



MANIFESTO FOR REPRESSION

SAUDI ARABIA'S FORTHCOMING PENAL CODE MUST UPHOLD
HUMAN RIGHTS IN LINE WITH INTERNATIONAL LAW AND STANDARDS

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GLOSSARY

| WORD | DESCRIPTION |
|---|--|
| ACPRA | Saudi Civil and Political Rights Association |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| CONSULTATIVE COUNCIL (MAJLIS AL-SHURA) | A consultative council comprising 150 members appointed by the King and which advises the king. |
| COUNCIL OF MINISTERS (MAJLIS AL-WUZARA) | The cabinet of the Kingdom of Saudi Arabia. It is led by the King and the Prime Minister, i.e., the Crown Prince. |
| CRC | Convention on the Rights of the Child |
| CRPD | Convention on the Rights of Persons with Disabilities |
| HADD | Hadd (plural: hudud) are divinely ordained crimes that have fixed punishments under sharia. The death penalty is prescribed as a punishment for several hadd offences under sharia, such as banditry and apostasy. Flogging is also prescribed as a punishment for hadd offences such as adultery. |
| HANBALI SCHOOL | One of the four schools of jurisprudence in Sunni Islam |
| ICCPR | International Covenant on Civil and Political Rights |
| QISAS | A crime whose punishment is equivalent to the crime, or retribution in kind. It includes murder and certain types of bodily injury. In cases of murder, relatives of the victim can authorize the death penalty or pardon the offender and accept financial compensation, known as “blood money” (diyah). |
| SCC | Specialized Criminal Court |
| SHARIA | Sharia is a set of rules and guidelines that make up Islamic Law, which is derived from primary and secondary sources. The primary sources for sharia are the Qur’an (the sacred scripture of Islam) and Sunnah (the traditions and practices of Prophet Muhammad). The secondary sources are various interpretations of the Qur’an and Islamic jurisprudence. |

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| WORD | DESCRIPTION |
|--------------------------|--|
| SHRC | Saudi Human Rights Commission, a governmental organization established by a decision of the Council of Ministers. Among the Commission's basic functions are visits to prisons and places of detention at any time and without requiring permission from the authorities concerned; submitting reports to the King; and receiving and investigating human rights concerns. |
| SUPREME JUDICIAL COUNCIL | An 11-member body headed by the Minister of Justice. Members are appointed by the King for renewable four year-terms. The body supervises the courts and judiciary, reviews all legal decisions that the Ministry of Justice refers to it, and provides legal opinions on judicial questions. |
| TA'ZIR | Ta'zir crimes have no fixed punishments in sharia, nor do they have clear definitions under other laws in the country. Therefore, judges have discretion to determine sentences for offences that have no fixed punishments, including the death penalty, without being bound by judicial precedent. |
| UDHR | Universal Declaration of Human Rights |
| WAHABISM (WAHABI ISLAM) | The teachings of 18 th century Hanbali cleric Mohammad Abd Al-Wahab. The Wahabi doctrine underscores the literal interpretation of the Qur'an and Sunnah (teachings of the Prophet), and condemns all other sources of doctrine as <i>bid'ah</i> , meaning innovations. |

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1. EXECUTIVE SUMMARY

Since coming to power, Crown Prince and Prime Minister Mohammad bin Salman (MBS), has effectively quashed all dissent at home while investing Saudi Arabia's significant financial resources to launder the Kingdom's image abroad, severely dented in 2018 by the brutal killing of Saudi dissident journalist Jamal Khashoggi. Increasingly since 2021 however, football players, pop stars and social media influencers have all streamed to the Kingdom for star-studded events at desert tourist locations or mega-real estate projects designed to dazzle and distract attention from the ever-worsening repression.

From the start, Mohammad bin Salman sought to position himself as a progressive reformer who, under his flagship agenda "Vision 2030," vowed to transform Saudi Arabia into "a thriving country in which all citizens can fulfil their dreams, hopes and ambitions." In February 2021, Mohammad bin Salman announced a package of legal reforms that he promised would "preserve rights, bolster the principles of justice, enforce transparency, protect human rights" while "adhering to sharia principles."¹ This package included a new penal code that he said would comply with international law and protect rights.

Yet Amnesty International's analysis of the draft leaked online in July 2022 shows how it codifies existing repressive practices that have allowed for the imprisonment of dissidents, as well as deeply regressive practices such as the death penalty. The Saudi authorities should seize this opportunity to transform the abusive criminal justice system into one that respects human rights, rather than passing a penal code that is essentially a manifesto for repression.

Under the leadership of Mohammad bin Salman, the human rights situation has markedly deteriorated. Practically all Saudi human rights defenders, women's rights activists, independent journalists, writers and activists in the country were targeted one by one through arbitrary arrests, prolonged unfair trials, travel bans or bans on online expression. Today, all brave Saudi dissident voices who had formed a vibrant part of Saudi society debating their vision for their country, are either in exile, imprisoned, under travel bans or silenced. All independent civil society groups in Saudi Arabia, whose members have been persecuted since 2013, have been shuttered and their members imprisoned or conditionally released after serving prison terms for their human rights work.

In the past two years, the authorities then increasingly turned their attention to target less high-profile people without an activist past, slamming them with heavy prison sentences and even a death sentence to great chilling effect, for posting online about women's rights, commenting on the economic situation or calling for the release of detained activists or clerics, sometimes for Tweets (now X) from accounts with as little as 10 followers. In one case, a Saudi woman was sentenced to 45 years imprisonment and in another a man was sentenced to death, solely for expressing views deemed critical of the authorities on social media.

Despite public Saudi promises to limit the use of the death penalty, in 2022, Saudi Arabia executed 196 people – the highest number of executions in one year recorded by Amnesty in the country during the past 30 years. This was three times higher than the number of executions carried out in 2021 and a seven-fold increase on executions in 2020.

¹ Saudi Press Agency, "HRH Crown Prince Announces 4 New Laws to Reform the Kingdom's Judicial Institutions", 8 February 2021, <https://www.spa.gov.sa/viewstory.php?lang=en&newsid=2187801>

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NO PENAL CODE

Saudi Arabia does not have a penal code. Instead, judges use their interpretation of Islamic law (sharia) and jurisprudence to determine what constitutes a crime and to impose punishments. Such practices allow judges wide discretion in adjudicating cases, resulting in the arbitrary imposition of punishments that vary in severity across similar offences and cases.

Judges' wide discretion in determining punishments has enabled Saudi authorities to use the judiciary to settle political scores and to retaliate against anyone who questions the authorities' political and economic agenda. In addition, such a system often leaves individuals unaware of what constitutes a crime and what its punishment might be, in violation of international human rights law.

In announcing his plan to develop the country's first Penal Code for Discretionary Sentences, meaning crimes whose punishments are not specified in sharia, Crown Prince Mohammad Bin Salman claimed the code would:

“contribute to the ability to predict court decisions, increase the level of integrity and efficiency of judicial institutions, and increase the reliability of procedures and oversight mechanisms as cornerstones in ... ensuring the consistency of legal references in a manner that limits discrepancies in courts decisions.”

In July 2022, a draft of the Penal Code for Discretionary Sentences (hereafter referred to as the draft penal code) was leaked online. Although a Ministry of Media official denied the authenticity of the draft in a statement to a government-aligned media outlet,² Amnesty International has strong reasons to believe that the draft is in fact an authentic working draft of the code.

Saudi authorities have not shared the draft penal code with independent civil society experts and nor have they published the draft. However, a number of Saudi legal experts, including a member of the bar association and two Saudi law firms publicly shared and commented on the 2022 draft, confirming its authenticity.

Amnesty International interviewed a lawyer with direct knowledge of the Saudi legislative process who confirmed that many provisions in the draft code are based on existing Saudi legislation such as the anti-cybercrime and anti-harassment laws, and therefore indicate that the draft is in fact authentic. Further, the draft penal code was shown on the official letterhead of the committee newly formed under the Council of Ministers to prepare the new legislation announced by MBS. Moreover, a state-aligned newspaper reported on new aspects that will be introduced in the forthcoming penal code that were included in the draft code. Amnesty International examined months after MBS announced the package of legislative reforms (see Section 2, Methodology).

Under international standards, any new legislative undertaking like this should benefit from public and civil society scrutiny, and the burden of consultation is on the authorities to publicly share the draft and to conduct transparent and meaningful consultations with independent civil society, academics and experts on the draft code and consider the input of civil society prior to the law's adoption.

Amnesty International wrote to Saudi Arabia's Council of Ministers and the Saudi Human Rights Commission on 29 January 2024 and 1 February 2024 respectively, to share questions about the draft penal code and the organization's analysis. On 4 February, the Saudi Human Rights Commission responded to Amnesty International, resharing the 2022 media article where a Ministry of Media official denied the authenticity of the draft and stating that the draft code is currently undergoing legislative review.

ANALYSIS OF THE DRAFT CODE

The draft code criminalizes acts of speech that are protected rights under international law. For example, the draft code criminalizes freedom of expression through codifying as crimes and prescribing punishments for, defamation, “insult” and “questioning the integrity of the judiciary.” It also includes as crimes vague terms such as “indecent acts” or “words affecting honour” which are overly broad and not recognizable offences under international law. The draft also does not amend provisions in existing laws, such as the anti-

² Saudi Gazette, Saudi official: Alleged draft of penal code shared on social media fake, 25 July 2022, <https://saudigazette.com.sa/article/623295>

cybercrime law and the counterterrorism law, which equate peaceful exercise of freedom of expression with “terrorism” and “impinging on public order”.

CRIMINALIZATION OF FREEDOM OF EXPRESSION

Saudi courts have frequently issued lengthy prison sentences against people for their peaceful online expression, such as in the case of Salma al-Shehab, sentenced to 27 years in prison for supporting women’s rights on Twitter (now X).

In another ongoing case, Manahel al-Otaibi awaits trial before the Specialized Criminal Court, Saudi Arabia’s notorious counter-terror court, for posting photos of herself on Snapchat in a mall without the abaya (a traditional robe) and for social media posts in support of women’s rights and calling for the removal of Saudi Arabia’s repressive male guardianship laws.

Alarming, the draft code codifies frequent use of the death penalty as one of the primary punishments. Instead of limiting its use – as Saudi authorities have promised over the years – the draft code continues to allow judges to sentence individuals accused of murder, rape, blasphemy and apostasy to death. Most worryingly, by referring to the Juvenile Law in cases of juveniles, it still permits the execution of child offenders if they were convicted of a *hadd* or *qisas* crime.

USE OF THE DEATH PENALTY

In 2022, Saudi authorities executed 196 people, the highest number of annual executions that Amnesty International has recorded in the country in the last 30 years.

Further, despite the Saudi authorities’ promises to end their use of the death penalty against children under 18 at the time of the crime, seven young men are at risk of imminent execution for *ta’zir* crimes – or crimes for which the death penalty is not mandated under Islamic law – after an appeals court confirmed their punishment in June 2023. In October 2023, Amnesty International received credible information that the Supreme Court upheld the death sentences of two of the seven young men, Abdullah al-Darazi and Jalal Labbad, without notifying their families or lawyers.

The draft also continues to allow the imposition of corporal punishment, such as flogging and amputation of hands, for certain crimes if the evidentiary threshold under sharia is met. Under international law, corporal punishment is considered a form of torture and other ill-treatment and is prohibited.

Moreover, the draft penal code does not guarantee freedom of religion or conscience, and instead criminalizes acts that are protected under international law, including blasphemy and apostasy. The draft code does not define apostasy, and the definition of blasphemy is vague and overly broad, leaving judges with a wide latitude to determine whether certain acts constitute apostasy or blasphemy, allowing them to sentence people to death for the exercise of their rights to freedom of expression and religion.

The draft code fails to protect women and girls from all forms of gender-based violence, including by conflating sexual assault with consensual sexual relations, not recognizing marital rape as a crime and protecting some perpetrators of abuse and killings by exempting individuals from criminal investigation if they committed crimes to protect their or another person’s “honour”. It also criminalizes “illegitimate” consensual sexual relations, homosexuality and abortion.

The codification of Saudi Arabia’s first penal code is an important opportunity to define crimes and punishments in line with international law and standards. However, a fundamental gap in the draft code is that it does not codify all crimes. It codifies discretionary crimes (*ta’zir*), which are crimes that have no fixed punishments under sharia, as well as some – but not all – crimes that do have fixed punishments under sharia. These are known as *hadd* or *qisas* crimes and include acts such as murder, blasphemy and “illegitimate” consensual sexual relations (understood as extramarital sexual relations and same-sex relations).

Although the draft penal code sets out the punishments for the crimes that it defines, it still allows judges to impose punishments as dictated by sharia, such as executions and corporal punishment, using their discretion to determine whether a crime meets the evidentiary threshold to be considered a *hadd* or *qisas* crime (which have fixed punishments under sharia) or a *ta’zir* crime.

RECOMMENDATIONS FOR REFORM

By virtue of its membership in the United Nations, Saudi Arabia is obligated to uphold the universal human rights standards set out in the Universal Declaration of Human Rights. Saudi Arabia is obligated under

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international law to establish a well-defined legislative framework that ensures the protection and promotion of human rights.

Amnesty International urges Saudi authorities to amend the draft penal code in line with the country's international obligations before the code's adoption and to amend or repeal the Law of Combating Crimes of Terrorism and its Financing (counterterrorism law), Anti-Cybercrime Law, Anti-Harassment Law and Law of Protection from Abuse to bring them in line with Saudi Arabia's obligations under international law.

Further, Amnesty International calls on the Council of Ministers to expand the scope of the penal code to include definitions and punishments for all crimes, including those with fixed punishments under sharia, and to clearly define punishments for all crimes with a view to reducing judges' discretion in sentencing individuals, in line with the principle of legality as established under international law, and so that an ordinary person can understand what constitutes criminal conduct.

The Council of Ministers must also ensure that any penal code adopted decriminalizes acts that are protected under international law, including insults; blasphemy and apostasy; "illegitimate" consensual sexual relations, including same-sex relations; discrimination and persecution based on gender identity or sexual orientation; and abortion. Further, the code must ensure that women and girls are protected from all forms of gender-based violence by removing "honour crimes" from the legal lexicon, ensuring adequate protection from harassment and domestic violence, and criminalizing marital rape.

The penal code must outlaw punishments that violate Saudi Arabia's obligations under international standards, including explicitly outlawing corporal punishment and removing the death penalty as a primary punishment. Under international law, use of the death penalty must be restricted to the most serious crimes, meaning intentional killing. Moreover, use of the death penalty for crimes committed by people younger than 18 is prohibited by the Convention on the Rights of the Child, which Saudi Arabia has ratified. Further, as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Saudi Arabia is required to take effective measures to prevent torture and ensure that all acts of torture are offences under its criminal law, including corporal punishment, which is mandated for a number of crimes under sharia.

In light of grave concerns regarding the human rights situation in the country and the lack of any independent civil society, Amnesty International re-iterates its call on the United Nations Human Rights Council to establish an independent monitoring mechanism to monitor and report on the human rights situation in Saudi Arabia.

Amnesty International submits the analysis and recommendations in this report, drawing on its years of documentation of rights violations and analysis of jurisprudence, as an urgent call to the Saudi authorities to revise the current draft to bring it in line with Saudi's obligations under international human rights law.

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2. METHODOLOGY

This report examines the 116-page draft Penal Code, analysing key issues affecting human rights in line with international human rights law and standards, illustrates their potential impact by looking at existing court and official practices leading to human rights violations, and provides recommendations for what a rights-respecting penal code should look like.

Research for this report was conducted from July 2023 onwards and builds on the organization's documentation on human rights violations in Saudi Arabia over the past 10 years. The cases and patterns of human rights violations mentioned in this report are based on the organization's documentation of the authorities' crackdown on freedom of expression, association and assembly, freedom of religion or conscience, use of torture and other ill-treatment, repression of rights related to bodily autonomy and use of the death penalty.

Amnesty International analysed key provisions affecting human rights in the draft penal code, as well as in existing legislation, comparing it with international human rights law and standards and contrasting with existing practices. That existing legislation included the Basic Law on Governance, Law of Combating Crimes of Terrorism and its Financing, Anti-Cybercrime Law, Law of Civil Society Associations and Organizations (law of associations), Law of Protection from Abuse and Anti-Harassment Law. Amnesty International also examined official court documents, including charge sheets and verdicts, of cases cited in this report.

Amnesty International interviewed four individuals with expert knowledge of Saudi Arabia's legislative and judicial procedures, including a Saudi lawyer, an activist and two academics who are all outside of Saudi Arabia to protect interviewees against reprisals. Cooperation with Amnesty International inside the country would put individuals at risk of persecution, arrest and long-term imprisonment under the counterterrorism or anti-cybercrime laws.

