91</sup>

54. At least six of the 37 individuals killed were children at the time of their alleged offences during the protests: Mohammed Saeed al-Scafi, Abdulkareem al-Hawaj, Abdulaziz Hassan Ali al-Sahawi, Abdullah Salman Saleh al-Asrij, Mujtaba al-Sweikat, and Salman al-

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<sup>88</sup> Amnesty International, 'Saudi Arabia: Further Information: twelve men at imminent risk of execution' 15 February 2018 (<https://www.amnesty.org/en/documents/mde23/7894/2018/en/>); Amnesty International, 'Saudi Arabia 37 killed in killing spree', 23 April 2019 (<https://www.amnesty.org.uk/press-releases/saudi-arabia-37-killed-chilling-execution-spree>); and Human Rights Watch, 'Saudi Arabia: Mass Execution of 37 Men', 24 April 2019 (<https://www.hrw.org/news/2019/04/24/saudi-arabia-mass-execution-37-men>). For information on systemic violations of the right to a fair trial before an independent and impartial judiciary in proceedings before the SCC, including in cases where the death penalty was imposed, see *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia*, UN Doc A/HRC/40/52/Add.2, paras 30-55.

<sup>89</sup> UN OHCHR, Joint Urgent Appeal (28 July 2017), UA SAU 7/2017 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23248>).

<sup>90</sup> Amnesty International, 'Fourteen men at imminent risk of beheading as Saudi Arabia continues bloody execution spree', 24 July 2017 (<https://www.amnesty.org/en/latest/news/2017/07/fourteen-men-at-imminent-risk-of-beheading-as-saudi-arabia-continues-bloody-execution-spree/>); and Amnesty International, 'Saudi Arabia 37 killed in killing spree', 23 April 2019 (<https://www.amnesty.org.uk/press-releases/saudi-arabia-37-killed-chilling-execution-spree>).

<sup>91</sup> The UN Human Rights Committee's *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial* (UN Doc CCPR/C/GC/32, 21 August 2007) establishes that although the requirement of independence and impartiality does not guarantee that the decisions of a domestic judicial authority must be at all times without error (para 26), the right will have been breached if the court's decision "amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality" (para 26), for example by acting in a way that appears to "improperly promote the interests of one party to the detriment of the other" (para 21). See for example *Opinions Adopted by the Working Group on Arbitrary Detention at its Eighty Session (19-23 November 2018)*, Op. No. 85/2018 concerning Toufik Bouachrine (Morocco), in which the Working Group on Arbitrary Detention held that where a state's judges either failed to consider procedural irregularities raised by a defendant, or dismissed them as inadmissible without assessing their substance, that would "objectively [raise] doubts about their independence" (para 72).

Qureish.<sup>92</sup> Their deaths starkly demonstrate the ineffectiveness of the Law on Juveniles, which was enacted some eight months before they were killed.

55. Further, three of these minors (Abdulkareem al-Hawaj, Mujtaba al-Sweikat, and Salman al-Qureish), had been the subject of long-term and repeated communications by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.<sup>93</sup> The UN Special Rapporteurs had urged the Saudi authorities not to carry out the death sentence in these three cases, noting the following features:

- a. Abdulkareem al-Hawaj was 16 at the time of his alleged offences. He was arrested at a security checkpoint in 2014 and placed in solitary confinement for five months. He was then held without charge for two years, during which time he was tortured by *al-Mabahith* officers and forced to sign a false confession. The methods of torture used included beatings, electric shocks, suspension, and being prevented from using the toilet for prolonged periods. The false confession was ultimately the only evidence relied upon against him at trial.<sup>94</sup>
- b. Mujtaba al-Sweikat was 17 at the time of his alleged offences. He was reportedly boarding a plane to commence his studies at the University of Michigan in December 2012 when he was arrested without a warrant for protest-related offences.<sup>95</sup> He was held in pre-trial detention without charge for three years, and was subjected to torture by *al-Mabahith* officers including beatings, *falaka*, and

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<sup>92</sup> ESOHR, 'Six minors beheaded in Saudi execution spree (News Release)', 24 April 2019 (<https://www.esohr.org/en/?p=2206>).

<sup>93</sup> UN OHCHR, Joint Urgent Appeal (11 October 2018), UA SAU 13/2018 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24136>).

<sup>94</sup> Amnesty International, 'Juvenile offender's death sentence upheld (News Release)', MDE 23/6744/2017 (17 July 2017) (<https://www.amnesty.org/download/Documents/MDE2367442017ENGLISH.pdf>).

<sup>95</sup> Reprieve, 'Saudi Arabia executes 37 people in a single day, including three juveniles', 23 April 2019 (<https://reprieve.org.uk/press/saudi-arabia-executes-37-people-in-a-single-day-including-three-juveniles/>).

cigarette burns. A ‘confession’ was thereby extracted which subsequently formed the sole basis of his conviction by the SCC in 2015. He was not afforded any legal assistance throughout the proceedings against him.<sup>96</sup>

- c. Salman al-Qureish was aged 17 at the time of his alleged offences. He was arrested sometime between September 2012 and December 2013; the precise date is unknown as he was held incommunicado for a lengthy period. He was ultimately held in pre-trial detention for three years during which time he was subjected to torture and forced to sign a confession which the SCC relied on in convicting him. His conviction was later upheld on the basis of the confession.<sup>97</sup>

56. Information obtained from the ESOHR makes clear that similar violations occurred in the cases of the other three juveniles – Mohammed Saeed al-Safi (born 13 November 1993), Abdulaziz Hassan Ali al-Sahawi (born 20 April 1994), and Abdullah Salman Saleh al-Asrij (10 April 1994). All were young Shia men, arrested for participating in protests in Qatif. The charges against Mohammed Saeed al-Safi included ‘publishing anti-regime sentiments’, attending demonstrations, and throwing Molotov cocktails (though not resulting in any loss of life). The charges against Abdulaziz Hassan Ali al-Sahawi included attendance at protests, ‘praising Sheikh Nimr Baqir al-Nimr’, burning tyres and discharging a revolver (though with no loss of life being alleged). Abdullah Salman Saleh al-Asrij, meanwhile, was charged with offences ranging from attendance at protests in Qatif to firing upon government forces, resulting in the death of a soldier. The safety of their convictions was wholly vitiated by the fact that they were held in solitary confinement for several months and subjected to brutal torture in order to procure confessions. They were denied access to legal assistance until after these confessions had been obtained and proceedings against them had begun. And although they reported that they had been tortured to the judges presiding over their cases (with Abdulaziz Hassan Ali al-Sahawi saying “*the confessions were obtained while I was in the*

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<sup>96</sup> UN OHCHR, Joint Urgent Appeal (11 October 2018), UA SAU 13/2018 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24136>).

