

Mid-term report for the Universal Periodic Review of the Kingdom of Saudi Arabia

Introduction

ESOHR is a non-profit organization established by a group of activists aiming to strengthen the commitment of human rights principles in Saudi Arabia.

Reprieve is a charitable organization registered in the United Kingdom (No. 1114900), and in special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. Our clients belong to some of the most vulnerable populations in the world, as it is in their cases that human rights are most swiftly jettisoned, and the rule of law is cast aside. In particular, we protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.

This report sets out ESOHR and Reprieve’s assessment of Saudi Arabia’s mid-term progress towards meeting Universal Periodic Review (UPR) recommendations relating to the use of death penalty and criminal justice reform made to Saudi Arabia in the third cycle of the UPR.

Executive summary

Saudi Arabia underwent its third-cycle UPR examination on 5 November 2018. It received a total of 258 recommendations, of which it accepted (at least in part) 199 and noted 80.¹

In advance of the mid-term reporting, ESOHR and Reprieve have jointly undertaken a brief analysis of the Saudi Arabian Government’s implementation of accepted recommendations pertinent to the death penalty and/or criminal justice reform.¹

This report provides a qualitative assessment of Saudi Arabia’s implementation of these recommendations. Reprieve and ESOHR have prepared this report using data collected by the organisations on the use of the death penalty in Saudi Arabia, public sources, and official documents collected in the course of death penalty investigations between 2018 and 2021.

In summary, Saudi Arabia must do more to deliver on the recommendations it has accepted. Despite accepting a recommendation to limit the death penalty to the most serious crimes, Saudi Arabia’s only step towards implementing this recommendation has been to announce an unofficial moratorium on executions for drug crimes via a statement by the Saudi Human Rights Commission (SHRC) on social media—far from the level of legal certainty required by international law.

Having accepted a recommendation to protect children from all forms of violence, Saudi Arabia proceeded to execute at least seven young people who were children at the time of the alleged offences for which they were executed since the UPR session and its laws still fail to protect all children from the death penalty. Recommendations relating to the promotion of access to lawyers and international observers have not been realised in capital trials monitored by Reprieve and ESOHR.

1. International Instruments

Saudi Arabia accepted 14 recommendations relating to the accession of international instruments, including nine recommendations urging KSA to accede to or otherwise become a party to the

¹ It should be noted that Saudi Arabia did not accept any recommendations relating to the use of torture-tainted confessions in the criminal justice process. It would be remiss of Reprieve and ESOHR to fail to highlight that this is a prevalent issue, and one which is important to assessing the compliance of Saudi Arabia’s use of the death penalty with international law. The absence of these issues from this mid-term report does not indicate progress in this area.

International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).ⁱⁱ

Since the 5 November 2018, Saudi Arabia has not acceded to the ICCPR or the ICESCR, the two central human rights treaties at the normative core of the right to life.

In conclusion these recommendations have not yet been implemented.

2. The Death Penalty – only for the most serious crimes

Saudi Arabia accepted one recommendation from Germany directly relating to the use of the death penalty for crimes which are not the most serious– ‘Forgo the application of the death penalty or at least restrict it to the most serious crimes’.ⁱⁱⁱ It further partially accepted three recommendations related to the use of the death penalty for crimes which are not the most serious.^{iv}

Since 5 November 2018, Saudi Arabia has made very limited progress towards implementing these recommendations. According to execution data collected by ESOHR, there have been at least 259 executions in Saudi Arabia since 5 November 2018, including 186 in 2019 alone.

On 5 April 2018, Crown Prince Mohammed bin Salman publically^v acknowledged that ‘the most serious crimes’ relates only to intentional murder, in line with the position of international law.^{vi} Nevertheless, according to ESOHR and Reprieve monitoring, Saudi Arabia proceed to execute 105 individuals for drug crimes and 37 for political offences since the UPR in 2018. Judges remain able to impose death sentences for these crimes, and individuals remain in the criminal justice system faced with the risk of the death penalty for these offences. There is therefore clear evidence that Saudi Arabia has failed to implement Germany’s recommendation to limit the application of the death penalty to the most serious crimes.