Amnesty International wrote to Saudi Arabia's Council of Ministers and the Saudi Human Rights Commission on 29 January 2024 and 1 February 2024 respectively, to share questions about the draft penal code and the organization's analysis. On 4 February, the Saudi Human Rights Commission responded to Amnesty International, resharing a 2022 media article where a Ministry of Media official denied the authenticity of the draft and stating that the draft code is currently undergoing legislative review.

The draft penal code has been drafted with secrecy and is being reviewed without allowing for dialogue with independent civil society and experts. Saudi authorities have not shared the draft penal code with independent civil society experts and nor have they published the draft. However, a number of Saudi legal experts, including a member of the bar association and two Saudi law firms publicly shared and commented on the 2022 draft, confirming its authenticity.

3. BACKGROUND

After the 2018 murder of journalist Jamal Khashoggi, Saudi Arabia – and Crown Prince Mohammad bin Salman specifically – was shunned internationally, with world leaders promising to hold Saudi officials responsible for the assassination to account, sanctioning Saudi officials, and suspending arms sales and transfers. In addition, many major corporations cut ties with the country or paused their investment there.³

However, since then, the Saudi authorities have gone into overdrive to rehabilitate their international image. In 2017, the Saudi Information Ministry launched a global public relations campaign “to promote the changing face of KSA to the rest of the world and improve international perception of the kingdom” The authorities set up public relations hubs in Europe and Asia to counter negative media coverage by producing press releases and social media content, as well as inviting influencers to visit and promote the country.⁴ In addition, Saudi Arabia’s sovereign wealth fund, the Public Investment Fund, which is chaired by MBS, invested billions of dollars in the entertainment and sports industries.⁵

Saudi officials have used the war in Ukraine and rising oil prices to ingratiate themselves with influential countries, and they pushed ahead with “Vision 2030,” investing huge sums of money and courting foreign investment.

This approach has worked, with states – including the UK, US, and several EU members – recently rolling out the red carpet for MBS and/or succumbing to lucrative trade, investment and weapons deals, turning a blind eye the deteriorating human rights situation. MBS’s appointment as the Prime Minister in 2022 has also made him immune from prosecution abroad, including for his responsibility for international crimes in Yemen and for the assassination of Khashoggi.

Saudi Arabia has also spent hundreds of millions of dollars on promoting its tourism, sports and entertainment industries, attracting major celebrities and influencers to Saudi Arabia, and in at least one case, paying a football player 500,000 USD per social media post promoting the kingdom. Such investments – aimed at whitewashing its appalling rights record – are also succeeding in convincing the global public that Saudi Arabia is becoming a rights-respecting, open country.

This rebranded narrative and the new image Saudi Arabia is projecting to the world stands in stark contrast to the reality of the human rights situation in country. In fact, since MBS’s ascent to power as Crown Prince in 2017 and his formal appointment as Prime Minister in 2022, the human rights situation has become worse than it has been in the last thirty years, when Amnesty International started its documentation.

³ Business Insider, “Individuals and businesses are distancing themselves from Saudi Arabia following the disappearance of journalist Jamal Khashoggi”, 19 October 2018, <https://www.businessinsider.com/businesses-cutting-ties-with-saudi-arabia-over-jamal-khashoggi-disappearance-2018-10?r=US&IR=T>

⁴ Financial Times, “Saudi Arabia to launch global PR offensive to counter negative press”, 11 September 2017, <https://www.ft.com/content/c7d57f8e-96ca-11e7-a652-cde3f882dd7b>

⁵ Hollywood Reporter, “Saudi Arabia’s Hollywood Dealmaking Ambitions Grow Despite Backlash”, 27 January 2023, <https://www.hollywoodreporter.com/business/business-news/saudi-arabia-dealmaking-film-entertainment-pif-1235311087/>

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3.1 A NEW DRAFT PENAL CODE

Since 2017, when Mohammed bin Salman became Crown Prince, King Salman bin Abdulaziz Al Saud has consolidated power in his own and the Crown Prince's hands. In September 2022, the King appointed the Crown Prince as the country's Prime Minister – a post traditionally held by the King – making MBS the head of the government.⁶

In April 2021, MBS stated in an interview with state-aligned newspaper *Arab News* that “the space for interpretation [of the Qur'an] is open permanently,” and that “there are no fixed schools of thought and there is no infallible person.”⁷ As part of that effort, he promised in February 2021 to pass new laws representing a “new wave of reforms”⁸ that would codify practices, ostensibly to limit the discretion that judges exercised over rulings based on their own subjective interpretations of Islamic law. These new laws include the Family Law adopted on 8 March 2022 and the not-yet-issued Penal Code for Discretionary Crimes.⁹ Saudi Arabia does not currently have a penal code, and instead, judges rely on their interpretations of Islamic law to determine what constitutes a crime and what the appropriate punishment is.

Some analysts have described these efforts to reform the Saudi legal system in an environment where authority is centralized and political authoritarianism has increased as an effort by the authorities “to fold the judiciary into state structures” instead of empowering the rule of law over noncodified political decisions.¹⁰

In July 2022, a draft of the Penal Code was publicly leaked. Although a Ministry of Media official denied the authenticity of the draft days later,¹¹ Amnesty International has strong reasons to believe that the draft is in fact an authentic working draft of the code.

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3.2 LEGISLATIVE PROCESS IN AN ABSOLUTE MONARCHY

As an absolute monarchy, Saudi Arabia has no separation of powers between the legislative, executive and judicial branches of government; the King and Crown Prince frequently intervene in the work of the judiciary and have the discretion to issue new laws by royal decree.

Saudi Arabia's Basic Law of Governance states that the ultimate sources of reference for any laws in the country are the Qur'an and Sunnah, or tradition – the Prophet Muhammad's teachings, sayings and

⁶ BBC News, “Saudi Crown Prince Mohammed bin Salman named prime minister”, 28 September 2022, <https://www.bbc.co.uk/news/world-middle-east-63058091>

⁷ Arab News, “Full Transcript: Crown Prince Mohammed bin Salman interview with Saudi journalist Abdullah Al-Mudaifer”, 28 April 2021, <https://www.arabnews.com/node/1850146/media>

⁸ The Embassy of the Kingdom of Saudi Arabia Washington, DC, “HRH Crown Prince Announces 4 New Laws to Reform the Kingdom's Judicial Institutions”, 8 February 2021, <https://www.saudiembassy.net/news/hrh-crown-prince-announces-4-new-laws-reform-kingdom%E2%80%99s-judicial-institutions>

⁹ Amnesty International, “Saudi Arabia: New Personal Status Law Codifies Discrimination Against Women” (Index: MDE 23/6431/2023), 8 March 2023, <https://www.amnesty.org/en/documents/mde23/6431/2023/en/>

¹⁰ Carnegie Endowment for International Peace, *Islamic Institutions in Arab States: Mapping the Dynamics of Control, Co-option, and Contention*, 7 June 2021, <https://carnegieendowment.org/2021/06/07/saudi-arabia-s-religious-reforms-are-touching-nothing-but-changing-everything-pub-84650>, pp. 7-32.

¹¹ Saudi Gazette, “Saudi official: Alleged draft of penal code shared on social media fake”, 25 July 2022, <https://saudigazette.com.sa/article/623295>

¹² Okaz, «تطوير «التشريعات».. شفافية وحفظ للحقوق» [“Developing “legislation” transparency and preservation of rights”], 10 February 2021, <https://www.okaz.com.sa/news/local/2057661> (in Arabic).

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practices, which constitute Islamic Sharia (Islamic law).¹³ Saudi Arabia's interpretation of sharia relies primarily on the Wahabi interpretation of the Hanbali school of Sunni Islamic jurisprudence.

Sharia is also derived from secondary sources relying on interpretations of the Qur'an by religious scholars, as well as Islamic jurisprudence, which in Saudi Arabia is based on Sunni schools of Islam. Such interpretations exclude interpretations of Islam followed by the country's Shi'a minority.

Saudi Arabia's legislative body is the Consultative Council (Majlis Al-Shura), which is composed of scholars, experts and specialists appointed by the King to discuss issues of public interest and propose laws or amendments to existing laws.¹⁴ The Consultative Council does not itself have the authority to pass laws. It sends its proposals or amendments to the Council of Ministers for their review, and the King then issues or amends laws by royal decree.¹⁵

The Council of Ministers, or the executive branch, is headed by the Prime Minister, MBS, and is made up of ministers appointed by the King. The Council is responsible for drafting and overseeing the implementation of internal, external, financial, economic, educational and defence policies, as well as for reviewing the proposals of the Consultative Council.¹⁶ The decisions of the Council of Ministers become final only after the King approves them.¹⁷

The top judicial body in Saudi Arabia is the Supreme Judicial Council, an 11-member body headed by the Minister of Justice. The Judicial Council's members are appointed by the King for renewable four-year terms. The Council supervises the courts and judiciary, reviews all legal decisions that the Ministry of Justice refers to it, provides legal opinions on judicial questions and reviews "death, amputation and stoning sentences".¹⁸

Judges are appointed by royal order. To be appointed as a judge, a candidate must be of Saudi nationality and must not have been convicted of a crime or subject to disciplinary action dismissing him from public office. A judge must also hold a degree in sharia from a religious college or pass an examination prepared by the Supreme Judicial Council. While neither the Basic Law of Governance nor the Law of the Judiciary specifically state that a judge must be a man, all judges in Saudi Arabia are men.

3.3 CRIMES LEFT TO JUDICIAL DISCRETION TO DEFINE

Because Saudi Arabia does not have a written penal code, judges widely use their discretion to interpret crimes under Sharia, which is uncodified, to determine what actions are considered crimes and what the punishments for those actions are.

Under sharia, there are two categories of crimes: those for which there are fixed punishments, *hadd and qisas*, and crimes for which there are no fixed punishments, *ta'zir*.

Hadd (plural: *hudud*) are considered to be offenses against God, and they have divinely ordained and fixed punishments. For a crime to be considered a *hadd* crime, certain high evidentiary thresholds need to be met and there must be no doubt about the crime in court proceedings, evidence or confessions.¹⁹ For example, under sharia, the death penalty is prescribed as a punishment for several *hadd* crimes, such as adultery, highway robbery when it results in loss of life and apostasy. Amputation is also prescribed as a punishment for *hadd* crimes, such as theft. If the evidentiary requirements for these crimes as dictated by sharia are not met, the crime is not considered a *hadd* crime, so the fixed punishment does not apply and the crime is instead prosecuted as a *ta'zir*, or discretionary, crime (see below).

Qisas are crimes against an individual or family. Punishments are equivalent to the crime committed (retribution in kind). According to sharia, *qisas* includes murder and certain types of bodily injury.²⁰ In cases of murder, relatives of the victim can authorize the death penalty or pardon the offender and accept financial compensation, known as "blood money" (*diyah*).

¹³ The Kingdom of Saudi Arabia, Basic Law of Governance, 1992, <https://www.saudiembassy.net/basic-law-governance>, Chapter 2, Article 7.

¹⁴ The Embassy of the Kingdom of Saudi Arabia Washington, DC, Majlis Al-Shura (Consultative Council), <https://www.saudiembassy.net/majlis-al-shura-consultative-council> (accessed on 4 March 2024).

¹⁵ The Kingdom of Saudi Arabia, Law of the Council of Ministers, 1993, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/93e87aa7-f344-4711-b97c-a9a700f1662b/2>, Article 20.

¹⁶ The Kingdom of Saudi Arabia, Law of the Council of Ministers (previously cited), Article 19.

¹⁷ Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation*, online edition, 18 July 2019, p.289.

¹⁸ The Kingdom of Saudi Arabia, Law of the Judiciary, 1975, <https://www.saudiembassy.net/law-judiciary>, Articles 6-9.

¹⁹ Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (previously cited), p.170, 21.

²⁰ For example, "If a person wilfully cuts off the hand of another, his hand is to be cut off in retaliation, and if a person strikes out the tooth of another, he is also liable to retaliation." See Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (previously cited), p.204.

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Crimes that have no fixed punishments under sharia are referred to as *ta'zir* crimes. Their punishments are determined judges who uses their discretion to determine the sentences; judges are not bound by judicial precedent. While various schools of sharia have agreed that “*ta'zir* against a person may not reach the level of *hudud* punishments in each category of the offences they may fall into”,²¹ in Saudi Arabia this is not applied. For example, judges can use their discretion to sentence to death individuals accused of adultery, even when the evidentiary standards for classifying the crime as *hadd* are not met.

3.4 JUDICIARY AS A POLITICAL TOOL TO ELIMINATE DISSENT

The widespread practice of discretionary sentencing without judicial precedent results in the arbitrary imposition of punishments that vary in severity across similar offences and cases. Judges’ wide discretion in determining punishments has enabled authorities to use the judiciary to settle political scores and to retaliate against anyone who questions the authorities’ political and economic agenda.

In dozens of cases documented by Amnesty International, judges used their powers to convict individuals on vague charges that do not constitute recognizable crimes under international law, and use laws which equate peaceful dissent online, human rights activism and advocacy for political and economic reform with “terrorism” or “cybercrimes”.

In one illustrative example of the control that the royal family exercises over the judiciary, DAWN, a human rights organization, reported that the Supreme Criminal Court (SCC), set up to try terrorism-related cases, charged 10 former judges in February 2023, six of whom presided over trials before the SCC, with “high treason”. According to a trusted source who reviewed the court documents, the judges were charged and tried in relation to sentences they issued that were too “lenient”.²²

Two months following the arrest of these judges, in April 2022, the King appointed Awadh al-Ahmari as the head of the SCC, and at least 10 detectives and prosecutors to the SCC.²³ Al-Ahmari was part of the delegation sent by Saudi authorities to Istanbul in October 2018 to allegedly clean up evidence of the assassination and dismemberment of journalist Jamal Khashoggi at the Saudi Consulate, according to the then-UN Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions.²⁴

Since the appointment of al-Ahmari as head of the SCC, Amnesty International has documented a trend of absurdly long prison sentences issued by the SCC against ordinary citizens expressing views online that are critical of Saudi authorities, including the longest sentence ever imposed for peaceful speech – 45 years.²⁵

²¹ For example, capital punishment is considered a lawful *ta'zir* penalty in cases of “a Muslim spying on Muslims for the enemy, spreading heresies, and some varieties of homicide that cannot be punished under retaliation (*qiṣāṣ*) proper”. See Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation (previously cited)*, p.193.

²² Interview by voice call with Abdullah Alodah, 27 July 2023. See DAWN, “Saudi Arabia: Saudi Prosecutor Seeks Death Penalty against 10 Former Judges for “High Treason””, 27 February 2023, <https://dawnmena.org/saudi-arabia-saudi-prosecutor-seeks-death-penalty-against-10-former-judges-for-high-treason/>

²³ DAWN, “Saudi Arabia: New Head of Counter-Terrorism Court Awadh al-Ahmari Helped Cover Up Khashoggi’s Murder, Tortured Activists”, 5 December 2022, <https://dawnmena.org/saudi-arabia-new-head-of-counter-terrorism-court-awadh-al-ahmari-helped-cover-up-khashoggis-murder-tortured-activists/>

²⁴ DAWN, “Saudi Arabia: New Head of Counter-Terrorism Court Awadh al-Ahmari Helped Cover Up Khashoggi’s Murder, Tortured Activists” (previously cited).


²⁵ Amnesty International, “Saudi Arabia: Alarming crackdown on online expression”, 14 February 2023, <https://www.amnesty.org/en/latest/news/2023/02/saudi-arabia-alarming-crackdown-on-online-expression/>

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SALMA AL-SHEHAB



←  Salma al-Shehab © Private

In one absurd case, in March 2022 the Supreme Criminal Court sentenced Salma al-Shehab, an academic and mother of two, to six years in prison for terrorism and cybercrimes. The charges arose from the peaceful exercise of al-Shehab's right to freedom of expression through tweets she published on her account in support of women's rights. The court found her guilty on charges of "supporting those who seek to disrupt public order, destabilize security and the stability of the state" and publishing tweets that "disturb public order, destabilize the security of society and the stability of the state."

At al-Shehab's appeal trial in August 2022, the prosecution demanded a harsher punishment, after which the SCC increased her sentence to 34 years. Al-Shehab then appealed that judgment, and in January 2023, the SCC referred her case back to the SCC's appeals chamber to re-examine it. The court dropped the cybercrime charges against her but confirmed other charges under the counterterrorism law, ultimately sentencing her to 27 years imprisonment followed by a 27-year travel ban.²⁶

In yet another instance, on the same day Salma al-Shehab was sentenced to 34 years' imprisonment, Noura al-Qahtani, a Saudi woman and mother of five who was then almost 50 years old, had her prison sentence increased from 13 to 45 years by the SCC. Al-Qahtani was also given a 45-year travel ban, her mobile phone was confiscated and her Twitter (now X) account was closed. Amnesty International believes this to be the longest sentence ever imposed on a Saudi woman for exercising her right to freedom of expression online.²⁷

3.5 SAUDI ARABIA'S HUMAN RIGHTS OBLIGATIONS

Saudi Arabia has not signed on to a number of international human rights treaties, most notably the International Covenant on Civil and Political Rights (ICCPR), which commits states to respecting the civil and political rights of individuals, including the right to life, freedom of religion, freedom of expression, the right to liberty and the right to a fair trial.