<sup>97</sup> UN OHCHR, Joint Urgent Appeal (11 October 2018), UA SAU 13/2018 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24136>).

*hospital for treatment, and I was beaten in the hospital bed”*), these allegations were not investigated, and the confessions formed the basis of their convictions nonetheless. Their executions were plainly arbitrary having regard to the nature of most of the offences with which they were charged, their treatment during the investigation and trial process, and the fact that they were under 18 at the time of their alleged crimes. Again, their deaths graphically demonstrate the futility of the Law on Juveniles, which had been in force for eight months before they were killed.

57. A further particularly alarming feature of the mass execution of 23 April 2019 was that one of the 37 men, Haidar al-Leif, had been the subject of an Urgent Communication by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions dated 28 July 2017. In its response dated 13 December 2017, Saudi Arabia asserted that “*on the completion of the consideration of his case, [Mr al-Leif] was sentenced in a final and definitive judgment to a term of 8 years’ imprisonment*”.<sup>98</sup> Thereafter, the UN Special Rapporteur designated Mr al-Leif as ‘no longer at risk’ in a report dated 19 June 2018, before he was ultimately executed in April 2019.<sup>99</sup>

58. The manner in which the executions were carried out also deserves special attention. The fact that they were carried out *en masse* is most troubling. This appears calculated to appal, and arguably has the effect of deflecting attention from the circumstances of individual cases. Further, as is typical of executions in Saudi Arabia, the executions were carried out in public by way of beheading. Disturbingly, it appears that the mutilated corpse of at least one victim, Khaled al-Tuwaijri, was left on public display for an extended period (a practice known as ‘crucifixion’ in Saudi Arabia), instead of being disposed of swiftly and with dignity.<sup>100</sup> Further, families of victims reported that they had

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<sup>98</sup> Saudi Arabia, *Response to UN OHCHR Joint Urgent Appeal SAU 13/2018*, HRC/NONE/2017/152 (13 December 2017).

<sup>99</sup> *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, UN Doc E/A/HRC/38/44/Add.3 (19 June 2018).

<sup>100</sup> Human Rights Watch, ‘Saudi Arabia: Mass Execution of 37 Men’, 24 April 2019 (<https://www.hrw.org/news/2019/04/24/saudi-arabia-mass-execution-37-men>). Such treatment is undoubtedly contrary to the victim’s and his relatives’ right not to be subjected to cruel, inhuman or degrading treatment or punishment.

not received any advance warning of the planned executions.<sup>101</sup> It is apparent that this has been a longstanding issue with the administration of executions in Saudi Arabia.

59. In addition, it appears that in a large number of cases, the Saudi authorities have failed or refused to release the bodies of victims of executions to their families. Instead, in such cases, the deceased were buried without ceremony in the absence of their families, in unmarked and undisclosed locations. The ESOHR identified at least 74 occasions where this has occurred since 2016 and where the issue remained unresolved as at the end of May 2019, in a complaint dated 10 June 2019<sup>102</sup> to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the UN Special Rapporteur in the field of cultural rights, and the UN Special Rapporteur on freedom of religion or belief. The ESOHR observed that in a very large proportion of these cases, the victims were members of the Shia minority. Notably, the bodies of the vast majority of the 37 individuals executed *en masse* on 23 April 2019 have not been returned to their families. Where victims were members of the Shia minority, the denial of access to the remains and even resting places of their loved ones has reportedly caused families particularly acute suffering, since the Shia faith requires the bodies of the deceased to be solemnly cared for, with great importance being attached to burial rites and post-burial ceremony.
60. As set out above, it is clear that international law, and particularly the prohibition on torture and cruel or inhuman treatment, requires states to make the bodies of the deceased available to their families without exception. The Saudi authorities' conduct in withholding the bodies of the deceased is a plain violation of this norm. In the case of Shia victims, such conduct is particularly egregious in that it appears discriminatory and calculated to persecute members of the Shia community by causing maximum distress.

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<sup>101</sup> Amnesty International, 'Saudi Arabia 37 killed in killing spree', 23 April 2019 (<https://www.amnesty.org.uk/press-releases/saudi-arabia-37-killed-chilling-execution-sprees>).

<sup>102</sup> The ESOHR has helpfully provided me with a copy of this complaint.