Drug Crimes

In 2005, the Law on the Control of Narcotic and Psychotropic Substances made the following drug offences punishable by the death penalty in Saudi Arabia: trafficking or smuggling narcotics; receiving such substances from a smuggler; importing or exporting narcotics; manufacturing drugs with the intent to trade; participating in any of the aforementioned activities and recidivism of possession or use offences.^{vii} These offences do not meet the threshold of ‘most serious crimes’ as defined by international standard setting bodies and should not attract the death penalty.^{viii}

To our knowledge, since the last UPR, Saudi Arabian authorities have taken no steps to amend their laws which provide for the death penalty for drug offences.

Whilst Saudi Arabia has announced a moratorium on executions for drug related offences since the last UPR, this does not amount to an official moratorium as reflected in other state practice and international law. In January 2021, the SHRC announced a moratorium on executions for drug related offences via Twitter.^{ix} The UN Human Rights Council’s documentation of moratoria suggests that a moratorium is only official if announced by the executive, legislative or judicial branches of a state,^x or unofficial if inferred from a pause in executions for 10 years or more.^{xi} In the context of Saudi Arabia, therefore, for a moratorium to be official it would have to be announced by the King himself, passed by Royal Decree; to be unofficial, the moratorium would have to be in place until January 2030. Neither of these tests have been met—Reprieve and ESOHR research suggests that this alleged moratorium has not been legalised by way of a Royal Decree or other means, and according to our monitoring there has only been a 16 month pause in drug-related executions as of 5 June 2021.^{xii}

The continued availability of the death penalty as a punishment for drug crimes, and the fragility of the so-called moratorium, concern Reprieve and ESOHR particularly in so far as they confirm vulnerability of our client, Hussein abo al-Kheir, to the death penalty. Hussein, a Jordanian national, was arrested in 2014 when crossing the border into Saudi Arabia, and was sentenced to death in 2015 for alleged drugs smuggling. Hussein has consistently denied these charges, was tortured into signing the confession document, and has never been able to instruct a lawyer. His health, in particular his eyesight, has deteriorated significantly in detention. In September 2019, despite these numerous fair trial violations, his family were informed that the Supreme Judicial Council refused his appeal, and that he had no further right to challenge his death sentence.

In conclusion, Saudi Arabia has only made limited progress towards implementing this recommendation in relation to drug crimes. Since the last UPR, Saudi Arabia has executed 105 individuals for drug offences, the death penalty for drug offences remains a valid punishment in law and a moratorium on executions for this type of offence, whilst welcome, has not been officially or unofficially established.

Political Offences

Under Saudi Arabia's Basic Law of Governance, '*Courts shall apply rules of the Islamic Sharia in cases that are brought before them, according to the Holy Qur'an and the Sunna, and according to laws which are decreed by the ruler in agreement with the Holy Qur'an and the Sunna.*'^{xiii} This grants judges the discretion to determine what conduct constitutes an offence under Shari'a law. The failure to codify a criminal code and the wide interpretative powers granted to judges to determine offences and punishments, including the death penalty, places individuals at risk of the death penalty for political offences. According to ESOHR, dozens of people face death sentences on charges relating to freedom of expression.^{xiv} Non-lethal and non-violent offences relating to political activities do not amount to the 'most serious crimes' as defined by international standard setting bodies.^{xv}

Since the UPR, there is no indication that Saudi Arabia has taken steps to amend their laws which allow judges to hand down death sentences for political offences. Saudi Arabia has not implemented the recommendation to restrict the use of the death penalty to 'the most serious crimes' in relation to political offences.

3. The death penalty and childhood crimes

Saudi Arabia partially accepted eleven recommendations calling for the abolition of the death penalty for those who were minors at the time of the alleged crime.^{xvi} Further, Saudi Arabia accepted two recommendations relating to strengthening legal protections for juveniles and protecting children from all forms of violence.^{xvii}

Since 5 November 2018, Saudi Arabia has made limited progress against these recommendations. The death penalty remains available to judges and prosecutors as a valid punishment for children, at least 10 individuals are at risk of the death penalty for 'crimes' committed under the age of 18, and at least seven individuals have been executed for allegedly crimes that occurred when they were children.