However, Saudi Arabia is obligated to uphold customary international law as reflected in the universal human rights standards set out in the Universal Declaration of Human Rights (UDHR).

Saudi Arabia has ratified a small number of international human rights treaties but has stated its general reservations to all the international conventions it has ratified, arguing that it is not bound by the conventions to the extent to which they contradict Islamic law (except for the Convention on the Rights of Persons with Disabilities [CRPD] and its Optional Protocol).

These Saudi-ratified treaties include the Convention on the Rights of the Child (CRC) and its Optional Protocol on the involvement of children in armed conflict, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the CRPD and its Optional Protocol. Since 2009, Saudi Arabia has also been a state party to the Arab Charter on Human Rights.

States parties to international conventions are obligated under international law to establish a well-defined legislative framework that ensures the protection and promotion of human rights. Both the CEDAW and CRC

²⁶ Amnesty International, "Saudi Arabia: Further information: Release woman sentenced to 27 years for tweets: Salma al-Shehab" (Index: MDE 23/6643/2023), 3 April 2023, <https://www.amnesty.org/en/documents/mde23/6643/2023/en/>

²⁷ Amnesty International, "Saudi Arabia: Alarming crackdown on online expression" (previously cited).

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committees stress that legislation aimed at eliminating harmful practices must “include appropriate budgeting, implementing, monitoring and effective enforcement measures.”²⁸

In the following sections, Amnesty International makes recommendations to Saudi Arabia on what a rights-respecting penal code should look like based on analysis of the applicable legal standards as well as existing legislation and practice in Saudi Arabia that violate key civil and political rights. In conducting the analysis, Amnesty has drawn on documentation of rights violations.

²⁸ UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, 14 November 2014, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, para. 12.

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4. CLEARLY DEFINE ALL CRIMES AND PUNISHMENTS

4.1 DEFINITIONS OF CRIMES

The codification of Saudi Arabia's first penal code is an important opportunity to define crimes and punishments in line with international law, and to decrease the wide scope for judges' discretion in criminal cases.

A fundamental gap in the draft penal code is that it does not codify all crimes. It codifies discretionary crimes that have no fixed punishments under sharia (Islamic law) as well as some – but not all – crimes that do have fixed punishments under sharia. It is not clear what criteria were used to determine which crimes with fixed punishments under sharia were included in the draft code and which were not.

While a number of crimes that Amnesty International reviewed in the draft penal code are clearly defined and in line with international standards, such as torture and hate speech,²⁹ the draft code criminalizes acts that, under international law, should not be criminalized. Further, the definitions for many of these crimes are vague and overly broad. For example, the draft code sets out vague definitions and criminalizes acts that relate to an individual's bodily autonomy, such as certain consensual sexual relations, homosexuality, abortion and sex work (see Section 8, Protect Bodily Autonomy). It also criminalizes acts that are protected under the rights to freedom of expression, assembly, association (see Section 6, Protect Freedom of Expression, Association and Peaceful Assembly) and religion (see Section 7, Protect Freedom of Thought, Conscience and Religion).

Saudi lawyer Taha al-Hajji, who has analysed the draft penal code, told Amnesty International:

“As a lawyer and citizen, I don't find that this code provides the clarity we need as a public to know what constitutes a crime in the country. In light of the authorities' track record of misusing laws to punish behaviours that constitute basic rights and personal freedoms, what we need is clearer definitions of crimes and to rethink what should and shouldn't be criminalized in line with international standards.”³⁰

²⁹ See Sections 5.3 and 6.1 for further analysis.

³⁰ Interview by voice call with Taha al-Hajji, 23 May 2023.

Article 11 of the UDHR guarantees that “No one shall be held guilty of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.”³¹ The principle of legality requires states to clearly define criminal offences within the law in a way that enables individuals to know from the wording of legal provisions what acts and omissions would make them criminally liable.³²

4.2 PUNISHMENTS

Although the draft Penal Code sets out the punishments for the crimes it defines, it still allows judges to impose punishments as dictated by sharia, such as execution and corporal punishment, using their discretion to determine whether a crime meets the evidentiary threshold to be considered a *hadd*, *qisas* or *ta'zir* crime.

For example, the draft code sets out the punishment for murder, which is imprisonment for seven to 15 years.³³ However, the draft code also stipulates that if the elements of the crime and evidentiary threshold are met for the murder to be considered a *hadd* crime, then the fixed punishment under sharia applies, which is the death penalty.³⁴ But the code does not set out what the evidentiary conditions under sharia are, leaving the judge with very wide latitude to determine the punishment. In addition, the draft Penal Code codifies the practice of *qisas*, or retribution, allowing the family of the victim of a crime such as murder to determine whether the alleged perpetrator is put to death or can escape criminal accountability by paying “blood money”.³⁵

In addition, the draft Penal Code enables corporal punishment by referring to punishments mandated by sharia for a number of crimes. For example, in the case of theft, the draft code states that “if the *hadd* stipulated under sharia is not imposed, the offender shall be punished depending on the crime in accordance with the provisions of this chapter.”³⁶ This article does not clarify what the threshold for considering theft a *hadd* crime is, leaves wide scope for judges to resort to amputation of the hand, which is a punishment for theft under sharia.

For *ta'zir* (discretionary) crimes that the draft Penal Code does define, three categories of punishment are prescribed: original punishments,³⁷ accessory punishments³⁸ and alternative punishments.³⁹

Original punishments are execution, imprisonment and fines. While the draft code explains the elements and conditions of imprisonment and fines in separate articles, it does not explain how executions are determined. Instead of codifying punishments in line with international standards, the code enables the judge’s discretionary power to sentence individuals to death for a wide range of crimes and offers no guidelines to follow for such judgments.

The draft code specifies conditions where a punishment could be aggravated, including “if a crime is committed with a dishonourable motive”.⁴⁰ It does not, however, define what a dishonourable motive might be, leaving wide scope for the judge to increase an individual’s sentence based on the judge’s perception of the individual’s motive.

The draft code also introduces life imprisonment as one of the original punishments⁴¹; it did not previously exist under other laws in Saudi Arabia. The draft code does not define a fixed number of years for life imprisonment nor provide any consideration of whether individuals sentenced to life imprisonment could be released under parole or remission.

Accessory punishments include: “[D]ismissal from public office, deprivation from handling public office in cases stipulated by law, removal of the guardian or custodian, deportation of foreigners, publication of the

³¹ Universal Declaration of Human Rights (UDHR), adopted by UN General Assembly on 10 December 1948, Article 11 (2).

³² International Criminal Tribunal for the former Yugoslavia Appeals Chamber, Prosecutor v. Zlatko Aleksovski (IT-95-14/1-A), 24 March 2000, paras 126-127.

³³ Draft Penal Code, Article 118.

³⁴ Under sharia, while murder is not a *hadd* crime, “banditry” is. Therefore, murder committed in the context of an armed robbery is considered a *hadd* crime and therefore punished with the death penalty.

³⁵ Draft Penal Code, Article 117.

³⁶ Draft Penal Code, Article 238.

³⁷ Draft Penal Code, Article 70.

³⁸ Draft Penal Code, Article 74.

³⁹ Draft Penal Code, Article 87.

⁴⁰ Draft Penal Code, Article 112.

⁴¹ Draft Penal Code, Article 71.

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summary of the final verdict [by the authorities], confiscation [of things related to the crime], temporary or permanent website shutdown or placement under security surveillance in cases stipulated by law.”⁴²

The draft code also lays out alternative punishments that may be handed down instead of prison terms for misdemeanours. Alternative punishments are a significant development in Saudi Arabia’s legislative framework, which, according to a former member of the public prosecution, aim to achieve “criminal justice, increase stakeholders’ sense of justice and protect human rights”.⁴³ These punishments include: restricting digital freedoms, community service, house arrest, prohibition of attending certain places and/or communicating with specific individuals or institutions, and deportation for foreigners.⁴⁴

RECOMMENDATIONS

Amnesty International calls on the Saudi authorities to ensure that any penal code adopted:

- expands in scope to include definitions and punishments for all crimes, including those with fixed punishments under sharia, and clearly defines punishments for all crimes with a view to reducing the judge’s discretion in sentencing individuals, in line with the principle of legality as established under international law;
- ensures that all punishments are in accordance with international law and standards;
- clearly defines all crimes in line with international standards so that an ordinary person can understand what constitutes criminalized conduct; and
- ensures that acts protected under international human rights law are not criminalized.

⁴² Draft Penal Code, Article 74.

⁴³ Okaz, «عكاظ»: مشروع النظام الجزائي يخفض تكاليف عقوبات الحبس بـ«البديلة» [“Okaz sources: The criminal code reduces the cost of imprisonment penalties with « alternative measures »], 17 November 2021, <https://www.okaz.com.sa/news/local/2088348> (in Arabic).

⁴⁴ Draft Penal Code, Article 87.

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5. REFORM ABUSIVE CRIMINAL JUSTICE PRACTICES

5.1 END USE OF THE DEATH PENALTY

Saudi Arabia is one of the top executioners in the world, sentencing and executing individuals for a wide range of crimes, including murder, but also non-violent offences such as drug smuggling and treason, in violation of international standards, which restrict the use of the death penalty to the “most serious crimes.”⁴⁵

Crown Prince Mohammad bin Salman has repeatedly promised to abolish the death penalty for crimes for which a death sentence is not mandated under sharia, such as drug smuggling.⁴⁶ On 3 March 2022, the Crown Prince stated in an interview with *The Atlantic*:

“About the death penalty, we got rid of all of it, except for one category, and this one is written in the Quran [*qisas*, for murder], and we cannot do anything about it ... because it is a clear teaching in the Quran.”⁴⁷

Days after this interview, on 12 March 2022, Saudi authorities carried out one of the largest mass executions in a single day in the past several decades – 81 people. According to the Ministry of Interior’s announcement, those executed were convicted of a range of offences, including “terrorism-related” crimes, murder, armed robbery and arms smuggling. A number of those executed were also convicted of charges such as “disrupting the social fabric and national cohesion” and “participating in and inciting sit-ins and protests.” Of those executed, 41 were from Saudi Arabia’s Shi’a minority, who have long faced discrimination, persecution, arrest, imprisonment and violence by state agencies for demanding equal rights.⁴⁸

Contrary to Mohammad bin Salman’s stated promise to limit the use of the death penalty, in 2022, Amnesty International documented the highest number of annual executions recorded in the country in 30 years. The

⁴⁵ Office of the UN High Commissioner for Human Rights, “Death penalty, if retained, only permissible for ‘most serious crimes’ – UN rapporteur on arbitrary executions”, 25 October 2012,

<https://www.ohchr.org/en/press-releases/2012/10/death-penalty-if-retained-only-permissible-most-serious-crimes-un-rapporteur>

⁴⁶ Al Arabiya, “Mohammed bin Salman on Iran, Israel, US and future of Saudi Arabia: Full transcript”, 3 March 2022, <https://english.alarabiya.net/News/gulf/2022/03/03/Mohammed-bin-Salman-on-Iran-Israel-US-and-future-of-Saudi-Arabia-Full-transcript>

⁴⁷ Al Arabiya, “Mohammed bin Salman on Iran, Israel, US and future of Saudi Arabia: Full transcript” (previously cited).

⁴⁸ Amnesty International, “Saudi Arabia: Mass execution of 81 men shows urgent need to abolish the death penalty”, 15 March 2022, <https://www.amnesty.org/en/latest/news/2022/03/saudi-arabia-mass-execution-of-81-men-shows-urgent-need-to-abolish-the-death-penalty/>.

Saudi Human Rights Commission (SHRC) informed Amnesty International that 196 people were executed that year.⁴⁹ This number is three times more than the number of executions in 2021 and at least seven times more than in 2020.⁵⁰

The number of executions the SHRC provided to Amnesty International in 2022 is much higher than what the Saudi Press Agency announced during the year, raising serious concerns about Saudi Arabia's transparency on the use of the death penalty.⁵¹

Amnesty International does not have final validated numbers yet for 2023, which will be provided in its Global Death Penalty report, but preliminary indications are that executions in 2023 were as high as 172 executions. In January 2023, Amnesty International sent a request for information to the Human Rights Commission on the country's use of the death penalty but has received no response at the time of publishing.

Further, Amnesty International continues to document executions for crimes for which sharia does not mandate the death penalty. In 2022 alone, Amnesty recorded the cases of 47 individuals who were executed after being convicted of *ta'zir* crimes, which do not carry the death penalty under sharia.⁵² The number of such executions is likely higher in light of the discrepancy between publicly recorded executions and the number of executions reported by the SHRC. Over the past two decades, Amnesty has consistently documented hundreds of executions carried out by Saudi authorities following discretionary (*ta'ziri*) death sentences for a wide range of crimes.

Of those executed in 2022, 57 were convicted of drug-related offences, according to the SHRC,⁵³ marking the resumption of such executions following a two-year moratorium that the SHRC announced in January 2021.⁵⁴ Amnesty International recorded 22 executions for solely drug-related crimes between November 2022, when the moratorium ended, and January 2024.⁵⁵

The authorities also reneged on their own promise to end the use of the death penalty for people who were under the age of 18 at the time of the alleged crime.⁵⁶ In 2018, Saudi Arabia introduced the Juvenile Law, which set a maximum penalty of 10 years imprisonment for anyone under the age of 18 convicted of *ta'zir* crimes, or crimes that have no fixed punishments under Islamic law. A 2020 royal order also prohibited judges from imposing discretionary death sentences on individuals under 18 at the time of the alleged crime, except if the crime was covered under the counterterrorism law.⁵⁷ In a May 2023 letter to Amnesty International, the SHRC confirmed that "the application of the death penalty on juveniles for *ta'zir* crimes has been completely abolished".⁵⁸

However, between June 2022 and January 2024, Amnesty International reviewed the cases of at least seven young men who were children – as young as 12 – at the time of their alleged crimes and who are currently at imminent risk of execution after an appeals court confirmed their sentences.⁵⁹ All seven youths have been convicted of *ta'zir* crimes, according to their court documents. In October 2023, Amnesty International learned that the Supreme Court upheld the death sentences of two of the seven young men without notifying their families or lawyers.⁶⁰

Further, executions of child offenders are still permissible if they commit a crime for which sharia has mandated the death penalty (*hadd* and *qisas* crimes).

Authorities routinely fail to abide by international fair trial standards and safeguards for defendants in death penalty cases. Amnesty International has documented the cases of dozens of individuals on death row who

⁴⁹ Saudi Human Rights Commission, Letter to Amnesty International, 11 May 2023, on file with Amnesty International.

⁵⁰ Amnesty International, *Death sentences and executions 2021* (Index: ACT 50/5418/2022), 24 May 2022, <https://www.amnesty.org/en/documents/act50/5418/2022/en/> and Amnesty International, *Death sentences and executions 2020*, (Index: ACT 50/3760/2021), 21 April 2021, <https://www.amnesty.org/en/documents/act50/3760/2021/en/>

⁵¹ The Saudi Press Agency announced 148 executions in 2022.

⁵² Log on file with Amnesty International.

⁵³ HRC International (Official Twitter [X] account of the Saudi Human Rights Commission), Twitter post: 18 January 2021, "#Saudi Arabia drastically decreases application of death penalty in 2020." https://twitter.com/HRCSaudi_EN/status/1351087958565281793.

⁵⁴ Amnesty International, "Saudi Arabia: Execution of two Pakistani nationals is callous attack on right to life", 10 November 2022, <https://www.amnesty.org/en/latest/news/2022/11/saudi-arabia-execution-of-two-pakistani-nationals-is-callous-attack-on-right-to-life/>.

⁵⁵ Amnesty International logs.

⁵⁶ Amnesty International, "Saudi Arabia: Death penalty reform for minors falls short, and total abolition must now follow", 27 April 2020, <https://www.amnesty.org/en/latest/news/2020/04/saudi-arabia-abolition-of-juvenile-death-penalty/>

⁵⁷ Amnesty International, "Saudi Arabia: Death penalty reform for minors falls short, and total abolition must now follow" (previously cited).

⁵⁸ Saudi Human Rights Commission, Letter to Amnesty International, 11 May 2023, on file with Amnesty International.

