

Death Penalty for Children in Saudi Arabia

Promises do not end the tragedy



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Introduction

From January 2016 to 31 October 2021, the Government of Saudi Arabia executed 12 persons who had been convicted for crimes that occurred when they were minors. Although the government has on several occasions promised to end child executions, first by promulgating a new Juvenile Law in 2018 and most recently by stating at the United Nations Human Rights Council in February 2021 that it had completely abolished the practice of executing children, the government has repeatedly violated these pledges. The most recent violation came in June 2021, when the government executed Moustafa al-Darwish for political crimes that he allegedly committed when he was 17 years old. The government also recently confirmed the death sentence against Abdullah al-Howaiti, sentenced to death for a crime he allegedly committed at 14 years old. The Supreme Court overturned the ruling in November 2021 and Abdullah will be retried.

This report seeks to document Saudi Arabia's recent history with the capital punishment of minors during the King Salman era. It first establishes the context in which King Salman's administration began executing minors, then briefly examines the number of children executed over the course of his reign. It then turns to the recent efforts towards legal reform, showing how the law continues to allow for the execution of children despite Saudi promises to the contrary.

It also analyzes two case studies: one of a recent execution, then an additional case of a child facing the death penalty.

The report concludes with recommendations to the Saudi Human Rights Commission and Foreign Ministry, as well as to the United Nations, the European Union and other international actors.

HISTORY OF CHILD EXECUTIONS

Saudi Arabia has maintained that children are eligible for the death penalty over the course of several administrations. A 2008 report by Human Rights Watch cited at least three persons who at the time faced the death penalty for crimes they would have allegedly committed as minors. In 2013, the Saudi government ignited a firestorm of international criticism when it publicly beheaded a young Sri Lankan woman after convicting her of infanticide; the Government of Sri Lanka claimed that her passport had been falsified, and that she was a minor at the time the crime occurred – while she herself claimed that her confession had been coerced. Later that year, the Government executed seven young men on charges of armed robbery, at least two of which appeared to have been minors at the time the crime occurred. These represent cases that ESOHR has been able to monitor over the course of the last several years; in the absence of suitably transparent information from the government, it is believed that there have been executions of minors that remain unreported.

Based on publicly-available information regarding executions, the Government of King Salman began executing children in 2016, approximately one year after he ascended to the throne. In a January mass execution of 47 persons, the Saudi government executed at least four persons for crimes they were alleged to have committed as minors. In the time since, the government has killed at least a further eight. The majority of these killings were for convictions related to political offenses, with the Saudi government claiming that it obtained confessions that the minors in question had committed acts of political violence.

For example, Saudi Arabia executed Ali Al-Rebh in January 2016 after he faced charges including participating in demonstrations, participating in groups via phone applications, and attending lectures by Sheikh Nimir Al-Nimr. The government added to these charges the charge of carrying weapons and throwing Molotov cocktails, to show that the political charges were violent offenses.

In every case, ESOHR was able to verify that those confessions were recanted, and that the alleged offenders claimed during the trial in front of the judge that they had made their original confessions under torture.

In 2018, the government promulgated a new Juvenile Law that abolished the capital punishment of minors for certain non-violent offenses. A year later, however, the government

once again engaged in the mass execution of adults and children. On 23 April 2019, Saudi Arabia executed 37 persons, including six minors. The minors were convicted of non-violent political offenses, despite this having been rendered illegal by the 2018 law. During the trial all the minors alleged in front of the judge that their confessions had been coerced by means of torture. This is clear on the judgment instruments.

This trend continued into 2020 and, eventually, into 2021. In 2020, the Government carried out significantly fewer executions as a result of the COVID-19 lockdown which resulted in completely shutting down the Saudi criminal justice system. Nevertheless, shortly before initiating the lockdown, the Saudi government executed a minor for murder.