The Juvenile Law 2018 governs the treatment of child defendants in the criminal justice system.^{xviii} The Juvenile Law prescribes a maximum punishment of ten years in prison in cases of children under

18 (*hijri* calendar) who commit death eligible offences under one category² of offence, *ta'zir*.^{xix} However, Article 16 of the Juvenile Law states that it '[...]shall not prejudice the legally prescribed provisions on the two other categories of offences, *hudud* and *qisas*'. This leaves children at risk of the death penalty, because judges are still able to impose *hudud* or *qisas* death sentences.^{xx}

In April 2020, the Saudi authorities announced a Royal Decree which would abolish the death penalty for crimes committed under the age of 18, and would make the Juvenile Law 2018 retroactive.^{xxi} Whilst this Royal Decree has not yet been published, Saudi authorities have since stated that the Decree does not extend the scope of application of the Framework to *hudud* and *qisas* offences.^{xxii} Reprieve and ESOHR are aware of at least three individuals who were children at the time of the alleged crimes for which they face the death penalty, including Reprieve / ESOHR client Abdullah al-Howaiti, whose death sentence for a *hudud* offence allegedly committed when he was just fourteen years old, has been upheld by Saudi courts as recently as 19 January 2021.^{xxiii}

Furthermore, the retroactivity of the Juvenile Law is not codified in law, and therefore the protections of the Royal Decree for those charged with death eligible *ta'zir* offences are fragile. Saudi authorities claim that the Royal Decree makes the Juvenile Law 2018 retroactive, and therefore protects all children at risk of *ta'zir* death sentences, even if they were charged or sentenced before the Juvenile Law was passed. However, until the Royal Decree is published, this is no more than a promise. At least **six** child defendants (including Reprieve / ESOHR client Mohammed al-Faraj) were charged with or convicted of death eligible *ta'zir* offences before the Juvenile Law was passed in 2018. Until the Royal Decree is published and takes effect, these individuals lack legal protection from the death penalty.

Saudi Arabia has executed at least seven individuals for childhood crimes since the last UPR.^{xxiv} Six of the individuals were executed in an infamous mass execution on 23 April 2019, including Reprieve/ESOHR clients Abdulkarim al-Hawaj, Salman Qureish and Mujtaba al-Sweikat. This creates serious doubt about the sincerity of Saudi Arabia's repeated promises not to execute for childhood crimes. Saudi Arabia's failure to publish death row data, and the alarming recent death sentence in Abdullah al-Howaiti's case, suggests that other unidentified individuals may remain at risk of a death sentence for alleged crimes committed as children.

In conclusion, Saudi Arabia has only made limited progress towards implementing these recommendations. The Royal Decree 2020 has not yet been published, and therefore it is not possible to assess to what degree it amounts to a partial implementation of these recommendations. It is important to note that Saudi Arabia have conceded that the Royal Decree 2020 does not extend the protection of the Juvenile Law 2018 to all types of offences, leaving children at risk of the death penalty under *hudud* or *qisas*.

3. Access to Justice

² Three categories of offences may be subject to the death penalty in Saudi Arabia: *Hudud* offences: are offences for which there are predetermined punishments under Shari'a law. *Hudud* offences punishable by death include adultery while married, apostasy, and *herabah* (banditry, waging war against God - generally referred to violent acts spreading fears in the community). *Qisas* offences: are offences for which there may be retributions in kind. For example, in murder cases, the family of the murder victim can decide to seek the death penalty, to pardon the perpetrator or forgo the death penalty in return for receiving financial compensation. *Ta'zir* offences: are offences for which there are no predetermined punishments under Shari'a, for example witchcraft and drug offences. The distinctions between these categories of offences are not always clear and, as detailed above, judges are granted vast discretion to determine crimes and punishments.