**F. Individuals currently at risk:**

The 24 individuals identified by the ESOHR:

61. The ESOHR has identified (and has permission to name) at least 24 individuals who are currently on death row or otherwise at imminent risk of arbitrary execution: Ali Mohammed al-Nimr, Dawood al-Marhoon, Abdullah al-Zaher, Mustafa al-Darwish, Hussain al-Aojami, Mustafa al-Khayyat, Hussain al-Ibrahim, Hussain Ahmed al-Faraj, Jaffar Mohammed al-Faraj, Zaid Ali al-Tuhaifa, Hussain al-Adam, Ahmed al-Abbas, Ahmed Hussain al-Matrood, Ali al-Owesheer, Mousa al-Hashim, Khalid al-Ghanim, Salman al-Awda, Ali al-Amri, Awad al-Qerni, Hassan Farhan al-Maliki, Hussain Mohammed al-Faraj, Ahmed Fareeh Radi al-Shomani, Hussain Abo-Alkhair, and Mohammed al-Labad.
62. The charges against almost all of the 24 (save for Hussain Abo-Alkhair, whose case is discussed further below) appear to broadly relate to political dissidence and participation in protests. At least 16, including Ali al-Owesheer and the three juveniles whose cases are considered immediately below, are members of the Shia minority from the protest-riven city of Qatif in the Eastern Province. A further four (also discussed below) are prominent, progressive clerics and human rights defenders from elsewhere in Saudi Arabia.
63. The three individuals known to have been children at the time of their alleged offences, which related to participation in protests in Qatif in 2011-12, are: Ali Mohammed al-Nimr, Dawood al-Marhoon, and Abdullah al-Zaher.
  - a. Ali Mohammed al-Nimr was 17 at the time of his alleged offences. He was detained without charge for over a year and subjected to torture until he gave a confession. In December 2013, he was brought before the SCC and charged with 12 offences including 'treason', 'membership of a terrorist cell', 'participation in an illegal demonstration' and 'explaining how to give first aid to protestors', and was found guilty even though the only evidence adduced against him at trial was

the ‘confession’. He was initially denied legal assistance despite most of his hearings being conducted *in absentia*, and when a lawyer was eventually appointed he was denied access to the case file. His sentence, which is for death by ‘crucifixion’, will require his mutilated corpse to be displayed publicly for an extended period.<sup>103</sup>

- b. Dawood al-Marhoon was 16 at the time of his alleged offences. He was arrested when still a minor and immediately subjected to an 18-hour interrogation. Thereafter, he was held without charge for nearly two years, and was subjected to prolonged periods of solitary confinement, beatings, electrocution and verbal abuse, to force him to sign a blank document onto which a ‘confession’ was later written. In January 2014, he was brought before the SCC and charged. The charges included several non-violent offences such as ‘participating in a number of marches and demonstrations across the Qatif district’; ‘chanting slogans with the intention to overthrow the government’; ‘inciting others to participate in the protests’; ‘supporting protesters by buying and distributing water to them during protests’; and ‘gathering with perverse and rogue-minded friends’. It is understood that he is currently being held in solitary confinement at al-Hayir Prison in Riyadh to await execution.<sup>104</sup>
- c. Abdullah al-Zaher was 15 at the time of his arrest in March 2012. A pre-prepared confession was procured by means of torture, which included beatings with iron rods. He was eventually tried along with Dawood al-Marhoon before the SCC. His charges included ‘participating in an illegal demonstration’ and ‘chanting slogans’, harbouring protesters, setting fire to a car, and throwing Molotov cocktails (though not resulting in any loss of life). As with Ali Mohammed al-Nimr, Abdullah

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<sup>103</sup> UN OHCHR, Joint Urgent Appeal, UA SAU 13/2018 (11 October 2018), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24136>; Reprieve, ‘Saudi Arabia: Stop the Crucifixion of Ali al-Nimr’, <https://reprieve.org.uk/saudi-arabia-stop-the-crucifixion-of-ali-al-nimr/>.

<sup>104</sup> UN OHCHR, Joint Urgent Appeal, UA SAU 8/2015 (19 October 2015), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18932>; Reprieve, ‘Case Study: Dawood al-Mahroon’, <https://reprieve.org.uk/case-study/dawood-al-marhoon/>.

al-Zaher's execution will be by 'crucifixion', meaning his mutilated body will be put on public display for a period of time.<sup>105</sup>

64. All three have been the subject of numerous Urgent Appeals demanding that the Saudi government "*take all necessary measures to halt [their executions]*", that their death sentences be annulled, and that they be afforded "*a re-trial in compliance with international standards*".<sup>106</sup> Despite this, their convictions and death sentences remain in place, and indeed they have exhausted all their appeal rights meaning they could be executed at any time. It is likely that neither they, their families, nor the international community will have any forewarning of their executions, not least because executions are carried out upon personal order of the King, a process which may be sudden and which is wholly lacking in transparency.<sup>107</sup>

65. A further case involving a minor should be highlighted. Murtaja Qureiris was detained approximately aged 12, for protest-related offences allegedly committed when he was just 10. These ranged from attending the funeral of his brother, which turned into an anti-government demonstration, to 'throwing Molotov cocktails' (though no loss of life was alleged to have resulted). A forced confession was procured from him and tendered in evidence together with the forced confessions of Ali Mohammed al-Nimr and Dawood al-Marhoon. He was convicted by the SCC and the prosecutor sought a death sentence, though following an international outcry, the Saudi authorities have recently claimed that the sentence handed down was one of 12 years.<sup>108</sup> In my view this should be

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<sup>105</sup> UN OHCHR, Joint Urgent Appeal, UA SAU 2/2016 (22 March 2016), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21114>; Reprieve, 'Case Study: Abdullah Hasan al-Zaher', <https://reprieve.org.uk/case-study/abdullah-hasan-al-zaher/>.

<sup>106</sup> See UN OHCHR, Joint Urgent Appeal, UA SAU 8/2015 (19 October 2015), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18932>; UN OHCHR, Joint Urgent Appeal, UA SAU 2/2016 (22 March 2016), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21114>; and UN OHCHR, Joint Urgent Appeal, UA SAU 13/2018 (11 October 2018), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24136>.

<sup>107</sup> Reprieve, 'Case Study: Dawood al-Mahroon', <https://reprieve.org.uk/case-study/dawood-al-marhoon/>.