In March 2020, the government amended the 2018 Juvenile Law to make it retroactive to crimes committed prior to 2018. In October 2020 and then later in February 2021, the government claimed that the amendment had completely abolished the execution of minors. Despite these promises, the government executed one further person for crimes committed as a minor in June 2021. ESOHR examination of his case confirmed that he was convicted of crimes that occurred when he was a minor.



LAW ON CHILD EXECUTIONS

A) Hudud, Qisas, and Taazir: The division of Saudi jurisprudence

Saudi law is generally uncodified, granting judges wide discretion in making rules based off of the Saudi interpretation of Islamic sharia. The Saudi code of criminal justice, for example, is approximately 20 pages long. This uncodified nature of the law has given judges broad flexibility to impose the death penalty on minors and it was not until 2018 that the government promulgated a law that seeks to limit the ability of the prosecution to seek the death penalty against child offenders.

Saudi law, based on the Saudi official explanation of Islamic sharia, divides itself into three categories. The first, hudud, is best described as Quranic offenses – that is, crimes for which an exact punishment is prescribed in the Quran or hadith. These crimes may include banditry, blasphemy, or sodomy, and in many cases are punishable by death. The second category of crime, called qisas, is best understood as retribution-in-kind, and applies specifically to the offense of murder.

In this case, once a person is convicted of murder, the family of the murder victim can seek either the death of the convicted or a payment of dia money. For both of these first two categories of crimes, the law forbids the execution of pre-pubescent offenders – according to organizational research on this subject, the government has never executed a person younger than age seven. However, the law makes no distinction between adolescents and adults; children that display the first signs of puberty are treated as adults within the Saudi judicial system. For this reason, children above the age of twelve have sometimes been considered viable targets for capital punishment.

Although hudud and qisas are defined in the Quran, they represent only a small portion of Saudi jurisprudence. The third category, taazir, is a significantly larger chunk of Saudi law. The taazir category is best understood as discretionary law; the Quran gives rulers broad leeway to define the law as they see fit, outside of the categories defined in the Quran and hadith. If a ruler decides that a law is necessary and no information about that law can be found in Quranic sources, that ruler may make a taazir law at his discretion. In Saudi Arabia, taazir laws can be used to justify death sentences. For example, there exists no Quranic law on the subject of drug smuggling; Saudi Arabia instead issued a taazir law on drug smuggling, first criminalizing the offense and second imposing a mandatory death sentence upon persons convicted of the crime[]. According to research conducted by ESOHR, approximately 50% of all executions in the country in the last five years have been on the basis of taazir.

Until recently, the government had no rule stating that taazir death sentences could not be handed down against minors. This absence led Saudi courts to issue, confirm, and implement several taazir death sentences against minors. In 2016, the government killed four on a taazir charge. In 2019, the government executed six minors similarly. In fact, until 2021, all but one of the 12 minors executed during the reign of King Salman appear to have been killed under taazir law.

B) The Juvenile Law of 2018

In 2018, the Government made headlines when it announced a new Juvenile Law that would ban the execution of children for some crimes. Execution does not appear among the penalties that may be applied to the juvenile, and in fact the law specifically contemplates alternative penalties for juveniles that have committed crimes otherwise considered capital offenses.

“If the crime requires penalty by capital punishment, the juvenile shall be admitted to the detention center for a period not exceeding ten years.”

However, the government carved out exceptions to the law in Article (16), which made it clear that the Juvenile Law as a whole, including those sections which define juvenility, do not apply in certain circumstances.

“The provisions contained in this Law shall not prejudice the legally prescribed provisions on hudud crimes and qisas.”

According to that Article, the provisions in the law defining juvenility do not override existing law in cases of hudud or qisas

crimes, for which the death sentence has been specifically prescribed in the Quran. The new Juvenile Law, then, only eliminated taazir death sentences for minors.