⁵⁹ Amnesty International, "Saudi Arabia: Young men face imminent execution despite assurances on re-sentencing juveniles to prison terms", 10 October 2022, <https://www.amnesty.org/en/latest/news/2023/06/saudi-arabia-imminent-execution-of-youths-would-violate-kingdoms-promise-to-abolish-death-penalty-for-juveniles/>

⁶⁰ Amnesty International, "Saudi Arabia: Two young men at imminent risk of execution after Supreme Court decision issued in secret", 25 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/saudi-arabia-two-young-men-at-imminent-risk-of-execution-after-supreme-court-decision-issued-in-secret/>

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described myriad fair trial and due process violations, including being held incommunicado throughout their pretrial detention, proceedings with no legal assistance or representation, as well as no translation services for foreign nationals through the various stages of detention and trial.⁶¹ According to the dozens of court verdicts that Amnesty has reviewed over the past several years, death sentences are regularly based on “confessions” that defendants say were extracted under torture. Those torture allegations are never independently and impartially investigated. Instead of retrying individuals in line with international standards, judges have instead sentenced people to death at their discretion despite doubts about the validity of the accused’s “confessions”.⁶² Authorities have disproportionately used the death penalty against foreign nationals, as well as the country’s Shi’a Muslim minority, to silence dissent.⁶³

The draft Penal Code does not remedy any of the violations listed above and does nothing to limit the use of the death penalty in Saudi Arabia in line with international standards and with Saudi Arabia’s obligations under international law.

Under international law, use of the death penalty must be restricted to the most serious crimes, meaning intentional killing. Moreover, use of the death penalty for crimes committed by people younger than 18 is prohibited by the CRC, which Saudi Arabia has ratified. The CRC states: “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”.⁶⁴

In cases where the age of an alleged juvenile offender is in dispute, the CRC requires authorities to presume the individual to be a child, unless the prosecution proves otherwise, in line with the principle that the best interests of the child shall be a primary consideration.⁶⁵

The death penalty is the ultimate cruel, inhuman and degrading punishment, and violates the right to life as proclaimed in the UDHR. Amnesty International opposes the death penalty in all cases without exception, regardless of who is accused, the nature or circumstances of the crime, guilt or innocence, or method of execution.

Despite Saudi authorities’ promise to decrease the use of the death penalty, the draft Penal Code codifies the use of execution as a primary punishment alongside imprisonment and fines and continues to enable judges to use their discretion to hand down death sentences. Alarming, the draft code states that “the death penalty supersedes all other discretionary punishments, except for the punishment of confiscation”, meaning that all other punishments, such as corporal punishment, fines, or imprisonment, are dropped if the judge hands down a death sentence.⁶⁶

Under the draft code, judges may apply the death penalty for murder, rape, and blasphemy or apostasy.

Moreover, the draft code continues to permit the execution of child offenders by referring to the provisions of the Law on Juveniles, which allows child offenders to be executed if they committed crimes for which sharia mandates the death penalty – that is, *hadd* and *qisas* crimes (see Draft Penal Code Allows the Execution of Minors below).

5.1.1 DRAFT PENAL CODE CODIFIES DEATH SENTENCES AS A PUNISHMENT FOR MURDER

The draft code stipulates that premeditated murder is punishable by between seven and 15 years in prison. However, it leaves large legal loopholes that allow judges to continue imposing the death penalty for this crime.⁶⁷

First, the draft code allows judges to impose the death penalty in cases of premeditated murder if the murder was accompanied by other crimes or the defendant has previously been convicted of murder.

⁶¹ Amnesty International, *Saudi Arabia: Muzzling critical voices: politicized trials before Saudi Arabia’s Specialized Criminal Court* (Index: MDE 23/1633/2020), 6 February 2020, <https://www.amnesty.org/en/documents/mde23/1633/2020/en/>

⁶² Amnesty International, *Saudi Arabia: Muzzling critical voices: politicized trials before Saudi Arabia’s Specialized Criminal Court* (Index: MDE 23/1633/2020) (previously cited).

⁶³ Amnesty International, “Saudi Arabia: Mass execution of 81 men shows urgent need to abolish the death penalty” (previously cited).

⁶⁴ Convention on the Rights of the Child, adopted by General Assembly Resolution 44/25 on 20 November 1989, Article 37.

⁶⁵ Human Rights Council resolution 19/37, 19 April 2012, UN Doc. A/HRC/RES/19/37, para. 55.

⁶⁶ Draft Penal Code, Article 104.

⁶⁷ Draft Penal Code, Article 118.

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Between 2021 and January 2024, Amnesty International recorded at least 80 executions of individuals convicted of murder as well as a range of other crimes, including rape and kidnapping.⁶⁸

Second, the draft code refers to punishments under sharia in cases where the murder is part of a robbery, which is a *hadd* crime.⁶⁹ The draft Penal Code states that in such cases, the punishment under sharia applies, which is execution.

Third, the draft code codifies the practice of *qisas* (retribution in kind), whereby the family of a murder victim can demand that the defendant be killed. If the family does so, under sharia, the judge is obligated to impose the death penalty.⁷⁰

5.1.2 DRAFT PENAL CODE CODIFIES DEATH SENTENCES AS A PUNISHMENT FOR RAPE

Under the draft Penal Code, rape is punishable by life imprisonment.⁷¹ However, as with murder, the draft law allows judges to impose the death penalty for this crime.

The draft code stipulates that rape can be prosecuted as a *hadd* offense, which is punishable under sharia by corporal punishment or a death sentence depending on the threshold of evidence and other crimes in the case.⁷² For rape to be considered a *hadd* offense, the evidentiary standard that must be met is four males directly witnessing the penetration.

If the court finds that the evidentiary threshold under sharia is not met, the draft code still allows judges to use their discretion to impose a death sentence under the following conditions:

- if the perpetrator is a relative of, or responsible for the upbringing and education of, the person or has authority over them;
- if the rape results in the death of the victim;
- if the rape results in a permanent disability, illness or pregnancy;
- if the victim was less than seven years old;
- if the rape occurred under the threat of, or using, a weapon.⁷³

5.1.3 DRAFT PENAL CODE ALLOWS DEATH SENTENCES AS A PUNISHMENT FOR BLASPHEMY OR APOSTASY

Leading schools of sharia have designated apostasy – specifically the renunciation of Islam – as a *hadd* crime,⁷⁴ meaning its punishment is mandated by sharia, and that punishment is death. Blasphemy is not a *hadd* crime under sharia.

However, the draft code conflates apostasy and blasphemy, referring to both as *hadd* crimes, allowing judges to sentence individuals to death in either case.

The draft code does not define apostasy, and the definition of blasphemy is vague and overly broad.⁷⁵ This leaves judges with a wide latitude to determine whether certain acts constitute apostasy or blasphemy, and it allows them to sentence people to death for the exercise of their rights to freedom of expression and religion and may justify the persecution of religious minorities.⁷⁶

⁶⁸ Amnesty International logs.

⁶⁹ Draft Penal Code, Article 246.

⁷⁰ Draft Penal Code, Article 117.

⁷¹ Draft Penal Code, Article 182.

⁷² Under sharia, rape is categorized as a “coercive variant of fornication”. See Azam, Hina. “Rape As a Variant of Fornication (Zinā) in Islamic Law: An Examination of the Early Legal Reports.” *Journal of Law and Religion*, vol. 28, no. 2, 2012, pp. 441–66.

<http://www.jstor.org/stable/23645194>

⁷³ Draft Penal Code, Article 183.

⁷⁴ Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation (previously cited)*, pp.141-142.

⁷⁵ The draft Penal Code defines blasphemy as “anyone who offends the divine, or the Qur’an – including through distorting or profaning it – or offends the Islamic religion, or one of its rituals, prophets or messengers ... or the wives of the Prophet Mohammad or his companions”, Draft Penal Code, Article 216.

⁷⁶ Freedom House, *Policing belief: The impact of blasphemy laws on human rights*, October 2010, https://freedomhouse.org/sites/default/files/2020-02/Archived_Special_Report_FH_Policing_Belief_Full.pdf

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The draft code stipulates that if the conditions (which the draft code does not define) for considering blasphemy a *hadd* crime are not met, the punishment is imprisonment for seven to 15 years.

Saudi Arabia is obligated to uphold customary international law as reflected in the UDHR, which guarantees the rights to freedom of thought, conscience and religion, and this includes freedom to change one's religion or belief.⁷⁷ It also guarantees the right to freedom of opinion and expression.⁷⁸

The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, states that “blasphemy laws are counterproductive, since they may result in de facto censure of all inter-religious or belief and intra-religious or belief dialogue, debate and criticism, most of which could be constructive, healthy and needed.”⁷⁹

The Human Rights Committee's General Comment no. 34 states:


“Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant [ICCPR]” except in specific circumstances related to ‘any propaganda for war’ and ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’.”⁸⁰

Moreover, the ICCPR states that:

“Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression.”⁸¹

HASSAN AL-MALIKI



←  Hassan al-Maliki © Private

In 2018, the Saudi public prosecution office demanded the execution of Hassan al-Maliki, an academic and religious scholar on trial before the SCC, for “defaming the Sunnah [practice] and the hadith [sayings] of the Prophet” as part of charges related to his expression of religious opinions about the Prophet's sayings and criticism of historic Islamic figures.⁸²

According to court documents reviewed by Amnesty International, al-Maliki was also charged with:

- “insulting the rulers and council of senior scholars of this country”;
- “conducting media interviews with Western newspapers and channels that are hostile [to the Kingdom]”;
- “authoring a number of books and research papers ... and publishing them outside of the Kingdom”; and
- “possessing 348 books that are unauthorized by the competent authority”.

Al-Maliki remains on trial, at risk of a death sentence for the peaceful expression of his opinions.

⁷⁷ UDHR, Article 18.

⁷⁸ UDHR, Article 19.

⁷⁹ Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence (the Rabat Plan), October 5, 2012, https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf (para. 19).

⁸⁰ International Covenant on Civil and Political Rights (ICCPR), Article 20.

⁸¹ ICCPR, Article 20.

⁸² AIQST, Prisoners of conscience database: Hassan Farhan Al-Maliki, <https://www.alqst.org/en/prisonersofconscience/hassan-al-maliki>

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5.1.4 DRAFT PENAL CODE ALLOWS THE EXECUTION OF MINORS

The draft Penal Code sets the age of criminal responsibility at seven years.⁸³ Child offenders between the ages of seven and 15 can be criminally investigated but should not be imprisoned.⁸⁴ Instead, the draft code states that one or more alternative measures should be imposed, but the draft code does not specify what those are. The draft code states that for individuals between seven and 18, the provisions of the Juvenile Law apply.⁸⁵

The CRC and the Committee on the Rights of the Child recommend that the minimum age of criminal responsibility be no lower than 12 years and urge State parties to increase their lower minimum age to 12 years as the absolute minimum age and to continue to increase it to a higher age.⁸⁶

While Saudi authorities publicly claimed that the Juvenile Law prohibits the imposition of death sentences for child offenders, the law in fact permits the death penalty for child offenders accused of *hadd* and *qisas* crimes, which have fixed punishments under sharia.⁸⁷

⁸³ Draft Penal Code, Article 66.

⁸⁴ Draft Penal Code, Article 66.

⁸⁵ Draft Penal Code, Article 67.

⁸⁶ CRC General comment 10 (2007), Children's rights in juvenile justice, 25 April 2007, UN Doc. CRC/C/GC/10, para. 32. <https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.10.pdf>

⁸⁷ The Kingdom of Saudi Arabia, Juveniles Law, 2018, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/4ec27eee-f917-408c-85eb-a9f6011ea426/1>, Article 16.

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CHILD OFFENDERS SENTENCED TO DEATH



Left to right: Abdullah al-Darazi, Abdullah al-Huwaiti and Jalal Labbad © Private

Amnesty International has documented at least seven cases in which Saudi judges did not follow the provisions of the Juvenile Law and used their discretion to sentence child offenders to death for *ta'zir* crimes, or crimes that have no fixed punishments under sharia. The Supreme Court upheld the death sentences of two of the young men, **Abdullah al-Derazi** and **Jalal Labbad**.⁸⁸

Ali Al-Sbaiti, one of the young men sentenced to death for alleged crimes committed when under the age of 18, was charged with participating in demonstrations in support of the anti-government protests in Bahrain and chanting slogans against the King of Bahrain when he was as young as 12 years old.

Yousef al-Manasif, who was as young as 15 at the time he committed some of his alleged “crimes”, was sentenced to death by the SCC in November 2022. The SCC appeals court upheld his sentence in March 2023. According to his charge sheet and verdict, which Amnesty International has reviewed, al-Manasif was convicted on several charges, including:

- “seeking to disrupt the social fabric and national cohesion, and participating and inciting sit-ins and protests that disrupt the state’s cohesion and security”;
- participating in funerals of individuals killed by security forces and participating in riots;
- joining an armed terrorist entity;
- shooting at security forces and their vehicles;
- participating in acts of vandalism during protests and riots in Al-Qatif; and
- chanting and raising slogans against the state.”

Al-Manasif’s family was not allowed to see or visit him until over six months after his arrest, during which time they said he was held in solitary confinement.

In another case, **Abdullah al-Huwaiti** was arrested when he was 14 years old. On 27 October 2019, al-Huwaiti was initially sentenced to death by a criminal court in Tabuk on charges related to:

- “gang formation and armed robbery of a jewellery store;
- the killing of a security officer intentionally and aggressively;
- robbery of gold; and
- hiding the weapons used and the stolen gold.”

On 10 November 2021, the Supreme Court overturned his death sentence and ordered a retrial. On 2 March 2022, al-Huwaiti was convicted based on the same evidence and re-sentenced to death by the criminal court in Tabuk. Disturbingly, despite the fact that he was a child at the time of the arrest, he was detained in the criminal investigations unit of Tabuk instead of the juvenile detention centre (*Dar Al Mulahaza*).

Al-Huwaiti told the court: “Everything in the ‘confession’ is not true, and I was forced to confess as I was beaten and threatened ... I was also told to change my testimony to match that of other defendants”. Al-Huwaiti refused to sign his testimony as he maintained it was not true, yet the court refused to withdraw his testimony and subsequently sentenced him to death.⁸⁹

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RECOMMENDATIONS

Amnesty International calls on the King and Crown Prince of Saudi Arabia to:

- declare an official moratorium on all executions with a view to abolishing the death penalty;
- refrain from ratifying the death sentences of individuals, particularly those who allege that their confessions were obtained under torture and other ill-treatment or who were under age 18 at the time of their alleged crimes, and order a retrial that affords defendants their full due process and fair trial rights without recourse to the death penalty; and
- review the cases of all prisoners currently under a death sentence with the aim of commuting their sentences and offering them a new and fair trial without recourse to the death penalty or release them.

Amnesty International calls on the Council of Ministers to ensure that any penal code adopted:

- abolishes the death penalty in all cases except for the most serious crimes, which under international law are limited to intentional murder; and
- explicitly prohibits the death penalty in all cases for defendants who were under age 18 at the time of their alleged crimes.

Amnesty International calls on the Supreme Judicial Council to:

- ensure that the death penalty is not imposed on anyone who was under the age of 18 at the time of their alleged offence;
- ensure that those sentenced to death are retried on recognizable criminal charges in proceedings that fully adhere to international fair trial standards, excluding coerced testimony and precluding the death penalty, or release them; and
- oversee fair hearings to afford appropriate reparation to families of all victims of execution and to victims of other human rights violations, such as torture, by state officials or those acting on their behalf. Such reparation should include, at a minimum, a formal apology by state authorities, financial compensation for loss of earnings and personal distress, and such medical treatment and psychological support as may be necessary in individual cases to address injuries or other trauma sustained in state detention or custody, which treatment and/or support should be provided at state expense. Such reparation should include the return of the remains of individuals executed to their families or informing families where their loved ones are buried.

⁸⁸ Amnesty International, "Saudi Arabia: Two young men at imminent risk of execution after Supreme Court decision issued in secret" (previously cited).

⁸⁹ Amnesty International, Urgent Action: Saudi Arabia: Arrested at 14, tortured, now faces execution: Abdullah al-Huwaiti, (Index: MDE 23/5715/2022), 20 June 2022, <https://www.amnesty.org/en/documents/mde23/5715/2022/en/>

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5.2 OUTLAW CORPORAL PUNISHMENTS

“The flogging penalty – that’s being cancelled totally in Saudi Arabia ... The only issue that we’re working on ... is to be sure that there is no penalty without a law ... So there are a few penalties that are up to the discretion of the judge. And now we are trying to be sure that there is no penalty in Saudi Arabia without a law.”

– Crown Prince Mohammad bin Salman in an interview with *The Atlantic*.⁹⁰

Saudi Arabia still applies corporal punishment for certain *hadd* crimes as mandated under sharia, including flogging, stoning and amputation of hands. Under sharia, flogging is the mandatory punishment for consumption of alcohol and extramarital relations, and hand amputation is the mandatory punishment for robbery – as long as strict evidentiary standards are met and there is no doubt or uncertainty in the defence.⁹¹

In April 2020, Saudi Arabia’s Supreme Court issued a decision to end discretionary flogging punishments and replace them with prison sentences and/or fines.⁹² However, the decision did not prohibit the use of flogging for *hadd* crimes, where the punishment is mandatory under sharia.