<sup>108</sup> Stephen Kalin, 'Saudis say Shi'ite man arrested as juvenile will not be executed', *Reuters*, 15 June 2019 (<https://uk.reuters.com/article/uk-saudi-rights-exclusive/exclusive-saudis-say-shiite-man-arrested-as-juvenile-will-not-be-executed-idUKKCN1TG0OE>); Adam Coogle, 'Using Saudi Death Penalty vs. Children is Barbaric', *Human Rights Watch*, 21 June 2019, (<https://www.hrw.org/news/2019/06/21/using-saudi-death-penalty-vs-children-barbaric>).



treated with some caution in light of the case of Haidar al-Leif (above, paragraph 57), and because the source of the assurance appears to have been an anonymous Saudi official speaking to Reuters. In any event, that official appears to have informed Reuters that the sentence was not final and could be appealed.

66. Attention should also be drawn to the ongoing prosecutions of Mousa al-Hashim, Ahmed al-Matroud, Ali al-Owesheer, and Khalid al-Ghanim. They are also members of the Shia minority originating from the Eastern Province. They were arrested in 2015 for participating in protests, calling for democratic reform of the government, and seeking an end to religious and ethnic discrimination.<sup>109</sup> They are now being tried jointly before the SCC,<sup>110</sup> and the Saudi Arabian authorities have formally applied for the death penalty to be imposed.

67. Ali al-Owesheer's sister, Zahra, was interviewed and agreed to be identified in this report. She informed me that her brother was arrested in front of his wife and children at Dammam airport in 2015, and was thereafter *"isolated in solitary confinement for more than 100 days"*, and *"subjected to brutal torture during the interrogation period in order to force him to sign statements prepared by the interrogator himself"*. I am told that as Mr al-Owesheer was being tortured, his interrogator made the following threat: *"If you do not confess, we will torture you to death. We will bring your children here ... we will beat you in front of them until you confess, and suffocate you with smoke, and then we will issue a report that you have died of heart failure"*. He ultimately gave the confession sought by his interrogators, and was subsequently brought before the SCC with his co-accused and charged. The charges against Mr al-Owesheer *"do not include a*

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<sup>109</sup> Amnesty International, 'Urgent Action: Saudi activists face the death penalty', 4 December 2018 (<https://www.amnesty.org.uk/resources/urgent-action-saudi-activists-face-death-penalty>); Amnesty International, 'Saudi Arabia: 'Relief' at withdrawal of death penalty against female activist', 1 February 2019 (<https://www.amnesty.org.uk/press-releases/saudi-arabia-relief-withdrawal-death-penalty-against-female-activist>).

<sup>110</sup> Together with Israa al-Ghomgham, the wife of Mousa al-Hashim. The prosecutor also sought the death penalty in her case, until late January 2019: see Amnesty International, 'Urgent Action: Saudi activists face the death penalty', 4 December 2018 (<https://www.amnesty.org.uk/resources/urgent-action-saudi-activists-face-death-penalty>); and Amnesty International, 'Saudi Arabia: 'Relief' at withdrawal of death penalty against female activist', 1 February 2019 (<https://www.amnesty.org.uk/press-releases/saudi-arabia-relief-withdrawal-death-penalty-against-female-activist>).

*single violent charge [and include] participation in demonstrations and expressing his political opinion on Facebook”, but the prosecutor has nevertheless applied for the death sentence to be passed. Zahra al-Owesheer is understandably pessimistic about the likely outcome: a ‘preliminary ruling’ against her brother has apparently already been issued, and “after all the violations against [her] brother, [she] and [her] family have no hope of justice in this trial”.*

68. Domestic proceedings are also ongoing against four political activists and human rights defenders from elsewhere in the country. These are: Salman al-Awda, a prominent, progressive cleric; Awad al-Qerni, and Hassan Farhan al-Maliki, also well-known moderate clerics and academics; and Ali al-Omari, a television presenter and writer who has used his broadcasts to support women’s rights. They were among the victims of a ‘wave’ of arrests of at least 60 political activists, which took place in September 2017.<sup>111</sup> Their cases are particularly striking as no evidence has been adduced to substantiate the allegations levelled against them. They are being singled out and persecuted for speaking out against the Saudi government and highlighting the widespread human rights violations being perpetrated against ordinary Saudi citizens and others abroad by the Saudi regime.
69. A legal opinion prepared by Lord Ken Macdonald QC and Rodney Dixon QC dated January 2018 considered the September 2017 arrests in detail, and in particular the circumstances of Salman al-Awda’s case. The opinion concluded that in general, the arrests appeared to be arbitrary *inter alia* because they ostensibly resulted from the peaceful exercise of the right to freedom of opinion and expression, and because they have been characterised by lengthy periods of detention incommunicado; certainly,

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<sup>111</sup> ESOHR, ‘Public prosecution calls for further beheadings, including execution of Sheikh Salman al-Ouda, in unjust trial’, 4 September 2018 (<https://www.esohr.org/en/?p=1900>); Human Rights Watch, ‘Saudi Arabia: Prominent Cleric May Face Death Penalty’, 12 September 2018, (<https://www.hrw.org/news/2018/09/12/saudi-arabia-prominent-cleric-may-face-death-penalty>); Amnesty International, ‘Saudi Arabia’s “year of shame”: Crackdown on critics and rights activists continues’, 14 May 2019, (<https://www.amnesty.org/en/latest/news/2019/05/saudi-arabias-year-of-shame-crackdown-on-critics-and-rights-activists-continues/>); Aletha Adu, ‘Saudi Arabia executions: Moderates Awad al-Qarni, Ali al-Omari and Sheikh Salman al-Odah to die’, 24 May 2019 (<https://www.news.com.au/world/middle-east/saudi-arabia-executions-moderates-awad-alqarni-ali-alomari-and-sheikh-salman-alodah-to-die/news-story/1d38a0f45cc3d85a5c663a8da6103d2a>); Human Rights Watch, ‘Saudi Arabia: Religious Thinker on Trial for His Life’, 23 June 2019, (<https://www.hrw.org/news/2019/06/23/saudi-arabia-religious-thinker-trial-his-life>).