Then, too, the law did not apply. A year after the promulgation of the 2018 Juvenile Law, the government executed Mujtaba al-Sweikat, a young man convicted on political charges that occurred when he was a minor. Although it appeared that the 2018 Juvenile Law would apply to Mujtaba's case, Mujtaba had already received the death penalty at trial prior to the law's entry into force. When his final appeal was heard before the Saudi Supreme Judicial Council after the law entered into force, the Court affirmed his conviction and instructed the government to carry out his execution. The Saudi government executed Mujtaba in April 2019.

C) The Royal Decree of 2020

In April 2020, the Saudi Human Rights Commission, a government-aligned National Human Rights Institution (NHRI) not accredited under the Paris Principles, announced that the Kingdom had promulgated a new Royal Decree that applied the 2018 Juvenile Law retroactively. Too late to save Mujtaba al-Sweikat, the new law was nevertheless purported to work on the behalf of other persons on death row convicted of offenses that occurred when they were children. Most notably, the Commission stated explicitly that the law would apply to Ali al-Nimr, Dawood al-Marhoun, and Abdullah al-Zaher, three young men that had been the focus of repeated international interventions , including several joint statements at the UN

Human Rights Council and at least one European Parliament resolution.

However, the text of the Royal Decree does not exist in any public forum. It has not been published in any Saudi legal registry and is unavailable to access through any official channel available to the authors. Notably, the law appears to continue to only apply to taazir offenses and is silent on the matter of qisas and hudud. An April 2020 reply from the Saudi government to the Special Procedures of the United Nations confirmed that the law only applied to executions for taazir offenses.

In October 2020 and later in January 2021, the government commuted the sentences of Ali, Dawood, and Abdullah to the maximum allowable prison term under the 2018 Juvenile Law, at the time lending credibility to the Commission's assertion that the Royal Decree had made the Law retroactive. Later, the government also claimed that the public prosecution had withdrawn its request for the death penalty against Mohammed al-Faraj, a minor alleged to have conspired in the killing of a Saudi official when he was 15 years old.

D) International Statements

The Saudi Commission for Human Rights, has made a series of statements on behalf of the government that, if true, would completely abolish child executions in the country. In August 2020, the Commission published a statement over Twitter indicating that the country had completely outlawed child executions. According to the statement, "Saudi Juvenile Law stipulates the maximum sentence for anyone convicted of

acrime committed while he or she was a minor is 10 years.”

In February 2021, the Commission again committed to the complete abolition of child executions in the Kingdom when Saudi Human Rights Commissioner Dr. Awwad al-Awwad stated at the UN Human Rights Council in Geneva that, “anyone who commits a death-eligible crime as a child” would be sentenced to “a maximum sentence of ten years in a juvenile institution.”

THE CURRENT SITUATION

Despite the existence of the Juvenile Law prohibiting child executions for taazir crimes, the existence of a Royal Decree applying that law retroactively, and two statements by the Human Rights Commission that children that are convicted of death-eligible offenses will receive a maximum sentence of ten years in prison, the Saudi government continues to execute persons convicted of crimes committed as children.

The Execution of Mustafa al-Darwish

In June 2021, the Government of Saudi Arabia executed Mustafa al-Darwish. Al-Darwish was arrested in May 2015. The government charged him with a series of offenses, many of which were related to protesting when he was 17 years old and send to al-Mabahith prison in Dammam. Over the course of his pre-trial detention, government agents tortured al-Darwish, placing him in prolonged solitary confinement and subjecting him to beatings that caused him to lose consciousness on several occasions.

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After two years of detention, al-Darwish was transferred to the Specialized Criminal Court, where he was charged with participating in the shooting of security officers, participating in demonstrations and gatherings, burning tires, hiding wanted persons, and storing information on his phone that would disrupt national security. Among the charges brought were participation in the demonstrations of 1433, when he was 17 years and two months old. Under pressure from the prosecution that included threats for continued torture, al-Darwish signed a coerced confession. At no point prior to his trial was al-Darwish permitted to have access to an attorney.