Further, authorities did not amend the Law on Combating Narcotics and Psychotropic Substances or the Ministry of Interior’s guidelines to reflect the Supreme Court decision to end discretionary flogging punishments.

Following the Supreme Court decision, a Saudi judge and lawyer told state-aligned newspaper *Saudi Gazette* that flogging cannot be replaced in cases of *hadd* crimes, such as if an unmarried man is involved in adultery.⁹³ According to Saudi lawyer Taha al-Hajji, Saudi authorities have expanded their interpretation of *hadd* crimes as a way to circumvent the 2020 Supreme Court decision and continue to apply flogging as a punishment for drug-related crimes.⁹⁴

Amnesty International reviewed the court document of an individual sentenced to a combination of discretionary and *hadd* punishments in April 2023 for the consumption of marijuana and heroin. In addition to a prison term, the court sentenced him to 80 lashes. The court considered drug consumption to be a *hadd* crime.⁹⁵

Under international law, corporal punishment is considered a form of torture and is prohibited.⁹⁶ As a party to the CAT, Saudi Arabia is required to take effective measures to prevent torture and ensure that all acts of torture are offences under its criminal law.

Responding to States justifying their use of corporal punishments as a required punishment under sharia, the Special Rapporteur on Torture stated:

“As there is no exception envisaged in international human rights or humanitarian law for torturous acts that may be part of a scheme of corporal punishment, the Special Rapporteur must consider that those States applying religious law are bound to do so in such a way as to avoid the application of pain-inducing acts of corporal punishment in practice. In this

⁹⁰ Al Arabiya, “Mohammed bin Salman on Iran, Israel, US and future of Saudi Arabia: Full transcript” (previously cited).

⁹¹ Council on Foreign Relations, “Understanding Sharia: The Intersection of Islam and the Law”, 17 December 2021, <https://www.cfr.org/background/understanding-sharia-intersection-islam-and-law>

⁹² Saudi Gazette, “Courts ordered to abolish flogging as a form of punishment”, 19 May 2020, <https://saudigazette.com.sa/article/593344>

⁹³ Saudi Gazette, “Abolition of flogging widely welcomed”, 26 April 2020, <https://saudigazette.com.sa/article/592359>

⁹⁴ Interview by voice call with Taha al-Hajji, Saudi lawyer, 27 July 2023.

⁹⁵ Court document on file with Amnesty International.

⁹⁶ UN Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, <https://www.refworld.org/docid/453883fb0.html> [accessed 11 April 2023].

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connection, he draws attention to the axiomatic doctrine that a State may not invoke the provisions of its national law to justify non-compliance with international law.”⁹⁷

The draft Penal Code continues to allow the imposition of corporal punishment for a range of *hadd* crimes, including theft, without guidelines for when the judge should consider that certain crimes have reached the evidentiary threshold and elements to be considered *hadd* crimes or whether they should be considered discretionary crimes and therefore subject to other forms of punishment.

For example, in the case of theft, the draft code states that “if the *hadd* stipulated under sharia is not imposed, the offender shall be punished depending on the crime in accordance with the provisions of this chapter.”⁹⁸ This article leaves wide scope for judges to resort to amputation of hands, which is a punishment for theft under sharia.

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to:

- ensure that any penal code adopted abolishes all forms of corporal punishment; and
- grant all victims of judicial corporal punishment access to effective remedies and reparation for harm suffered, including restitution, compensation and rehabilitation.

5.3 OUTLAW USE OF CONFESSIONS OBTAINED THROUGH TORTURE IN CRIMINAL PROCEEDINGS

Torture and other ill-treatment are prevalent in Saudi Arabia, including against children, in violation of the country’s obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC) and other international law.

Amnesty International regularly documents cases of torture and other ill-treatment in detention, including beatings, electric shocks, sexual violence, prolonged solitary confinement and denial of adequate medical care, including care for injuries sustained during torture.⁹⁹ In some instances, the torture or other ill-treatment has resulted in deaths in custody.¹⁰⁰ Amnesty found that even in cases where the defendants alleged in court that they had been subjected to torture and coerced into making confessions, the courts took no steps to investigate the allegations of torture and generally dismissed them on the grounds that the defendants were unable to prove their validity. Amnesty has documented the cases of dozens of individuals who were sentenced to death on the basis of their confessions, even though they had told the court that their confessions were coerced.¹⁰¹

Saudi Arabia’s Law of Criminal Procedure states that “a person under arrest may not be subjected to any bodily or moral harm, nor torture or degrading treatment”.¹⁰² However, the law does not define the terms “torture” or “degrading treatment”, does not impose criminal sanctions on officials who commit these acts, does not mandate a criminal investigation into torture allegations, and does not provide that confessions obtained through torture or ill-treatment are inadmissible in court. The law merely gives detainees the right to

⁹⁷ UN Economic and Social Council, Commission on Human Rights, Question of the Human Rights of All Persons Subjected to any Form of detention or imprisonment, In Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur on Torture, 53rd session, 10 January 1997, U.N. Doc. E/CN.4/1997/7, Article 10.

⁹⁸ Draft Penal Code, Article 238.

⁹⁹ Amnesty International, *Saudi Arabia: Muzzling critical voices: politicized trials before Saudi Arabia’s Specialized Criminal Court* (previously cited).

¹⁰⁰ Amnesty International, *Saudi Arabia: “It’s like we are not human”: Forced returns, abhorrent detention conditions of Ethiopian migrants in Saudi Arabia*, (Index: MDE 23/5826/2022), 16 December 2022, <https://www.amnesty.org/en/documents/mde23/5826/2022/en/>.

¹⁰¹ Amnesty International, “Saudi Arabia: Mass death sentences in ‘spy trial’ a travesty of justice, 6 December 2016,

<https://www.amnesty.org/en/latest/press-release/2016/12/saudi-arabia-mass-death-sentences-in-spy-trial-a-travesty-of-justice/>

¹⁰² The Kingdom of Saudi Arabia, Law of Criminal Procedure, 2001, <https://www.saudiembassy.net/law-criminal-procedure>, Article 2.

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submit, at any time, a written or oral complaint to the warden of a prison or detention centre and request that they refer it to a member of the Bureau of Investigation and Public Prosecution.¹⁰³

Further, Amnesty International's documentation shows that Saudi Arabia's security agencies violate the Law of Criminal Procedure regularly and with impunity, enabling the commission of torture and other ill-treatment.¹⁰⁴

In 2005, the Council of Ministers set up the Saudi Human Rights Commission, a governmental agency reporting directly to the King.¹⁰⁵ Its basic functions are, among other things, to ensure that governmental agencies implement laws and regulations in relation to human rights, to visit prisons and places of detention at any time and without requiring permission from the authorities concerned and to submit reports about them to the King, and to receive and investigate human rights concerns.¹⁰⁶

In July 2020, the SHRC said that its representatives made over 2,000 visits to prisons and detention centres in one year, aiming to "ensure that convicts and detainees were being afforded their rights under Saudi laws and regulations."¹⁰⁷ However, Amnesty International has routinely documented violations of due process rights, as well as torture and other ill-treatment of detainees by Saudi prison guards during interrogations and throughout their pretrial detention.¹⁰⁸

MOHAMMAD AL-SHAKHOURI

In one egregious example, Mohammad al-Shakhouri was executed, along with 80 other men, on 12 March 2022 despite having withdrawn his confession in court and alleging that he was tortured into making it. Al-Shakhouri told the court that he suffered bruising and severe pain in his back, ribs and mouth and lost most of his teeth as a result of the torture that security forces inflicted on him during his pretrial detention. The court, however, did not investigate these serious torture allegations, and a judge handed down a discretionary death sentence, relying in part on al-Shakhouri's torture-tainted confession, on charges relating to his participation in anti-government protests.¹⁰⁹

JALAL LABBAD



←  Jalal Labbad © Private

In another egregious case, in August 2022, the SCC sentenced to death Jalal Labbad, based on his "confessions", which he told the court were extracted through torture for alleged crimes that occurred when he was 16 and 17 years old. Labbad alleged that during his two-year pretrial detention, security forces subjected him to physical, sexual and psychological torture. The court did not investigate his torture allegations and Labbad's death sentence was subsequently upheld upon appeal in October 2022 and secretly upheld by the Supreme Court in 2023.

According to court documents that Amnesty International reviewed, Labbad told the court that he suffered:

¹⁰³ The Kingdom of Saudi Arabia, Law of Criminal Procedure (previously cited), Article 39.

¹⁰⁴ Amnesty International, *Saudi Arabia: Muzzling critical voices: politicized trials before Saudi Arabia's Specialized Criminal Court* (previously cited).

¹⁰⁵ The Kingdom of Saudi Arabia, Statute of Human Rights Commission, 2005, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/836460dd-2750-40a8-b8b1-a9a700f26ede/2>, Article 1.

¹⁰⁶ Human Rights Commission, "الإستراتيجيات والسياسات" ["Strategies and Policies"] <https://www.hrc.gov.sa/website/Strategies-Policies> (in Arabic), (accessed on 4 October 2023).

¹⁰⁷ Arab News, "Human rights officials visit 2,094 Saudi prisons", 8 July 2020, <https://www.arabnews.pk/node/1701866/saudi-arabia>.

¹⁰⁸ Amnesty International, "Saudi Arabia: Reports of torture and sexual harassment of detained activists", 20 November 2018, <https://www.amnesty.org/en/latest/press-release/2018/11/saudi-arabia-reports-of-torture-and-sexual-harassment-of-detained-activists/>

¹⁰⁹ Amnesty International, "Saudi Arabia: Mass execution of 81 men shows urgent need to abolish the death penalty" (previously cited).

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“[S]evere beating all over my body, and particularly on my right leg, which already had metal implants from a previous operation ... Kicking my face and entire body, including my genitals, by four to six soldiers following the orders of the investigator, who urged them to intensify the beating and torture ... Electrocuting my entire body, and particularly my genitals, in a dark room.”

He said the torture led to several health problems, for which he has been denied medical treatment.¹¹⁰ He added: “I was sometimes put in a dark room for continuous days, and other times put in a very cold room and once in a very bright room where lights didn’t go off even at bedtime ... [I] Stayed for a total of nine and a half months in solitary confinement in a small and tight room”.

LOUJAIN AL-HATHLOUL



←  Loujain al-Hathloul © Private

Loujain al-Hathloul is a prominent woman human rights defender currently serving a five-year travel ban following her conditional release from detention in February 2021. She was subjected by prison officials to torture and other ill-treatment during her pretrial detention.¹¹¹ Al-Hathloul said she was subjected to beatings, electric shocks, sexual harassment and threats of rape and murder.¹¹²

According to al-Hathloul’s family, “a delegation from the Saudi Human Rights Commission visited her after the publication of the reports about her torture. She told the delegation everything she had endured. Loujain asked the delegation if they would protect her. ‘We can’t,’ the delegates replied.”¹¹³

In late 2018, Amnesty International obtained reports of torture and other ill-treatment that a group of women human rights defenders and other activists had been subjected to during their pretrial detention. According to the testimonies, a total of 10 human rights defenders were subjected to torture, including sexual abuse, and other forms of ill-treatment during the first three months of their detention, when they were held in an informal detention facility in an unknown location.¹¹⁴

As a party to the CAT, Saudi Arabia is required to take effective measures to prevent torture; ensure that all acts of torture are offences under its criminal law; provide for penalties that are commensurate with the grave nature of the crime; and prevent other acts of cruel, inhuman or degrading treatment or punishment. Saudi Arabia is also obliged to “ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”¹¹⁵

¹¹⁰ Amnesty International, “Saudi Arabia: Young men face imminent execution despite assurances on re-sentencing juveniles to prison terms” (previously cited).

¹¹¹ Amnesty International, “You can’t leave and we won’t tell you why: Travel bans in Saudi Arabia”, <https://www.amnesty.org/en/latest/campaigns/2022/05/you-cant-leave-and-we-wont-tell-you-why-travel-bans-in-saudi-arabia/>, (accessed on 4 October 2023)

¹¹² Loujain AlHathloul, “Timeline of arrest, torture and charges” <https://www.loujainalhathloul.org/arrest-torture-charges>, (accessed on 4 October 2023)

¹¹³ Loujain AlHathloul, “Timeline of arrest, torture and charges” (previously cited).

¹¹⁴ Amnesty International, Saudi Arabia: Access for independent monitors urgently needed amid more reports of torture of activists, 25 January 2019, <https://www.amnesty.org/en/latest/news/2019/01/saudi-arabia-access-for-independent-monitors-urgently-needed-amid-more-reports-of-torture-of-activists-2/>

¹¹⁵ Convention Against Torture (CAT), Article 13.

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The prohibition against torture and other ill-treatment is also a rule of customary international law, which means it is binding on all nations.¹¹⁶ The CRC specifically states that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”¹¹⁷

The draft Penal Code introduces some positive reforms relating to torture and other ill-treatment. First, the draft Penal Code defines torture in line with the CAT as:

“any act that results in severe physical or psychological pain or suffering, deliberately inflicted on a person for the purpose of obtaining from him or her, or from a third party, information or a confession, or as punishment for an act they have committed, or which they or another person is suspected of having committed, to intimidate them or to compel them or another person to be intimidated. In addition, torture shall be considered to have occurred when this pain or punishment is inflicted for a reason based on discrimination of any kind or for any other reason. This shall not include any pain or suffering resulting from criminal penalties, that is inherent in them or that is an incidental result of them.”¹¹⁸

Second, the draft code provides for criminal penalties for public servants responsible for torture. It stipulates a prison term of between three and seven years for “any public servant who uses or orders the torture of any person with the intention of obtaining information or a confession, or any other purpose.”¹¹⁹ It also stipulates a prison term of between seven and 15 years if the torture resulted in a permanent disability.

If the torture results in death, however, the draft code prescribes the fixed punishment for murder under sharia – it is a *qisas*, or retribution, crime, whereby the family of the victim can require that the perpetrator be put to death.¹²⁰

A significant gap in the draft code is that it does not oblige judicial authorities to investigate allegations of torture, and it does not prohibit the use of confessions obtained under torture or other forms of duress as evidence in legal proceedings.

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to:

- ensure that any penal code adopted fulfils Saudi Arabia’s obligations under CAT, including by:
 - mandating judicial authorities to independently investigate all allegations of torture and other ill-treatment; and
 - prohibiting the admission of confessions or statements extracted through torture or other ill-treatment as evidence in court proceedings.
- establish an independent commission of inquiry into the use of torture and other ill-treatment in places of detention; those conducting the inquiry should have the authority, power and resources to:
 - visit and search all places of detention without advance notice;
 - seize and examine official documents and records they consider relevant to their investigations;
 - summon, question and take testimony under oath from officials they consider may possess information relevant to their investigation; and
 - protect victims, witnesses and their families.
- compile evidence for use in bringing criminal charges against any state official or other individual, of whatever rank and status, who is found to have apparent responsibility for torture or other ill-treatment – specifically, those suspected of having responsibility for ordering, perpetrating, assisting, acquiescing to or covering up torture or other ill-treatment; and

¹¹⁶ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundžija* (previously cited), paras 153-154; International Court of Justice, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Judgement of 30 November 2010, para. 87.

¹¹⁷ Convention on the Rights of the Child, Article 37.

¹¹⁸ Draft Penal Code, Article 351.

¹¹⁹ Draft Penal Code, Article 351.

¹²⁰ Draft Penal Code, Article 352.

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- ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Amnesty International calls on the Supreme Judicial Council to:

- ensure that all those against whom there is sufficient admissible evidence of responsibility for torture or other ill-treatment are promptly prosecuted on criminal charges in fair trials and, if convicted, given sentences commensurate with the gravity of the offence. In no case should anyone be sentenced to death or to punishments that violate the prohibition of torture and other cruel, inhuman or degrading punishment, such as amputation or flogging. Those suspected of carrying out torture should be suspended from positions where they exercise power or authority over detainees until their cases are resolved. Those convicted should be barred from returning to such positions.

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6. PROTECT FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

6.1 FREEDOM OF EXPRESSION


Over the past few years, Saudi Arabian authorities have eliminated any space for free speech, independent thought, political organizing and dissent. Almost every human rights activist, peaceful political activist, and critical journalist, poet or cleric is in exile, behind bars or conditionally released from prison on terms that prohibit them from speaking out freely.

As of January 2024, Amnesty International had documented the cases of 69 individuals who had been prosecuted between 2013 and May 2023 solely for exercising their rights to freedom of expression, association and assembly, including human rights defenders, peaceful political activists, journalists, poets, clerics and others. Of the 69, 46 individuals are currently imprisoned and 23 were conditionally released after serving their sentences or awaiting trial. Amnesty is aware that the actual number of such prosecutions is likely much higher.