Salman al-Awda's case clearly smacked of arbitrariness on this basis.<sup>112</sup> That opinion – written at a time when charges had not yet been brought against Salman al-Awda, Awad al-Qerni, Hassan Farhan al-Maliki or Ali al-Omari – has been borne out as time has gone on.

70. In September 2018, after nearly a year of being held incommunicado and without charge, Salman al-Awda was brought before the SCC and charged with no less than 37 offences – charges for which the prosecutor is seeking the imposition of the death penalty. I am grateful to have been provided with a copy of the charge sheet, both in the original Arabic and in translation. Unfortunately, it makes for dismal reading. All of the charges are cast in unacceptably broad and imprecise terms, and most relate to the peaceful exercise to freedom of opinion, conscience, religion and expression. By way of example, the charges include: “*publicly objecting to the policy of the Kingdom in hosting the former Tunisian president on its soil*”, “*receiving text messages that are antagonistic to the Kingdom and critical of its policy towards Qatar*”, and perhaps most bleakly of all, “*cynicism and sarcasm about the government's achievements*”. The few charges which at first glance appear more serious (though which would never be such as to justify capital punishment), for example financing and membership of proscribed groups, are on examination no better. They do not descend into any particulars which would render them recognisable as charges, but rather are allegations cast in the widest and most abstract terms. There can be no doubt that the application of the death penalty in these circumstances would amount to a brazen violation of Salman al-Awda's right to life.

71. On 16 November 2018, an Urgent Appeal was submitted on Salman al-Awda's behalf by the UN Working Group on Arbitrary Detention; the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the UN Special Rapporteur on the independence of judges and lawyers; the UN Special Rapporteur on freedom of religion or belief; and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Urgent Appeal noted the circumstances of Salman al-Awda's case, and

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<sup>112</sup> Lord Macdonald of River Glaven Kt QC and Rodney Dixon QC, *Shrouded in Secrecy: The Human Rights situation in Saudi Arabia following arrests in September 2017*, January 2018.

considered that it “*appear[ed] to be part of a pattern of widespread and systematic arbitrary arrest and detention of persons in Saudi Arabia for peacefully exercising their human rights to freedom of expression, belief, assembly and association based on counter-terrorism and other national or state security legislation*”. In particular, the Urgent Appeal referred to the risk that Salman al-Awda faced of being subjected to the death penalty, and concluded that this would appear to constitute a violation of Art. 3 UDHR (the right to life).<sup>113</sup>

72. It should be noted that these individuals are being detained in solitary confinement with little or no contact with their families or the outside world. There is credible evidence that they and others are being mistreated and tortured by the Saudi authorities.<sup>114</sup> Further, the domestic proceedings in each of these cases are being conducted in secret by the SCC, and are characterised by serious due process violations.
73. Of the 24 individuals identified as being on death row and at imminent risk of execution, one, Hussain Abo-Alkhair, has been sentenced to death for non-violent drug-related crime. His sister, Zainab, was interviewed and agreed to be identified in this report. She explained that Mr Abo-Alkhair is a Jordanian national who was accused of possessing pills containing illicit drugs in his car, charges which he denies. Following his arrest in May 2014, he was repeatedly subjected to “*all kinds of torture*” for a period of 12 days, to force him to confess. Although he complained to the judge presiding over his case that he had been tortured, no investigation was ordered or other action taken by the judge. Indeed, the evidence relied on by the trial court in convicting Mr Abo-Alkhair consisted solely of the forced confession, since the prosecutor did not proffer any other evidence to substantiate his guilt. Zainab Abo-Alkhair’s view was that the prosecutor had been single-minded and “*aggressive*” in his efforts to secure a conviction against her brother, who has also been denied access to a lawyer throughout his five-year

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<sup>113</sup> UN OHCHR, Urgent Appeal, UA SAU 14/2018 (16 November 2018), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24186>.

<sup>114</sup> See for example Amnesty International Public Statement (28 October 2018), <https://www.amnesty.org/download/Documents/MDE2391412018ENGLISH.pdf>; and Kareem Chehayeb, ‘Torture in Saudi prisons: ‘Most oppressive era we have witnessed’ (7 June 2019), <https://www.aljazeera.com/indepth/features/torture-saudi-prisons-oppressive-era-witnessed-190606091245089.html>.

incarceration. Zainab observed that the effect of the above on both Mr Abo-Alkhair and his family had been immense – they have suffered, and are still suffering *“all kinds of emotional and psychological pain due to the excessive stress and worry”*.

Unidentified individuals who may be at risk:

74. The 24 individuals specifically identified above as being on death row and at imminent risk of unlawful execution, is very likely to be a significant underestimate. These 24 people only include those whom the ESOHR has been able to identify as being on death row for protest or non-violent drug-related offences, *and* whose names the ESOHR has been given permission to release. The pool from which they are drawn is thus limited, and it is clear that there are others beyond this pool (for example, people whose details cannot be released by the ESOHR, or others who have been convicted of serious crimes but following an unfair process). For example, Zahra al-Owesheer informed me that she is aware of *“dozens of people in Saudi Arabia who are currently being threatened with being beheaded on charges relating to freedom of expression. Many of them have been exposed to the same [kinds of violations] as [Ali al-Owesheer], but their families are afraid to talk about the abuses they are subjected to because they are present in Saudi Arabia and in fear of being arrested”*. Elsewhere, it has been estimated that ‘dozens of people’ are being held on death row in Saudi Arabia for non-violent drug-related offences, many of them foreign nationals.<sup>115</sup>
75. Across the system, there is virtually no comprehensive, reliable and up-to-date information on who has been detained, in what circumstances and on what charges, and what penalties they may face. This is compounded by the fact that detainees are often held incommunicado for lengthy periods and denied access to legal assistance, with trials and appeal processes generally taking place in secret. Information on sentences passed, including death sentences, are not consistently communicated or reported (even after they have been carried out). There may therefore be many unidentified individuals at

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<sup>115</sup> Giada Girelli, *The Death Penalty for Drug Offences: Global Overview 2018* (February 2019), p.26.

risk of arbitrary execution – just as the statistics on past executions are likely to underestimate the true number, as noted above.