Saudi Arabia accepted four recommendations relating to fair trial guarantees that must be guaranteed in capital trials.

UPR Recommendation 122.92 - Ensure that the treatment of persons suspected of acts of terrorism strictly complies with international human rights law and abolish the public prosecutor's discretion to forbid detainees' access to a lawyer

UPR Recommendation 122.188 - Promote further the principle of public trials, the right to access to a lawyer and other guarantees provided for in the Code of Criminal Procedure

UPR Recommendation 122.191 - Allow diplomats to attend trials and court sessions as was done in 2013

UPR Recommendation 122.175 - Increase the transparency and openness of legal proceedings and investigations [...]

Saudi Arabia has not made progress towards implementing these recommendations. This is evident from our documentation of the Specialised Criminal Court trial of Mohammed al-Faraj, who is at risk of a *ta'zir* death sentence for non-violent political offences allegedly committed when he was under fifteen years old. The court have prevented Mr Faraj from attending hearings on 29 October 2020, 18 January and 31 March 2021. Reprieve and ESOHR understand that Mr Faraj has been unable to consult with his lawyer. The court have prevented international observers from attending the hearings. Indeed, it is Reprieve and ESOHR's understanding that observers have been prevented from attending all hearings in Saudi Arabia since December 2019.

Outside the counter-terrorism context, individuals remain on death row following trials in which their right to a fair trial was violated. Saudi Arabia did not provide ESOHR/Reprieve client Hussein abo al-Kheir with a lawyer to represent him in his capital trial for drug offences between 2014 and 2019. The Supreme Court upheld his death sentence in September 2019.^{xxv} The state must grant Mr al-Kheir a retrial in which these rights are upheld and the death penalty is an unavailable punishment.

In conclusion, these recommendations have not been implemented.

Conclusion

In summary, Saudi Arabia has not implemented the majority of recommendations relating to the death penalty. Saudi Arabia has not ratified either of the core UN treaties which protect the rights of those at risk of the death penalty. The death penalty remains a valid punishment for offences which are not 'the most serious', including non-lethal drug offences and offences relating to freedom of expression. The announcement of a moratorium on the use of executions for drug offences does not amount to an official or unofficial confirmation of its existence. Children remain at risk of the death penalty because of the narrow scope of the Juvenile Law 2018 (even considering the promised Royal Decree 2020) and the failure to publish the Royal Decree 2020. Finally, there has been no change to the law providing for greater fair trial guarantees in capital trials, and international observers are not permitted to enter and observe proceedings in court.

For more information about the cases cited in this report or other questions related to the report, please contact menaexternal@Reprieve.org.uk and Duaa@eso.hr.