Saudi authorities routinely use the overly broad counterterrorism and anti-cybercrime legislation to prosecute and criminalize peaceful speech. The Specialized Criminal Court, which was set up to try terrorism-related cases, regularly applies the provisions of the 2017 Law for the Crimes of Terrorism and its Financing (counterterrorism law) to put peaceful activists on trial. The law uses overly vague definitions for “terrorism”, “terrorist crime” and “terrorist entity”, which serve to criminalize the peaceful exercise of freedom of expression and has been used to charge and convict human rights defenders for their peaceful activism.

MANAHEL AL-OTAIBI



←  Manahel al-Otaibi © Private

Manahel al-Otaibi is a 29-year-old certified fitness instructor, human rights defender and blogger who has been forcibly disappeared since November 2023.

According to court documents reviewed by Amnesty International, the Riyadh Criminal Court examined her case in January 2023 and then referred it to the Specialized Criminal Court (SCC), because her actions “violate religious principles and social values and disrupt public order and undermine the security of the society”.

The charges against Manahel al-Otaibi include “publishing and spreading content that contains committing public sins and inciting individuals and girls in society to renounce religious principles,” in violation of the Anti-Cybercrime Law. The charges against her are based on her social media posts which were “opposed to regulations and laws that relate to women”, including through calling to #EndMaleGuardianship.

The prosecutor also referred to reports from 2018 and 2019 by the Committee for the Promotion of Virtue and the Prevention of Vice, also known as the religious police, who accused her of tarnishing the reputation of the Kingdom and going to the mall without wearing an abaya, promoting the removal of the hijab and posting photos of that outing on Snapchat.

Both of Manahel al-Otaibi’s sisters have also faced investigation for criminal charges for campaigning for women’s rights.

In Manahel al-Otaibi’s hearing, the Public Prosecutor noted that her sister, Fawzia al-Otaibi, “leads a propaganda campaign to incite Saudi girls to denounce religious principles and rebel against customs and traditions in the Saudi culture” for using the #society_is_ready hashtag which “promotes liberation and the fall of male guardianship”. The court document reviewed by Amnesty International, states that a separate order would be issued for Fawzia al-Otaibi’s arrest. She is currently in the United Kingdom and cannot return to Saudi Arabia for fear of arrest and prosecution.

Their other sister, Mariam al-Otaibi, is a prominent advocate against male guardianship in the Kingdom. She was previously charged and detained in 2017 for 104 days for her women’s rights activism and is currently subjected to a travel ban and restrictions on her speech.¹²¹

¹²¹ Amnesty International, Urgent Action: Saudi Arabia: Saudi Woman Imprisoned for Women’s Rights Tweets: Manahel al-Otaibi, (Index: MDE 23/7646/2024), 15 February 2024, [amnesty.org/en/documents/mde23/7646/2024/en/](https://www.amnesty.org/en/documents/mde23/7646/2024/en/)

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MOHAMMAD AL-GHAMDI



←  Mohammad al-Ghamdi © Private

In a marked escalation in the crackdown on peaceful dissent, on 9 July 2023, the Specialized Criminal Court sentenced 54-year-old retired teacher Mohammad bin Nasser al-Ghamdi to death for his peaceful online activity on Twitter and YouTube. According to the verdict and charges sheet reviewed by Amnesty International, Mohammad bin Nasser al-Ghamdi was convicted under articles 30, 34, 43 and 44 of Saudi's counterterrorism law including for in which he criticized the Saudi King and Crown Prince and Saudi's foreign policy, called for the release of detained religious clerics, and protested increased prices.

During questioning, interrogators asked Mohammad bin Nasser al-Ghamdi about his political opinions and his views on other imprisoned Saudi nationals, including religious clerics Salman al-Awda and Awad al-Qarni, both of whom were detained in 2017 and face the death penalty for their political views. Mohammad al-Ghamdi has a total of just 10 followers on both of his anonymous Twitter accounts.¹²²

The UDHR guarantees the right to freedom of opinion and expression, and further states that “this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹²³

Under international human rights law, restrictions on freedom of expression are permissible only in limited instances to protect the rights or reputations of others; to protect national security, public order, public health or morals; or when the speech constitutes incitement to discrimination, hostility or violence. However, any restrictions aimed at protecting these legitimate aims must meet the requirements of legality, necessity and proportionality. The burden is on the state to demonstrate the necessity and proportionality of any restriction and the legitimate reason for which it is imposed.¹²⁴

International human rights law and standards also require states to ensure that laws restricting the right to freedom of expression provide sufficient guidance to those charged with their application to allow them to ascertain what sorts of expressions are restricted to avoid the arbitrary and discretionary application of the law.

The United Nations Human Rights Committee, which interprets the International Covenant on Civil and Political Rights, has made clear that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the covenant upon uninhibited expression is particularly high.”¹²⁵

Under international law, laws criminalizing “hate speech” are one of the few permissible criminal restrictions on the right to freedom of expression. However, these laws must be properly framed to safeguard individuals' rights to free speech as well as the state's obligation to safeguard the rights of others.

The Rabat Plan of Action states that the limitation of free speech requires a high threshold in line with the ICCPR and must remain an exceptional measure, stating that:

¹²² Amnesty International, “Saudi Arabia: Man sentenced to death over twitter posts: Mohammad bin Nasser al-Ghamdi”, 1 September 2023, <https://www.amnesty.org/en/documents/mde23/7162/2023/en/>

¹²³ UDHR, Article 19.

¹²⁴ UN Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion and expression, 11-29 July 2011, UN Doc. CCPR/C/GC/34.

¹²⁵ UN Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion and expression (previously cited).

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“Such threshold must take into account the provisions of article 19 of the Covenant. Indeed the three-part test (legality, proportionality and necessity) for restrictions also applies to cases involving incitement to hatred, in that such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measure available; are not overly broad, so that they do not restrict speech in a wide or untargeted way; and are proportionate so that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions they authorize.”¹²⁶

As explained below, the draft Penal Code fails to uphold the right to freedom of expression and criminalizes speech that is protected under international law.

In a positive development, the draft penal code defines hate speech in line with international standards as: “Every behaviour that includes public expression that may incite hatred against any person, sect, class or group on the basis of race, colour, descent, national or ethnic origin or any other illegitimate basis.”¹²⁷

DO NOT CRIMINALIZE DEFAMATION AND INSULTS, INCLUDING “INSULTING THE JUDICIARY”

Saudi Arabia’s 2017 counterterrorism law imposes a prison sentence of up to 10 years for directly or indirectly insulting the King or Crown Prince in a way that impugns religion or justice.¹²⁸

The 2007 anti-cybercrime law criminalizes the “defamation and infliction of damage upon others through the use of various information technology devices”, which is punishable by up to one year in prison and a fine not exceeding SAR 500,000 (around USD 133,000).¹²⁹

Amnesty International has documented several cases of human rights defenders who have been charged with, among other things, “insulting the judiciary”, “questioning the integrity of judges”, and “insulting the integrity of the judicial system and the judges and contesting their independence”. According to Amnesty’s documentation, these charges are potent tools used to crack down on free speech and political opposition. The people charged are all serving prison sentences ranging from four to 15 years, to be followed by travel bans of equal duration for charges related to exercising their rights to freedom of expression, association and peaceful assembly. These individuals include several members of the now-disbanded civil society organization Saudi Civil and Political Rights Association (ACPRA), including Abdulaziz al-Shubaily, Issa al-Hamid and Dr Abdulrahman al-Hamid.¹³⁰ Other people charged with these “crimes” include human rights lawyer Waleed Abu al-Khair,¹³¹ and Mohammed al-Otaibi and Abdullah al-Attawi, founding members of another human rights association.¹³²

¹²⁶ Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence (previously cited), (para.18).

¹²⁷ Draft Penal Code, Article 219.

¹²⁸ The Kingdom of Saudi Arabia, Law of Combating Crimes of Terrorism and its Financing, 2017, <https://laws.boe.gov.sa/Boelaws/Laws/LawDetails/57694209-3eed-46c7-a5d8-a9ed012761d4/1>, Article 30.

¹²⁹ The Kingdom of Saudi Arabia, Anti-Cyber Crime Law, 2007, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/25df73d6-0f49-4dc5-b010-a9a700f2ec1d/2>, Article 3 (5).

¹³⁰ Amnesty International, “Saudi Arabia: On the 19th anniversary of the establishment of ACPRA, NGOs jointly call on Saudi authorities to release all detained members”, (Index: MDE 23/1191/2019), 10 October 2019, <https://www.amnesty.org/en/documents/mde23/1191/2019/en/>

¹³¹ Amnesty International, “Saudi Arabia: End ill-treatment, arbitrary detention of human rights defender, Waleed Abu al-Khair, 6 December 2019, <https://www.amnesty.org/en/latest/press-release/2019/12/saudi-arabia-end-ill-treatment-arbitrary-detention-of-human-rights-defender-waleed-abu-al-khair/>

¹³² Amnesty International, “Saudi Arabia: First human rights defenders sentenced under leadership of reformer Crown Prince Mohammad bin Salman”, 25 January 2018, <https://www.amnesty.org/en/latest/news/2018/01/saudi-arabia-first-human-rights-defenders-sentenced-under-leadership-of-reformer-crown-prince-mohammad-bin-salman/>

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WALEED ABU AL-KHAIR



←  Waleed Abu al-Khair © Private

In July 2014, the SCC sentenced lawyer and human rights defender Waleed Abu al-Khair to 15 years in prison and 1,000 lashes, followed by a 15-year travel ban and a fine of approximately USD 53,000. The charges included:

- “disobeying the ruler and seeking to remove his legitimacy;
- insulting the judiciary and questioning the integrity of judges;
- setting up an unlicensed organization;
- harming the reputation of the state by communicating with international organizations; and
- preparing, storing and sending information that harms public order”.

The SCC had ordered al-Khair to serve 10 years in prison, but the appeal judge who upheld his sentence on 12 January 2015 ordered him to serve the full 15-year sentence because al-Khair refused to apologize for his “offences”. Al-Khair had defended and legally represented numerous victims of human rights violations. Notably, he was the lawyer of Raif Badawi, a well-known Saudi Arabian blogger who was sentenced in July 2013 to seven years in prison and 600 lashes for creating an online forum for debate, and for accusations that he insulted Islam.¹³³

The draft code includes problematic provisions that have been used to silence dissent and punish human rights defenders and stipulates a prison term of up to one year and/or a fine of up to SAR 50,000 (around USD 13,000) for “anyone who uses public means to question the integrity of the judiciary or one of its members, or their commitment to the provisions under sharia or regulations in performing their work.”¹³⁴

Publishing anything in relation to the actions above on the internet is considered an “aggravated circumstance” and carries a harsher punishment, at the discretion of the judge.¹³⁵

The draft Penal Code introduces a new crime, imposing criminal penalties on “anyone who publicly offends the reputation of another”, anyone who offends another’s reputation impacting their “honour” and anyone who uses insulting words against someone’s honour, even if not publicly, which is punishable by up to three years in prison and/or a fine of up to SAR 10,000 (around USD 2,700). The draft code states other conditions that stipulate punishment of up to six months in prison and/or SAR 50,000 (around USD 13,000) in cases such as insulting a public sector employee publicly, if the insult disgraces a family’s reputation or is intended to achieve something unlawful.¹³⁶

If any of the aforementioned acts of “insult” are carried out on the internet, the draft law allows the court to exceed the fines prescribed above, as long as the amount is not more than double the fine.¹³⁷

The criminalization of insults, both private and public, could be instrumentalized by Saudi authorities to crack down on freedom of expression and dissent. Additionally, the criminalization of insults in relation to a person’s “honour”, which is not defined in the draft code, opens the code’s application to the discretion of the judge, perpetuates patriarchal norms and enables individuals to call for the persecution of others in the name of “honour”. The notion of “honour” can be used to justify gender-based violence against women

¹³³ Amnesty International, “Saudi Arabia jails lawyer and human rights activist in ongoing crackdown on dissent”, 16 April 2014, <https://www.amnesty.org/en/latest/news/2014/04/saudi-arabia-waleed-abu-al-khair/>

¹³⁴ Draft Penal Code, Article 378.

¹³⁵ Draft Penal Code, Article 383.

¹³⁶ Draft Penal Code, Article 210.

¹³⁷ Draft Penal Code, Article 212.

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ranging from domestic abuse to killing because family members consider that certain suspected, perceived or actual behaviour will bring dishonour to the family or community.

Criminal defamation laws are increasingly seen as inconsistent with obligations to protect the right to freedom of expression. The UN Human Rights Committee deems that imprisonment is never an appropriate penalty for defamation.¹³⁸ Arrests, detention, charges or convictions based on laws that criminalize the exercise of freedom of expression are considered arbitrary and unlawful. Civil damages are widely seen to be sufficient to redress harm in the limited circumstances in which it is necessary and proportionate to impose sanctions to protect an individual's reputation.

END USE OF THE ANTI-CYBERCRIME LAW TO CRACKDOWN ON DISSENT

Saudi authorities have resorted extensively to the 2007 anti-cybercrime law to prosecute government critics and human rights defenders, citing tweets and other forms of protected expression and association as threats to national security, according to court judgments Amnesty International has analysed.¹³⁹ In particular, authorities have repeatedly invoked Article 6, stating that the “production, preparation, transmission, or storage of material impinging on public order, religious values, public morals and privacy, through the information network or computers” is a crime punishable by up to five years' imprisonment and a fine.¹⁴⁰

In 2022 alone, Amnesty International documented the cases of 15 people who were sentenced to prison terms of between 10 and 45 years under the counterterrorism and anti-cybercrime laws simply for peaceful online activities, including the longest sentence believed to ever be imposed on a Saudi woman for protected online expression.¹⁴¹

ABDULRAHMAN AL-SADHAN



←  Abdulrahman al-Sadhan © Private

In April 2021, the SCC sentenced Abdulrahman al-Sadhan, an employee of the Saudi Arabian Red Crescent Society in Riyadh, to 20 years in prison, to be followed by a travel ban of equal duration. The evidence presented against him was a series of satirical and critical tweets from an account the prosecution accused him of running, and a statement he was forced to sign as a “confession” under duress. On 3 March 2021, al-Sadhan attended his first secret hearing at the SCC, without legal representation and in the absence of his father, who had been assisting with his legal defence. The charges included both terrorism-related crimes and cybercrimes such as preparing, storing and sending materials prejudicial to public order and religious values. Some of the tweets authorities deemed offensive include al-Sadhan's criticism of the authorities' economic policies and his calls for an alternative form of governance.¹⁴²

The draft Penal Code introduces definitions of electronic data, computer programmes and reception that are the same as definitions in the existing anti-cybercrime law. However, the draft code introduces a new crime for anyone who accesses a website to, among other things, obtain, publish or leak “data that affects internal

¹³⁸ UN Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion and expression (previously cited).

¹³⁹ Amnesty International, *Saudi Arabia: Muzzling critical voices: Politicized trials before Saudi Arabia's Specialized Criminal Court* (previously cited).

¹⁴⁰ The Kingdom of Saudi Arabia, Anti-Cyber Crime Law (previously cited), Article 6.

¹⁴¹ Amnesty International, “Saudi Arabia: Alarming crackdown on online expression”, 14 February, 2023, <https://www.amnesty.org/en/latest/news/2023/02/saudi-arabia-alarming-crackdown-on-online-expression/>

¹⁴² Amnesty International, “Saudi Arabia: Release aid worker sentenced to 20 years: Abdelrahman al-Sadhan”, (Index: 23/4072/2021), 5 May 2021, <https://www.amnesty.org/en/documents/mde23/4072/2021/en/>

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and external security or national economy” without defining “affecting”.¹⁴³ This crime is punishable by a prison term of three to seven years and a fine of up to SAR 500,000 (around USD 133,300).

The draft code does not replace the anti-cybercrime law but complements it. In light of Saudi Arabia’s track record of misusing such legislation to crack down on criticism of government policy and practice and on other forms of protected speech, the new crime introduced in this draft law risks being used in politically motivated trials of activists, human rights defenders and other critics of the government.

6.2 FREEDOM OF ASSOCIATION

Saudi authorities do not allow the formation of any independent civil society or human rights organizations. Saudi Arabia’s 2015 Law of Civil Society Associations and Organizations (law of associations), issued by the Council of Ministers, provides a legal process for the establishment, governance, funding and activities of associations and foundations.