76. In particular, as observed by Zahra al-Owesheer, it is likely that there are many as yet unidentified individuals who are at risk of being executed for protest-related crimes and for the peaceful exercise of the right to freedom of opinion and expression. It is clear that Saudi Arabia's recent excessive use of the death penalty comes in the midst of a concerted campaign in which large numbers of human rights defenders and political activists have been arbitrarily detained on the pretext of 'terrorism' (which, as set out above, is regarded as a potentially capital crime in Saudi Arabia). These cases have been characterised by long periods of detention without charge, allegations of torture to procure information and forced confessions, and by the wholesale violation of due process norms including denial of access to legal assistance, denial of defence rights, and trial in secret before a compromised and partial judiciary.
77. As noted above, in September 2017, the Saudi Arabian authorities arrested more than 60 such individuals.<sup>116</sup> In the first half of 2018, at least 17 human rights defenders and political dissidents were detained and have since alleged that they were tortured, many of them notable women's rights campaigners. It is understood that domestic proceedings against 12 women are ongoing (with a further woman and two men believed to be in detention awaiting charge).<sup>117</sup> In April 2019, the Saudi Arabian authorities detained at least 14 journalists, academics and family members of women's rights campaigners.<sup>118</sup> The numbers of people thought to have been arbitrarily detained in this way are likely to have been underestimated.<sup>119</sup> In these circumstances, it is entirely possible that there are many unknown individuals facing arbitrary execution.

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<sup>116</sup> Lord Macdonald of River Glaven Kt QC and Rodney Dixon QC, *Shrouded in Secrecy: The Human Rights situation in Saudi Arabia following arrests in September 2017*, January 2018.

<sup>117</sup> Amnesty International, 'Saudi Arabia's "year of shame": Crackdown on critics and rights activists continues', 14 May 2019, (<https://www.amnesty.org/en/latest/news/2019/05/saudi-arabias-year-of-shame-crackdown-on-critics-and-rights-activists-continues/>).

<sup>118</sup> Amnesty International, 'Saudi Arabia's "year of shame": Crackdown on critics and rights activists continues', 14 May 2019, (<https://www.amnesty.org/en/latest/news/2019/05/saudi-arabias-year-of-shame-crackdown-on-critics-and-rights-activists-continues/>).

<sup>119</sup> See Lord Macdonald of River Glaven Kt QC and Rodney Dixon QC, *Shrouded in Secrecy: The Human Rights situation in Saudi Arabia following arrests in September 2017*, January 2018.

## G. Conclusions and recommendations:

### Frequency of executions and numbers of at-risk persons:

78. It is clear from the evidence reviewed that Saudi Arabia's recourse to the death penalty, which was already excessive on any measure, has escalated in recent months. At least 149 people were executed in 2018, with 46 remaining on death row as at the end of the year. Many of those 46 individuals appear to have since been executed, with at least 134 death sentences having been carried out between 1 January and 20 July 2019 alone.
79. Of the people executed in 2019, the mass execution of 37 political activists on 23 April 2019 is particularly troubling. The majority were members of Saudi Arabia's Shia minority who were arrested and ultimately executed for their participation in protests in the country's Eastern Province. Six were children at the time of their alleged offences. Several had been the subject of Urgent Communications by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and one appears to have been designated as 'no longer at risk' on the strength of the Saudi authorities' response to the UN Special Rapporteur.
80. At least 24 people have been identified as being at imminent risk of execution for non-violent or protest-related crime, according to credible information supplied by the ESOHR and others. Three were children at the time of their alleged offending, and have exhausted all available avenues of appeal: Ali Mohammed al-Nimr, Dawood al-Marhoon, and Abdullah al-Zaher. The Saudi Arabian authorities are known to have sought the imposition of the death penalty in at least eight ongoing trials of political activists, academics, and human rights defenders: that of Mousa al-Hashim, Ahmed al-Matrout, Ali al-Owesheer, and Khalid al-Ghanim; and those of Salman al-Awda, Ali al-Amri, Awad al-Qerni, and Hassan Farhan al-Maliki.
81. Additionally, it is clear that the recent executions are part of a well-established pattern of systemic and egregious human rights violations, including arbitrary arrest and detention,

the use of torture, and violation of the right to a fair trial before an independent and impartial judiciary. These violations are clearly motivated by a desire on the part of the Saudi government to silence political activists and human rights defenders, and to frustrate freedom of thought, expression, religion and assembly. They are carried out under the guise of 'counter-terrorism', no doubt to cloak the Saudi authorities' conduct with a veneer of legitimacy. Crucially, they are also shrouded in secrecy. There is virtually no comprehensive, reliable and up-to-date information on who has been detained, for what, in what circumstances, and what penalties they may face. Detainees are often held incommunicado for prolonged period, denied access to legal assistance, and tried in secret (as is almost universally the case before the SCC). There may therefore be many more individuals at risk of arbitrary execution.

The legality of recent and prospective executions:

82. It is plain, on examination of the evidence, that Saudi Arabia's recent use of the death penalty has been unlawful and arbitrary. Indeed, it has been grossly so, and in almost every aspect contemplated by international law:
- a. In many cases, the death penalty was imposed for crimes that could not be regarded as 'the most serious', in that they did not involve intentional killing.
  - b. In a large proportion of cases, particularly those of the 37 men executed on 23 April 2019, the death penalty was imposed pursuant to unacceptably wide and vague laws. Both the laws defining 'terrorist' crimes, and the laws governing the circumstances in which the death penalty may be imposed, are objectionably imprecise and unpredictable.
  - c. To compound this, the laws defining 'terrorist' crimes frequently criminalised conduct which is *required to be protected* – for example, the exercise of the right to freedom of thought, expression, religion and assembly. This was no accident. It is plain that the purpose of the Saudi authorities was and is to silence dissent and human rights activism.