The prosecution introduced the coerced confession into evidence at trial, and the court relied substantially upon that confession in convicting him and sentencing him to death for taazir. The Appeals Court confirmed the case and referred it to the Supreme Court, which finally confirmed the sentence.

On 26 June 2021, in violation of the April 2020 Royal Decree prohibiting the taazir execution of minors and in violation of

In commitments made by the Saudi Human Rights Commission, the Government of Saudi Arabia executed Moustafa al-Darwish.

The case of Abdullah al-Howaiti

Al-Darwish's execution is not the only violation of Saudi Arabia's commitments, however. In January, the Saudi Court of Appeals confirmed a death sentence against Abdullah al-Howaiti. Abdullah was sentenced to death under qisas for a murder he is alleged to have committed when he was fourteen years old. Substantial evidence points to him not being capable of having committed the murder, including security camera footage placing him elsewhere at the time of the event. Abdullah was sentenced to death largely on the basis of a confession that he has since recanted, stating that it was extracted from him by means of torture.

On 8 May 2017, masked security agents raided the family home of the then 14-year-old Abdullah al-Huwaiti, arresting him and his brother, Abdulaziz. Both were taken to the police station in Duba, where they were charged with the crime of robbery and murder committed on 6 May 2017.

Abdullah's mother posted his diary entries on Twitter which spoke of the treatment he received from the time of his arrest until he signed off on statements recorded by the investigator. He was subjected to appalling conditions that compelled him to admit to statements he did not make and to incidents in which he was not involved.

In his diary, Abdullah said he was forced to stand for long hours at the Duba police station while guards insulted and verbally abused him. When he was transferred to the criminal investigation center in Tabouk, the physical and psychological torture began to intensify in order to make him confess to committing murder.

The following are among the types of torture Saudi security agents inflicted on Abdullah:

- Forced to stand for hours at a time until he lost consciousness.
- Beaten and slapped on the face.
- Hit with an electrical cable on the soles of his feet (falaqa).
- Hit with an electrical cable on different parts of his body until he lost consciousness.
- Forced to stand directly in front of an air conditioner.
- Severely beaten while being forced to hold the legs of his brother Abdulaziz during the latter's torture with falaqa.
- Psychologically tortured by being told his mother and sisters were in prison and would only be released once he confessed to having committed the crime.

Abdullah's diary mentioned that, after enduring rounds of physical torture at the hands of Captain Mohammed Saleh al-Anzi, he told the security agent to write whatever he wanted and agreed to sign it with his fingerprint. Captain al-Anzi then ordered another officer to write while he dictated. When Abdullah became hesitant, al-Anzi falsely claimed that his mother and sisters were in prison and that he would release them along with his brother, Abdulaziz, once Abdullah signed the confession. This prompted Abdullah to fingerprint the confession.

Abdullah was then transferred to the juvenile observation home in Tabouk. According to Abdullah's diary, Investigator Ali al-Shamrani asked him to explain what happened, to which he responded that his statements at the criminal investigation center were made under duress. Next, he was taken to a prison cell. Sometime after midnight, Captain Mohammed Saleh al-Anzi came in with a group of soldiers. They woke him up and informed him he was being transferred again. Abdullah was blindfolded and escorted back to the criminal investigation unit. According to his diary, al-Anzi threatened to pull out his nails, suspend him from one hand, and torture him in other ways he could scarcely imagine. Abdullah pleaded with him, promising not to tell anyone about his treatment again.

The next day, Captain al-Anzi took Abdullah to court. Judge Ali Abdullah read out the confession and Abdullah pleaded guilty, afraid of what would happen to him if he revealed how he was tortured. Afterwards, al-Anzi told him: "Now you can eat!"

On 27 October 2019, the criminal court in Tabouk in northern Saudi Arabia convicted Abdullah of murder and sentenced him to a Hodood execution. Five others were convicted for their involvement in the crime and sentenced to fifteen years' imprisonment and one thousand lashes. They were also ordered to pay 800,000 Saudi riyals, an amount equal in value to the stolen goods.