- ⁱ HRC, UPR, Annex to the Report of the Working Group, 26 February 2019, UN. Doc A/HRC/40/4/Add.1, available at : <https://www.ohchr.org/EN/HRBodies/UPR/Pages/SAindex.aspx> .
- ⁱⁱ 122.1; 122.15 ;122.17 ;122.35 ; 122.3 122.4 ; 122.2 ;122.5 ; 122.6 ;122.16 122.10;122.24 ;122.26 ;122.27
- ⁱⁱⁱ 122.107
- ^{iv} 122.95 ; 122.100 ;122.99
- ^v Time Magazine, Crown Prince Mohammed Bin Salman Talks to Time About Saudi Arabia, The Middle East and President Trump, 5 April 2018, available at <https://time.com/5228006/mohammed-bin-salman-interview-transcript-full/>. [accessed 3 June 2021]
- ^{vi} See, *inter alia*, Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, 30 October 2018, UN. Doc(CCPR/C/GC/36), para. 35, available at : https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf. [accessed 2 June 2021].
- ^{vii} The Law of Combating Drugs and Psychotropic Substances, 2005, available at <https://www.moi.gov.sa/wps/wcm/connect/73b2ca0041ec56f7b3e1b77e08398394/%D9%86%D8%B8%D8%A7%D9%85+%D9%85%D9%83%D8%A7%D9%81%D8%AD%D8%A9+%D8%A7%D9%84%D9%85%D8%AE%D8%AF%D8%B1%D8%A7%D8%AA+%D9%88%D8%A7%D9%84%D9%85%D8%A4%D8%AB%D8%B1%D8%A7%D8%AA+%D8%A7%D9%84%D8%B9%D9%82%D9%84%D9%8A%D8%A9.pdf?MOD=AJPERES&CVID=IDGm78p> [accessed on 03 June 2021]].
- ^{viii} Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, 30 October 2018, UN. Doc(CCPR/C/GC/36), para. 35, available at : https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf. [accessed 2 June 2021].
- ^{ix} Saudi Human Rights Commission account on twitter, 18th of January 2021 https://mobile.twitter.com/HRCSaudi_EN. See also reports that harsh sentencing for offences relating to freedom of expression has increased in 2021: Ruth Michaelson, Weak US let Saudis jail more dissidents, 13 May 2021, available at: <https://www.theguardian.com/global-development/2021/may/13/weak-us-let-saudis-jail-more-dissidents-says-rights-group> [accessed 3 June 2021].
- ^x Economic and Social Council fo the United Nations, Report of the Secretary General on Capital Punishment and the Implementation of Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, UN. Doc. E/2010/10, 18 December 2009, para. 20, available at: <https://digitallibrary.un.org/record/682264?ln=en%20-%20record-files-collapse-header> [accessed 27 May 2021].
- ^{xi} *Ibid*, para. 19.
- ^{xii} See Saudi Press Agency, Ta'zir death penalty imposed for a drug smuggler in Juba, 14 January 2020, available at: <https://www.spa.gov.sa/viewfullstory.php?lang=ar&newsid=2022381> [accessed 27 May 2021].
- ^{xiii} Royal decree A/91, Basic Law of Governance, 1 March 1992, available at: <https://www.saudiembassy.net/basic-law-governance#Chapter Two: The Law of Governance>.
- ^{xiv} Data held on file by ESOHR.
- ^{xv} Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, 30 October 2018, UN. Doc(CCPR/C/GC/36), para. 35, available at : https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf. [accessed 2 June 2021].
- ^{xvi} See Human Rights Council, Report of the Working Group on the UPR, Saudi Arabia, Addendum, UN Doc. A/HRC/40/4/Add.1, 26 February 2019, available at: https://www.upr-info.org/sites/default/files/document/saudi_arabia/session_31_-_november_2018/saudi_arabia_addendum_en.pdf 122.96; 122.99; 122.100; 122.101; 122.110; 122.111; 122.112; 122.113; 122.114; 122.118; 122.220
- ^{xvii} 122.225 and 122.244
- ^{xviii} Royal Decree no. 118 2018 on the Juvenile Law 2018, Article 15(2) available at <https://www.moj.gov.sa/Documents/Regulations/pdf/77.pdf>.
- ^{xix} Royal Decree no. 118 2018 on the Juvenile Law 2018, Article 15(2) available at <https://www.moj.gov.sa/Documents/Regulations/pdf/77.pdf>.
- ^{xx} Royal Decree no. 118 2018 on the Juvenile Law 2018, Article 16 available at <https://www.moj.gov.sa/Documents/Regulations/pdf/77.pdf>.
- ^{xxi} Saudi Human Rights Commission, Press Release, Abolition of Death Penalty for Crimes Committed as Minors, 25 April 2020, <https://hrc.gov.sa/en-us/News/Pages/news803.aspx> ; <https://hrc.gov.sa/ar-sa/News/Pages/news805.aspx>

^{xxii} Mission of Saudi Arabia to the UN Geneva, Communication SAU 17.07.2020 (6.2020)A, pp 1 -2, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35427>

^{xxiii} Information held on file at Reprieve/ESOHR. Please contact menaexternal@reprieve.org.uk or duaa@esohr.org for a detailed briefing on these cases.

^{xxiv} Information held on file at ESOHR.

^{xxv} Information held on file at Reprieve.