- d. The figures suggest that the recent application of the death penalty has been discriminatory, in that foreign nationals and members of Saudi Arabia's Shia minority were disproportionately likely to be executed.
- e. A number of the victims were under the age of 18 at the time of their alleged offences. This flies in the face of the absolute prohibition on execution of such persons, and demonstrates the inadequacy and ineffectiveness of the 2018 Law on Juveniles.
- f. There is credible evidence that many of the victims of the recent executions were tortured whilst in detention.
- g. The criminal process which culminated in the recent executions has been shown to be systematically unfair, particularly where the trial has been conducted by the SCC. In all cases surveyed, victims were denied the legal assistance required to be provided by international law. Defence rights were not respected, unreliable evidence procured by torture was relied upon, and the SCC is institutionally compromised and has shown itself in a number of cases surveyed to be biased.
- h. The administration of the recent executions (for example, failure to forewarn the victims' families) was contrary to international law and renders them arbitrary. Further, the manner of all the executions surveyed (by beheading, in public, and sometimes *en masse*) is calculated to 'shock the conscience of humanity' and renders them arbitrary.
- i. The failure to return the bodies of the victims to their families, both following the 23 April 2019 mass execution and in other cases, is a clear breach of the prohibition on torture and cruel or inhuman treatment. Moreover, this is aggravated by the fact that the Saudi Arabian government's decision to

withhold the bodies appears in many cases to be motivated by religious discrimination and persecution.

83. Many of these features are also clearly present in the cases of the 24 individuals named by the ESOHR as awaiting execution for non-violent or protest-related offences. Salman al-Awda's case, in particular, provides a prominent example of how the death penalty may be imposed for alleged crimes which do not rank amongst 'the most serious', which are evidentially unfounded, and which amount to no more than the exercise of the right to freedom of opinion, expression, religion and assembly. These same troubling themes arise in the cases of other well-known figures like Ali al-Amri and Awad al-Qerni. Further, there is credible evidence that all of these 24 people have been tortured, and that they have been denied their due process rights in the domestic criminal proceedings. In addition, there are three young men currently on death row who were under 18 at the time of their alleged offences. The evidence therefore strongly suggests that use of the death penalty in any of these 24 cases would be in flagrant breach of the right to life.
84. Further, past experience has shown that the administration and manner of executions are often brutal and impermissible as a matter of international human rights law. There is scant reason to hope that the Saudi authorities will adopt less inhumane practices for any of the executions that are in prospect.
85. In light of these findings, my recommendations are set out below.

Recommendation 1: Moratorium:

86. Saudi Arabia must immediately establish a moratorium on all use of the death penalty. This step is of vital importance to preserve the lives of the large number of people at immediate risk of arbitrary execution.
87. The moratorium should be instituted with a view to ultimately abolishing the death penalty. To this end, Saudi Arabia should sign and ratify the ICCPR and in particular the Second Optional Protocol, which aims at the abolition of the death penalty.

Recommendation 2: Transparency:

88. In order to ensure effective scrutiny of its practices, including the enforcement of the moratorium, Saudi Arabia should immediately publish comprehensive, reliable and up-to-date information about the number and identities of persons on death row, together with an explanation of the specific conduct for which the death penalty was imposed.

Recommendation 3: Release of bodies of the deceased:

89. Saudi Arabia must immediately release the remains of those who have been executed to their families, in all cases where the bodies of victims have been withheld and disposed of by the Saudi authorities.

Recommendation 4: Fact-finding mission:

90. An international fact-finding mission should be convened by an independent and politically neutral organisation, such as the International Committee of the Red Cross or the International Federation for Human Rights.<sup>120</sup> The function of the mission should be to investigate further the matters set out in this report, to ensure the safety and welfare of the individuals identified herein as 'at-risk', and to report on the same. The mission must be given immediate and unfettered access, as an absolute minimum, to all those who are on death row awaiting execution or who have otherwise been identified in this report as 'at risk'. In this regard, it is noted that the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism complained that, during his visit in May 2017, Saudi officials "*prevented him from speaking to the prisoners he wished to interview in private, taking him instead to*

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<sup>120</sup> FIDH has undertaken a number of such missions in recent years, including to Taiwan in 2005, to Japan in 2008, and to California and Louisiana in 2013: see, respectively, *The Death Penalty in Taiwan: Towards Abolition?* (June 2006); *The Death Penalty in Japan: The Law of Silence* (October 2008); and *Discrimination, Torture, and Execution: A Human Rights Analysis of the Death Penalty in U.S. Prisons* (October 2013).

*carefully selected showcase facilities*".<sup>121</sup> There must be no repeat of such conduct during the fact-finding mission which is the subject of this recommendation.

Recommendation 5: Action by Special Procedures of the UN Human Rights Council:

91. This report has been provided to relevant international actors, including the EU Parliament, and the Special Procedures of the UN Human Rights Council mentioned at paragraph 13 above. In particular, the UN Special Rapporteurs on (i) extrajudicial, summary or arbitrary executions, (ii) torture and other cruel, inhuman or degrading treatment or punishment, (iii) the promotion and protection of the right to freedom of opinion and expression, (iv) the situation of human rights defenders, and (v) the promotion and protection of human rights and fundamental freedoms while countering terrorism, are called upon to investigate the matters set out in this report, and to urgently issue communications demanding that Saudi Arabia remedy all past violations and take steps to prevent all prospective violations. Saudi Arabia is called upon to respond constructively and transparently to such communications, and to not "[resort] to blanket denials, bland reassurances and invocations of its own interpretation of Shariah law to justify its actions", as it has been found to have done in the past.<sup>122</sup>

Recommendation 6: Action by other countries, the EU, the UN Human Rights Council, and the UN General Assembly:

92. I note that over the years there have been repeated condemnations of the human rights situation in Saudi Arabia, including Saudi Arabia's practices regarding the use of the death penalty. Such condemnations have emanated from officials of other states, Special Procedures of the UN Human Rights Council, the European Parliament, and NGOs. I also note that recently, more concerted international action has been taken. This has

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<sup>121</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia, UN Doc A/HRC/40/52/Add.2, para 69.