On 19 October 2020, the Court held an appeal hearing in the Al-Huwaiti case. After several sessions, the Court of Appeals in

Tabouk confirmed the ruling in January 2021, and it was filed to the Supreme Court in Riyadh.

Abdullah's mother rejects the accusations made against Abdullah, stating that he was with his brother and friends on the Corniche in Duba when the crime took place, as confirmed by eyewitnesses and surveillance cameras. She states that video evidence places Abdullah at the Corniche at the time of the crime. Abdullah's mother also disclosed that a brigadier general initially involved in the case had confirmed Abdullah was on the Corniche at the time of the crime. This witness was, however, later excluded from the investigation.

Abdullah's mother also understands that another person has already confessed to having committed the crime. She states that a man had gone to the Duba city police station and confessed to committing the murder. The man was released for allegedly being mentally unstable despite having described to police in detail how he had carried out the robbery, killed a soldier, and fled in a security vehicle.

In November 2021, the Supreme Court overturned the ruling, and the information said that the reason was the judge's failure to be convinced of the evidence. It is expected that Abdullah will be returned to the court and he will be retained and it is not excluded that the Public Prosecution will insist on requesting the death penalty, under qisas and hudud provisions.

Four other minors continue to be threatened by executions: Jalal al-Labbad, Sajjad al-Yassin, Youssef al-Manasf and Hasan Zaki

al-Faraj. ESOHR has monitored these four cases in spite of the lack of transparency in the official handling of the execution file, the imposition of silence on society, the continuing intimidation of families and the criminalization of communication with human rights organizations, and a lack of knowledge about the actual number of minors still at risk of execution.

According to ESOHR documentation, the four minors do not face charges considered to be the most serious, and a number of them confirmed that they had been tortured in order to extract their confessions. Their trials are still ongoing despite the lack of fair trial rights. Despite the recent changes in law detailed above, ESOHR monitoring of Saudi Arabian court cases indicates that there has been no change in the sentencing requests of the public prosecution in these cases.

Recommendations

To the Saudi Human Rights Commission and Saudi Foreign Ministry

- i. Fully implement into law the Convention on the Rights of the Child, to which Saudi Arabia acceded in 1996, including by completely rendering illegal any use of the death penalty against any person for crimes that took place when they were minors.
- ii. Ensure that the 2018 Juvenile Law is amended to fully prohibit the death penalty for all offenses on minors.
- iii. Fully implement both the Convention on the Rights of the Child and the Convention against Torture, to which Saudi Arabia

acceded 1997, by not only completely rendering illegal the use of torture in investigations, but by also mandating and carrying out credible investigations into torture allegations by introducing stand-alone legislation that renders illegal the use of torture in investigations, and mandates credible investigations into allegations of torture, and ensuring the full implementing of such legislation.

iv. Dissemination of laws in a clear and accessible manner for all to ensure the right of individuals to know their rights.

v. Withdraw the death penalty in place against Abdullah al-Howaiti, permanently and to ensure that he receives a new fair trial, and credibly investigate his allegations of torture

vi. Issue public apologies and provide reparations to the families of all minors executed by Saudi Arabia during the reign of King Salman, and return the remains of those executed to their families so that proper funeral rites may be performed.

To the United Nations

I) Given the commitments made to the UN Human Rights Council by the Government of Saudi Arabia to completely abolish the death penalty against children, consider introducing a resolution condemning child executions taking place throughout the world, including in Saudi Arabia; and

II) As part of the ongoing technical support for the implementation of human rights in Saudi Arabia, remind the Saudi government of its commitments to ending the death penalty against children.

To the International Community

I) Hold Saudi Arabia to account for its promises to end child executions by implementing targeted sanctions against perpetrators of child executions, including members of King Salman's government; and

II) Utilize the upcoming European Union-Saudi Arabia Human Rights Dialogue to advocate for the complete abolition of child executions in Saudi Arabia.