That law, however, gives wide discretionary powers to the Ministry of Social Affairs,¹⁴⁴ including the power to determine permissible activities and deny licences to new organizations or disband them if they are deemed to be “conflicting with the provisions of sharia, public order, or public morality, or if it undermines national unity”.¹⁴⁵

According to Saudi scholar Hala Aldosari’s assessment:

“[The law] does not ease the restrictions imposed on associations; rather it offers a more stringent regulatory process, maintaining control on board members’ selection, funding, and the intended public activities of any association. In other words, the new law allows only for government-sanctioned, non-governmental organizations.”¹⁴⁶

No independent human rights organizations have been able to register under the law of associations, and human rights defenders continue to be put on trial for establishing unlicensed organizations and “dividing national unity”.¹⁴⁷ The only two human rights groups currently in operation in Saudi Arabia are the Saudi Human Rights Commission and the National Society for Human Rights, both of which are government bodies. Saudi Arabia also continues to deny access to the country for most human rights monitors, including Amnesty International representatives.

10 EGYPTIAN NUBIAN MEN DETAINED FOR COMMUNITY EVENT



Nubian Men detained in Saudi Arabia © Private

In October 2022, the SCC sentenced 10 Egyptian Nubian men to between 10 and 18 years in prison for organizing a peaceful community event on charges of establishing an association without a licence, posting on social media, and showing solidarity with the Muslim Brotherhood, a Sunni Islamist organization that is outlawed in Saudi Arabia.

According to one of the men’s relatives, their families were prevented from attending the sentencing hearing. The prison terms of the 10 men were upheld by the SCC Appeal Court in February 2023.¹⁴⁸

¹⁴³ Draft Penal Code, Article 289.

¹⁴⁴ Hala Aldosari, “New Saudi Law Maintains State Control Over Civil Society Organizations”, 27 December 2015, The Arab Gulf States Institute in Washington, <https://agsiw.org/new-saudi-law-maintains-state-control-over-civil-society-organizations/>

¹⁴⁵ The Kingdom of Saudi Arabia, Law of Civil Society Associations and Organizations, 2015, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/37e0768f-8e3c-493a-b951-a9a700f2bbb1/1>, Article 8 (2).

¹⁴⁶ Aldosari, “New Saudi Law Maintains State Control Over Civil Society Organizations” (previously cited).

¹⁴⁷ Amnesty International, “Saudi Arabia: First human rights defenders sentenced under leadership of reformer Crown Prince Mohammad bin Salman” (previously cited).

¹⁴⁸ Amnesty International, “Saudi Arabia: Quash sentences for Egyptian Nubians who organized peaceful remembrance event”, 11 October 2022, <https://www.amnesty.org/en/latest/news/2022/10/saudi-arabia-quash-sentences-for-egyptian-nubians-who-organized-peaceful-remembrance-event/>

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THE SILENCING OF THE SAUDI CIVIL AND POLITICAL RIGHTS ASSOCIATION (ACPRA)



Front from left: ACPRA founding members Abdullah al-Hamid, Waleed Abu al-Khair and Mohammed al-Qahtani © Private

The story of the Saudi Civil and Political Rights Association (ACPRA) is emblematic of how Saudi authorities silence any independent civil-society effort to organize against and document human rights abuses.

Adopting the slogan “Know Your Rights”, ACPRA’s founding members committed to promoting the rights enshrined in the Universal Declaration of Human Rights and other international treaties and standards and applied for permission to operate legally.

For years, authorities tolerated ACPRA’s work despite refusing to provide it with permission to operate legally. In 2011, authorities started to round up most human rights defenders associated with ACPRA and other human rights groups, initially summoning them for interrogation. By the end of 2013, authorities had closed all independent human rights groups and arrested and detained most of their founders and activists associated with them. They were held without trial or were in the process of being tried at that time. As of May 2016, the SCC had sentenced all 11 of ACPRA’s members to prison sentences ranging from seven to 15 years for their human rights activism and cooperation with the United Nations human rights mechanisms.

Among those prosecuted for their human rights work with ACPRA are two academics and human rights defenders: Dr Mohammad al-Qahtani and Dr Abdullah al-Hamid. In March 2012, al-Hamid and al-Qahtani were arrested and interrogated about their work with ACPRA and their peaceful activism. In March 2013, they were sentenced to 11 and 10 years in prison, respectively, on charges of “breaking allegiance to the ruler”, “questioning the integrity of officials”, “seeking to disrupt security and inciting disorder by calling for demonstrations” and “instigating international organizations against the Kingdom”.

Dr al-Hamid died while in detention on 24 April 2020. He had hypertension and was told by a doctor three months before his death that he required heart surgery. He was threatened by prison authorities that if he told his family about his health condition, authorities would cut off his communication with his family. Al-Hamid had a stroke on 9 April but remained in detention, despite being in a coma in the intensive care unit at al-Shumaisi Hospital in Riyadh.¹⁴⁹

Saudi authorities failed to release Dr al-Qahtani on 22 November 2022, when he finished serving his prison sentence. Since 24 October 2022, Saudi authorities have denied him any contact with his family and continue to detain him incommunicado.¹⁵⁰

Freedom of association, including the right to form and be part of a trade union, political party or any other organization, is a fundamental human right proclaimed in the UDHR.¹⁵¹ While the draft Penal Code does not explicitly criminalize the formation of associations, the law of associations will continue to prohibit the formation of independent civil society organizations.

¹⁴⁹ Amnesty International, “Saudi Arabia: Prisoner of conscience Dr Abdullah al-Hamid dies while in detention”, 24 April 2020, <https://www.amnesty.org/en/latest/news/2020/04/saudi-arabia-prisoner-of-conscience-dr-abdullah-alhamid-dies-while-in-detention/>

¹⁵⁰ Amnesty International, “Saudi Arabia: Saudi authorities must release human rights defender Mohammed al-Qahtani and other ACPRA members who are arbitrarily detained”, (Index: MDE 23/6711/2023), 24 April 2023 <https://www.amnesty.org/en/documents/mde23/6711/2023/en/>

¹⁵¹ UDHR, Article 20.

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6.3 RIGHT TO PEACEFUL ASSEMBLY

Saudi Arabia's Ministry of Interior has banned all forms of peaceful gatherings and demonstrations. The judiciary frequently imprisons – and even sentences to death – individuals on charges that include participating in demonstrations and disobeying the ruler.

Amnesty International has documented the cases of over 100 Saudi Arabian Shi'a activists tried before the SCC on vague and wide-ranging charges and in deeply flawed legal proceedings arising from their opposition to the government and participation in anti-government protests.¹⁵²

JUVENILE OFFENDER EXECUTED FOR PROTEST-RELATED CRIMES



←  Abdulkareem al-Hawaj © Private

On 23 April 2019, Saudi Arabia carried out a mass execution of 37 men convicted of “terrorism-related” charges.¹⁵³ Among those executed was Abdulkareem al-Hawaj – a Shi'a young man who was convicted of offences related to his involvement in anti-government protests when he was at the age of 16.

Al-Hawaj told the court that prison guards beat him with their hands, shoes and sticks, and said that he was tortured to sign a “confession”. During the first five months of his detention, al-Hawaj was detained incommunicado without access to his family or lawyer.

His family looked for al-Hawaj in the police stations and prisons of al-Qatif, where he was arrested, but were told by officials that he was not held in those locations. His family learned of his whereabouts only when an official from the General Directorate of Investigation Prison in Dammam telephoned them approximately five months after al-Hawaj's arrest and told them that he was being held by the authorities and that they could now visit.

Al-Hawaj was not permitted to consult a lawyer throughout his pretrial detention and interrogations. He was convicted of a range of offences, including “throwing two Molotov cocktails”, “participating in riots that resulted in the shooting of an armoured vehicle”, “participating in illegal gatherings and chanting against the state” and using social media to share photos and videos of demonstrations in al-Qatif and Bahrain and to “insult the leaders”.

Saudi Arabia has a duty to respect, facilitate and protect the right to peaceful assembly, which is enshrined in the UDHR.¹⁵⁴

Legislating a penal code is an opportunity for Saudi authorities to repeal offences in relation to the right to peaceful assembly. While the draft Penal Code does not explicitly ban peaceful gatherings, several other articles relating to national security and insulting the ruler in existing legislating can be used to continue criminalizing such joining and organizing peaceful gatherings.¹⁵⁵

¹⁵² Amnesty International, *Saudi Arabia: Muzzling critical voices: politicized trials before Saudi Arabia's Specialized Criminal Court* (previously cited).

¹⁵³ Amnesty International, “Saudi Arabia: 37 put to death in shocking execution spree”, 23 April 2019, <https://www.amnesty.org/en/latest/press-release/2019/04/saudi-arabia-37-put-to-death-in-shocking-execution-spreel/>.

¹⁵⁴ UDHR, Article 20.

¹⁵⁵ The Kingdom of Saudi Arabia, Law of Combating Crimes of Terrorism (previously cited), Articles 30; 32-35.

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RECOMMENDATIONS

Amnesty International calls on the King and Crown Prince of Saudi Arabia to:

- release all those detained solely for exercising their rights to freedom of expression, association and peaceful assembly, and others unjustly detained, immediately and unconditionally;
- ensure their convictions and sentences are quashed;
- lift all administrative bans and other penalties against them;
- drop any pending charges; and
- promptly afford them appropriate reparation for the violations of their human rights.

Amnesty International calls on the Council of Ministers to:

- ratify the International Covenant on Civil and Political Rights;
- ensure that any penal code adopted respects the rights to freedom of expression, assembly and association, including by:
 - de-criminalizing defamation and replacing that “crime” with provisions in the civil code;
 - abolishing provisions prohibiting or criminalizing insult of state institutions, the judiciary, public officials, symbols and other individuals;
 - ensuring that criminal sanctions related to unlawful forms of expression are last-resort measures to be applied only in strictly justifiable situations in line with the Rabat Plan of Action;
 - defining “national security”, “public order”, “national unity” and the breaches against them in narrow terms that do not infringe on internationally guaranteed rights of freedom of expression, association and peaceful assembly;
 - explicitly guaranteeing the right to peaceful protests without a requirement for prior authorization; and
 - explicitly guaranteeing the rights to form or join trade unions or other organizations, including human rights organizations.
- amend or repeal the Penal Law for Crimes of Terrorism and its Financing and the 2007 anti-cybercrime law to make them fully compatible with international human rights law and standards, including by:
 - ensuring that definitions of “terrorism”, “terrorist crime” and “terrorist entity” are not overly broad and vague and do not infringe on the exercise of human rights, removing provisions in those laws that criminalize the exercising of the rights to freedom of expression, association and assembly;
 - abolishing provisions that criminalize the use of social media or the internet for exercising the rights to freedom of expression, association and peaceful assembly; and
 - removing the counterterrorism law’s provisions authorizing up to 90 days’ incommunicado detention, arrests without warrants and denial of access to lawyers during interrogations;
- amend the Law of Civil Society Associations and Organizations to remove restrictions that prevent the legal registration of independent human rights groups and other civil society organizations and thereby remove the powers of the Ministry of Labour and Social Development to prevent or impede the legal registration of such associations on grounds such as the Ministry deeming them to be breaching “national unity”; and
- strike out provisions such as “insulting the judiciary,” “questioning the integrity of judges” and “insulting the integrity of the judicial system and the judges and contesting their independence” from Saudi Arabia’s legal lexicon, and replace them with enforceable, constitutional and legal guarantees of free speech, freedom of association and freedom of peaceful assembly.

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7. PROTECT FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Saudi Arabia bans any public practice of a religion other than Islam, and it does not permit any places of worship other than mosques. It also criminalizes apostasy and blasphemy, with both crimes having the potential to carry a death sentence, though no executions have been carried out for either in recent years (see Section 4, Clearly Define All Crimes and Punishments). Saudi Arabia also bans eating, drinking and smoking in public during daylight hours during the month of Ramadan, when Muslims fast from dawn to dusk. Foreign nationals who defy this ban may face deportation.¹⁵⁶

Saudi Arabia follows the Sunni school of Islam, and authorities have systematically discriminated against the country's Muslim Shi'a minority, estimated to make up 10–15% of the population, including in education curricula, the justice system and religious practices. Moreover, Saudi religious scholars have expressed anti-Shi'a rhetoric that sometimes rises to the level of hate speech or incitement to hatred or discrimination and have not been held accountable.¹⁵⁷

Almost a decade after popular protests erupted in Saudi Arabia's Shi'a-majority Eastern Province, authorities continue to prosecute individuals from the country's Shi'a minority who protested to demand equal rights. Courts routinely mete out death sentences as a political weapon against the Shi'a population to crush dissent and punish individuals.

International law prohibits religion-based discrimination and protects the rights of religious and other minorities. The UDHR states that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."¹⁵⁸

In 1981, the UN General Assembly adopted the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. The declaration guaranteed that the "freedom to have a religion ... and freedom ... to manifest his religion or belief in worship, observance, practice and teaching" is protected, and "coercion which would impair [t]his freedom" is prohibited.¹⁵⁹

Further, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination, Saudi Arabia is obliged to guarantee the right of everyone, without discrimination, to the

¹⁵⁶ Gulf News, "Saudi Arabia denies reports about allowing restaurants to serve food in Ramadan during day", 17 March 2022, <https://gulfnews.com/world/gulf/saudi/saudi-arabia-denies-reports-about-allowing-restaurants-to-serve-food-in-ramadan-during-day-1.1647520951409>

¹⁵⁷ Human Rights Watch, "They are not our brothers": Hate speech by Saudi officials, 26 September 2016, <https://www.hrw.org/report/2017/09/26/they-are-not-our-brothers/hate-speech-saudi-officials>

¹⁵⁸ UDHR, Article 18.

¹⁵⁹ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 1.

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enjoyment of equal treatment before the judiciary; to civil and political rights; to economic, social and cultural rights; to education; and to freedom of thought, conscience and religion.¹⁶⁰

The draft Penal Code does not guarantee freedom of religion or conscience, and instead criminalizes several acts that are protected under international law, including blasphemy and apostasy (see Section 4).

The draft code's definition of blasphemy is vague and overly broad, and it allows judges to impose the death penalty on individuals accused of this offence by stipulating that blasphemy could be punishable under sharia as a *hadd* crime. If the evidentiary threshold for punishing blasphemy under sharia is met, the crime would amount to apostasy which is considered one of the *hudud* and may be punishable by death.¹⁶¹

It defines blasphemy as “anyone who offends the divine, or the Qur’an – including through distorting or profaning it – or offends the Islamic religion, or one of its rituals, prophets or messengers ... or the wives of the Prophet Mohammad or his companions.”¹⁶²

The draft Penal Code stipulates alternative punishments to be imposed on anyone who eats or drinks in public during Ramadan.¹⁶³ These punishments include the deportation of foreign nationals, community service and a ban on going to certain places and/or communicating with specific individuals or institutions.¹⁶⁴ If the person fails to abide by the alternative punishments, they must serve 10 days in prison, and if the offence is repeated, up to a month in prison and a fine of up to SAR 10,000 (around USD 2,700).

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to adopt a penal code that guarantees freedom of conscience and the profession and free practice of religion, including through:

- removing from the draft code provisions that prohibit blasphemy and apostasy; and
- removing criminal sanctions for individuals who eat or drink in public during the month of Ramadan.

¹⁶⁰ International Convention on the Elimination of all Forms of Racial Discrimination, Article 5.

¹⁶¹ For example, in November 2015, a Saudi court sentenced a poet to death for the crime of “apostasy”. See: Amnesty International, Urgent Action: Poet faces death for apostasy in Saudi Arabia, (Index: MDE 23/2925/2015), 24 November 2015, <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2329252015ENGLISH.pdf>

¹⁶² Draft Penal Code, Article 216.

¹⁶³ Draft Penal Code, Article 232.

¹⁶⁴ Draft Penal Code, Article 87.

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8. PROTECT BODILY AUTONOMY

8.1 DECRIMINALIZE CONSENSUAL SEXUAL RELATIONS

Saudi Arabia currently has no codified laws that criminalize extra-marital consensual sexual relations, including same-sex relations. However, such acts are strictly prohibited in Saudi Arabia based on references to sharia, and judges have sentenced individuals to death, flogging and imprisonment for engaging in these acts.¹⁶⁵

Under sharia, if adultery is proven, it is punishable by 100 lashes if the person is unmarried, and death if married. The threshold of evidence to prove adultery under sharia is extremely high: it requires four eyewitnesses to the penetration, or a confession.¹⁶⁶ In practice, “illegitimate” relations which include the presence of an unmarried man and woman alone (*khilwa*) without a male relative whom a woman could not marry, such as her brother (also known as *mahram*) are also criminalized.¹⁶⁷

Although there is very little public reporting in Saudi Arabia on criminal cases of *khilwa*, adultery and illegitimate consensual sexual relations, media reports concerning such cases related to foreign nationals indicate that the Saudi judiciary has sentenced individuals to both flogging and execution by stoning for adultery over the past decade.