<sup>122</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Saudi Arabia, UN Doc A/HRC/40/52/Add.2, para 69. See as an example Saudi Arabia, Response to UN OHCHR Joint Urgent Appeal SAU 13/2018, HRC/NONE/2017/152 (13 December 2017).

included the adoption by the UN Human Rights Council of a recommendation that Saudi Arabia “*Forgo the application of the death penalty or at least restrict it to the most serious crimes*”, in the course of the 3<sup>rd</sup> Universal Periodic Review of Saudi Arabia. It has also included the EU Parliament’s resolution dated 31 May 2018 (regarding the situation of women’s rights campaigners), urging Saudi Arabia to immediately and unconditionally release all human rights defenders and other prisoners of conscience detained and sentenced merely for exercising their right to freedom of opinion and expression.<sup>123</sup> Further, on 25 October 2018, the EU Parliament adopted a resolution (regarding the murder of Jamal Khashoggi) which called for a moratorium on the use of the death penalty, and a review of all extant death sentences to ensure that the trials on which they were based adhered to international standards.<sup>124</sup> Notably, on 7 March 2019, Saudi Arabia was for the first time the subject of collective criticism at the UN Human Rights Council, when 36 countries issued a joint statement expressing serious concerns over the human rights situation in the country. In particular, the statement criticised the invocation of ‘counter-terrorism’ to justify the arbitrary arrest and detention of human rights defenders and other individuals peacefully exercising their rights and freedoms.<sup>125</sup>

93. These steps are welcome, but they are not yet sufficient. Diplomatic and international pressure must be maintained if this groundswell of international condemnation of the human rights situation in Saudi Arabia is to bring about meaningful change. Accordingly, other countries must condemn Saudi Arabia’s use of the death penalty and call upon it to comply with all the recommendations set out in this report. All members of the UN Human Rights Council should also express their support for the joint statement delivered on 7 March 2019, if they have not already done so.

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<sup>123</sup> EU Parliament, *Resolution on the situation of women’s rights defenders in Saudi Arabia*, 2018/2712(RSP) (31 May 2018), available at <https://oeil.secure.europarl.europa.eu/oeil/popups/printficheglobal.pdf?id=692315&l=en>.

<sup>124</sup> EU Parliament, *Resolution on the killing of journalist Jamal Khashoggi in the Saudi consulate in Istanbul*, 2018/2885(RSP) (25 October 2018), available at <https://oeil.secure.europarl.europa.eu/oeil/popups/printficheglobal.pdf?id=696785&l=en>.

<sup>125</sup> *Statement Under Agenda Item 2: Interactive Dialogue With The High Commissioner*, delivered by H.E. Harald Aspelund (Iceland) at the 40<sup>th</sup> Session Of The UN Human Rights Council (7 March 2019).

94. Further, should Saudi Arabia fail to comply with the recommendations set out herein, all members of the G20, including the EU, should refuse to participate in the summit due to be held in Riyadh on 21-22 November 2020. Otherwise, these countries and the EU will risk normalising and even tacitly legitimising the human rights abuses being perpetrated by the Saudi regime. Indeed, should Saudi Arabia fail to take appropriate remedial action, other countries should consider the use of targeted sanctions to incentivise compliance with international human rights norms.
95. Finally, I consider that the evidence of Saudi Arabia's systematic and flagrant disregard for the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, expression, religion and assembly, in particular, is now so compelling that the UN Human Rights Council should refer the matter to the UN General Assembly. In particular, the UN General Assembly should consider whether Saudi Arabia's rights of membership of the UN Human Rights Council should be suspended under paragraph 8 of UN General Assembly Resolution 60/251, unless and until such time as it halts its excessive and arbitrary use of the death penalty.

**Helena Kennedy, The Baroness Kennedy of The Shaws, QC**  
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**29<sup>th</sup> July 2019**

## Helena Kennedy, The Baroness Kennedy of The Shaws, QC

Baroness Kennedy is a leading barrister and an expert in human rights law, civil liberties and constitutional issues.

She was elevated to the House of Lords in 1997, and as a life peer she participates in the House of Lords on issues concerned with human rights, civil liberties, social justice and culture. Her opposition to encroachments on the right to jury trial led to *The Spectator* presenting her with the Parliamentary Campaigner of the Year Award in 2000.

She has lectured on human rights, criminal law and many other subjects, both in Britain and internationally. She was the Rose Sheinberg scholar-in-residence at New York University's School of Law in 2003. She delivered the Hamlyn Trust lecture for the Institute of Advanced Legal Studies in 2002.



She is chair of Justice – the British arm of the International Commission of Jurists. She is a bencher of Gray's Inn and President of the School of Oriental and African studies, University of London. Previously, she was the chair of Charter 88 from 1992 to 1997, the Human Genetics Commission from 1998 to 2007, and the British Council from 1998 to 2004. She also chaired the Power Inquiry, which produced the Power Report on the state of British democracy in 2006. She has been honoured for her work on human rights by the French and Italian governments, and has been awarded over thirty honorary doctorates.

In Baroness Kennedy's practice as a barrister at Doughty Street Chambers in London, she has acted in many of the most prominent cases of the last 30 years including the Brighton Bombing, the Michael Bettany espionage trial, the Guildford Four appeal and the bombing of the Israeli embassy. She was the British member of the recent International Bar Association Task Force on Terrorism, and is currently acting in a number of cases connected to the recent wave of terrorism. She recently chaired an inquiry for the Royal College of Pathologists and the Royal College of Paediatrics and Child Health into sudden infant death, in the aftermath of miscarriages of justice where mothers were wrongly convicted of murdering their babies.

*Further information on Baroness Kennedy's work can be found at:*  
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