For example, in December 2015, the judiciary sentenced a Sri Lankan woman to death on charges of adultery. She was spared execution following advocacy by the Sri Lankan government. Her partner was sentenced to 100 lashes- the Sri Lankan government confirmed that Saudi authorities had carried out this punishment.¹⁶⁸ As discussed in Section 5.2 (Outlaw Corporal Punishments), corporal punishment is considered a form of torture and other ill-treatment and is prohibited under international law.

In October 2012, the United Nations Working Group on discrimination against women in law and in practice urged governments to repeal laws that criminalize adultery because such laws lead to discrimination and violence against women.¹⁶⁹ Moreover, the Human Rights Committee called for the repeal of “adultery” laws “so that women are not deterred from reporting rapes for fear their claims will be associated with the crime of adultery.”¹⁷⁰

The draft Penal Code codifies “illegitimate” consensual sexual relations as *hadd* crimes and refers to their punishments under sharia if the evidentiary threshold is met. While the law does not list what these

¹⁶⁵ UN OHCHR, “Mandate of the Working Group on the issue of discrimination against women in law and in practice”, 17 November 2017, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Communications/32/OL-SAU-14-11-17.pdf>

¹⁶⁶ Al Safwa Law Firm, “عقوبة الزنا في القانون السعودي” [“The punishment of adultery in Saudi law”], 13 March 2023, <https://mycaseweb.com/%D8%B9%D9%82%D9%88%D8%A8%D8%A9-%D8%A7%D9%84%D8%B2%D9%86%D8%A7-%D9%81%D9%8A-%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A/> (in Arabic).

¹⁶⁷ Interview by voice call with Taha al-Hajji, Saudi lawyer, 27 July 2023.

¹⁶⁸ BBC, “Saudi Arabia ‘spares’ Sri Lankan maid in adultery case”, 23 December 2015, https://www.bbc.com/arabic/middleeast/2015/12/151223_saudi_death_sentence_sri_lankan

¹⁶⁹ UN OHCHR, “Statement by the United Nations Working Group on discrimination against women in law and in practice”, 18 October 2012, <https://www.ohchr.org/en/statements/2012/10/statement-united-nations-working-group-discrimination-against-women-law-and?LangID=E&NewsID=12672>

¹⁷⁰ UN News, “Group of UN experts urge governments to repeal laws that criminalize adultery”, 18 October 2012, <https://news.un.org/en/story/2012/10/423892-group-un-experts-urge-governments-repeal-laws-criminalize-adultery>

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punishments are, under sharia, they can include flogging or the death penalty. If the evidentiary threshold is not met for these acts to be considered *hadd* crimes under sharia, the sentence is up to three years in prison.¹⁷¹

The draft law specifically criminalizes consensual sexual relations between two men with prison terms of three to seven years.¹⁷² Further, the draft law explicitly criminalizes such consensual sexual relations and classifies such consensual acts as “indecent assault (also understood as sexual assault).” The draft code stipulates that “whoever indecently assaults a person with consent, or consents to it”¹⁷³ and “anyone who conducts an illegitimate sexual relation”¹⁷⁴ can be punished by up to six months in prison or a fine of up to SAR 10,000 (around USD 2,700).

The draft code does not define vague terms such as “indecent assault” or “illegitimate sexual relation”, criminalizing consensual sex between adults, which is a violation of international legal standards in relation to the right to privacy, liberty and non-discrimination.¹⁷⁵ If the individuals accused of consensual sexual relations are of the same sex, the act would be considered an “aggravated circumstance”, which allows judges to issue harsher punishments, which the law does not specify and leaves up to the judges’ discretion.¹⁷⁶

The draft code’s conflation of sexual assault with consensual sexual relations places an additional burden on women and girls who have been raped or sexually assaulted and perpetuates impunity for their attackers. Those who attempt to press charges would risk punishment for “adultery” or “illegitimate sexual relations”. Similarly, criminalizing same-sex sexual conduct makes it impossible for lesbian, gay or bisexual people to report sexual and other violence against them because of the risk of arrest and prosecution.¹⁷⁷ Laws that prohibit same-sex sexual conduct do not simply criminalize acts of sex between consenting people, they enable the stigmatization, policing and punishment of people whose sexual orientation or gender identity do not conform to strict norms, regardless of their actual sexual behaviour.

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to ensure that any penal code adopted:

- excludes provisions that criminalize any consensual sexual relations between adults, including with a same sex partner;
- provides adequate protection from prosecution for victims of sexual violence;
- provides clear definitions of sexual and gender-based crimes, such as sexual assault, attempted rape and rape, in line with international standards, and providing for aggravating circumstances, including, but not limited to, the age of the victim and the relationship of the perpetrator to the victim; and
- provides for penalties commensurate with the gravity of the crime, without resort to corporal punishment or the death penalty.

Amnesty International calls on the Supreme Judicial Council to:

- order the immediate and unconditional release of anyone imprisoned solely for having consensual sexual relations, including with a same-sex partner; and
- train judges and prosecutors to understand the nature of sexual and gender-based violence and handle cases of such violence in a gender-sensitive and survivor-centred way to prevent re-traumatization of survivors; to address implicit bias in investigations, evidence collection and court proceedings; and to provide adequate protection from prosecution for victims of sexual violence.

¹⁷¹ Draft Penal Code, Article 185.

¹⁷² Draft Penal Code, Article 186.

¹⁷³ Draft Penal Code, Article 187.

¹⁷⁴ Draft Penal Code, Article 188.

¹⁷⁵ UN General Assembly, Report of the Independent Expert on Protection of Violence and Discrimination Based on Sexual Orientation and Gender Identity, Embrace Diversity and Energize Humanity, UN Doc. A/72/172, 2017, para. 32.

¹⁷⁶ Draft Penal Code, Article 187.

¹⁷⁷ Amnesty International, *Body politics: a primer on criminalization of sexuality and reproduction*, (Index: POL 40/7763/2018), 12 March 2018, <https://www.amnesty.org/en/documents/pol40/7763/2018/en/>

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8.2 PROHIBIT DISCRIMINATION BASED ON GENDER IDENTITY OR SEXUAL ORIENTATION

Although Saudi Arabia does not have codified laws that criminalize being a member of the LGBTI community or supporting LGBTI rights, individuals who do not conform to the dominant sexual and gender norms risk imprisonment and prosecution under Saudi Arabia's vague and overly broad public order and morality regulations as well as the cybercrime law.

Foreign nationals are particularly vulnerable because they risk deportation to their home countries, including countries with conflict situations such as Syria and Yemen, solely for their sexual orientation or gender identity.

Saudi Arabia's efforts to rebrand its image extend to claiming that LGBTI tourists are welcome. As part of this effort, authorities updated the Saudi Tourism Authority's website with an additional Frequently Asked Question: "Are LGBT visitors welcome to visit Saudi Arabia?" The answer states: "We don't ask anyone to disclose personal details and never have. Everyone is welcome to visit our country."¹⁷⁸

Despite such rhetoric, in September 2019, Saudi Arabia's Ministry of Interior approved public decency regulations identifying 19 punishable offences, including some that are vaguely defined and violate personal freedoms and are open to misinterpretation and abuse, such as "Indecent behaviour that includes any act of a sexual nature", which is punishable by a fine of SAR 3,000 (around USD 800) for a first-time violation and SAR 6,000 (USD 1,600) for a repeat violation. Another offence is "wearing improper clothing in public places," which is punishable by a fine of SAR 100 (USD 27) for a first-time violation and SAR 200 (USD 53) for a repeat violation.¹⁷⁹

Further, Amnesty International has documented cases of individuals who have been detained or threatened with deportation to their home countries solely for being members of the LGBTI community or expressing support for LGBTI rights.

MOHAMED AL-BOKARI

In April 2020, security forces arbitrarily arrested Yemeni national Mohamed al-Bokari, held him incommunicado for one month and tortured him to force him to "confess" that he is a "homosexual." On 20 July 2020, he was sentenced to 10 months in prison on charges of "perversion", "imitating women" and "disturbing public order" for sharing a video of himself saying: "Every person is free to do what they will, and gay people have rights. Every person has rights. I hope you leave gay people be and not intervene in their lives. Every person is free."¹⁸⁰

According to Saudi activist Tariq bin Aziz, who was detained between May 2021 and May 2022 in Khubar Prison in the Eastern Province, members of the LGBTI community are routinely targeted for their gender expression and support of LGBTI rights.¹⁸¹

¹⁷⁸ Al Monitor, "In a shift, Saudi Arabia to 'welcome' LGBTQ tourists", 1 May 2023, <https://www.al-monitor.com/originals/2023/05/shift-saudi-arabia-welcome-lgbtq-tourists>

¹⁷⁹ Arab News, "All you need to know about the new Saudi public decency code", 28 September 2019, <https://www.arabnews.com/node/1561206/saudi-arabia>

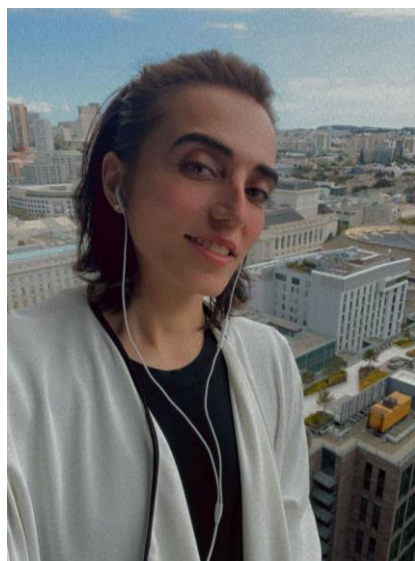
¹⁸⁰ Amnesty International, "Saudi Arabia: Yemeni LGBTQI+ Rights Defender Arrested: Mohamed al-Bokari", (Index: 23/2641/2020), 2 July 2020, <https://www.amnesty.org/en/documents/mde23/2641/2020/en/>

¹⁸¹ Interview by voice call with Tariq bin Aziz, a Saudi activist, 26 July 2023.

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TARIQ BIN AZIZ



←  Tariq bin Aziz © Private

On 6 July 2021, the Criminal Court in Dammam sentenced Tariq bin Aziz to one year in prison and a fine of SAR 10,000 (approximately USD 2,700) and ordered the confiscation of the two devices used in the “crime” and the closure of his Twitter account (@t_alaziz) under the anti-cybercrime law.

According to his court documents, which Amnesty International reviewed, Aziz was charged for producing, preparing and publishing what would allegedly prejudice public order, religious values and public morals online through his Twitter account, including by advocating for legislation to protect LGBTI rights.

His charges included denying the Qur’an and questioning it; contempt for the teachings of the Islamic religion, sharia and *hudud*; mocking the symbolism of the Saudi flag; and storing video clips and “perverted” pictures of him and other people on his phone, as well as on Twitter and Snapchat. Aziz’s charges – according to court documents which Amnesty International reviewed- cite his support of LGBTI rights, as well as his views against the death penalty and discrimination by Islamic clerics against members of the LGBTI community, criticism of child marriage, the appointment of judges based on religious background instead of merit and persecution of individuals by religious groups.

Aziz’s sentence was upheld by the Court of Appeals in Dammam on 17 September 2021. The appeals court justified upholding the conviction by quoting Aziz’s tweets in support of homosexuality, women’s rights, transgender people’s rights, children’s rights and human rights in general.

Bin Aziz, who was detained in relation to his public support of LGBTI rights, told Amnesty International:

“I was arrested by men in civilian clothing after I posted a video on Twitter about security officials telling me that the expression of my gender identity is a violation of public morals. Interrogators told me that I will get out if I cooperated with the interrogation, gave them my passwords and fingerprint on a paper with my tweets. I believed them, but later realised that I was deceived. After I had confirmed that the tweets they presented were mine, the interrogator told me ‘you have now given us your fingerprints, this is a confession’. While I [was] assigned my own lawyer, he was not allowed to enter my interrogations the first two times, and was not allowed to speak the third time. It’s as if I had no legal representation during my interrogations.”¹⁸²

Detaining someone on the basis of their sexual orientation constitutes arbitrary detention and is prohibited under international law. UN human rights bodies have repeatedly urged states to reform laws criminalizing homosexuality and same-sex sexual conduct and have welcomed the legislative or judicial repeal of such laws.¹⁸³

In its General Comment on Article 2, the UN Committee Against Torture states:

“[T]he protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties

¹⁸² Interview by voice call with Tariq bin Aziz, a Saudi activist, 26 July 2023.

¹⁸³ UN OHCHR, Concluding Observations of the Human Rights Committee, 28 November 2002, UN Doc. CCPR/CO/76/EGY, para. 19.

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must ensure that ... their laws are in practice applied to all persons, regardless of [among other characteristics,] ... gender, sexual orientation, [or] transgender identity.”¹⁸⁴

Forcing individuals to hide their sexual orientation or gender identity or to dress or express themselves in ways that do not reflect who they are compromises their freedom of expression. CEDAW obliges states to combat gender stereotypes by taking “all appropriate measures” to “modify the social and cultural patterns of conduct of men and women”.¹⁸⁵

The UN Committee on Economic, Social and Cultural Rights included both sexual orientation and gender identity as prohibited grounds of discrimination under the Covenant.¹⁸⁶

Here again, Saudi Arabia’s draft Penal Code fails to bring the country’s laws and practices in line with international standards. The draft law stipulates that committing “indecent behaviour” or “imitat[ing] another sex through his dress and appearance” is punishable by up to six months in prison and a fine of up to SAR 10,000 (around USD 2,700).¹⁸⁷

The draft law further considers that if this “indecent behaviour” is shared on the internet, it is considered an “aggravating circumstance”, which stipulates a harsher punishment – which is left to the judge’s discretion.

The draft law does not define what “indecent behaviour” entails, leaving a wide scope for the judge to define such behaviours and leaving people, including the LGBTI community or people who are perceived to be LGBTI, vulnerable to persecution and harassment for their gender expression.

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to:

- ensure that any penal code adopted does not criminalize individuals’ real or perceived expression of gender identity and sexual orientation, and removes all mentions of “perversion”, “indecent behaviour”, “imitating another sex” and other such terms as crimes, which has a negative impact on individuals’ human rights, particularly the rights to bodily autonomy and expression;
- immediately drop criminal charges, expunge resulting criminal records and unconditionally release all individuals who have been imprisoned on the grounds of their real or perceived sexual orientation, gender identity or expression; and
- put in place mechanisms to enable LGBTI individuals, civil society organizations and human rights defenders to participate fully, meaningfully and effectively in the design, decision-making, implementation and monitoring of laws and policies affecting their interests.

8.3 DECRIMINALIZE ABORTION

There is no absolute prohibition of abortion under sharia, and different interpretations in Islam permit abortion in particular circumstances (but only during the first trimester of pregnancy), including when the physical and mental health or life of a pregnant woman is in danger, as well as in situations of severe deformities and genetic diseases of the fetus.¹⁸⁸

According to Saudi academic Hala Aldosari, in practice women can seek abortions during the first trimester of a pregnancy, with the consent of the fetus’s father, to save the life of the pregnant woman or preserve a woman’s physical health. Women can also seek post-abortion medical care without being criminalized after undergoing abortions at home.¹⁸⁹

However, other laws that criminalize extra-marital sexual relations (see Section 8.1, Decriminalize Consensual Sexual Relations) pose serious obstacles to women seeking abortions. For example, women who

¹⁸⁴ UN Committee Against Torture (CAT), *General Comment 2: Implementation of Article 2 by States Parties*, 24 January 2008, UN Doc. CAT/C/GC/2.

¹⁸⁵ CEDAW, Article 5(a).

¹⁸⁶ UN Committee on Economic, Social and Cultural Rights, General comment 20, Non-discrimination in economic, social and cultural rights (art. 2, para.2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, UN Doc. E/C.12/GC/20.

¹⁸⁷ Draft Penal Code, Article 192.

¹⁸⁸ Interview by voice call with Hala Aldosari, Saudi academic, 1 August 2023

¹⁸⁹ Interview by voice call with Hala Aldosari (previously cited).. See also Shapiro, Gilla K. “Abortion Law in Muslim-Majority Countries: An Overview of the Islamic Discourse with Policy Implications.”, July 2014, *Health Policy and Planning*, Volume 29, Issue 4, 2014, pp. 483–94. <http://www.jstor.org/stable/45089293>

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became pregnant as a result of rape or in the context of consensual extra-marital relations risk being prosecuted for adultery if they seek an abortion. Foreign workers with irregular migration status also risk being detained arbitrarily in cramped and unsanitary conditions solely for their immigration status, and then deported if they go to a health clinic to seek an abortion.¹⁹⁰

Access to abortion is a human right and is key to protecting and upholding the full range of human rights of women and girls. The criminalization of abortion is a breach of a wide range of human rights and international standards, including the rights to life, health, privacy and freedom from discrimination and from torture and other ill-treatment. Under this framework, abortion is an integral component of sexual and reproductive healthcare, which is key to realizing individuals' reproductive autonomy and their full range of human rights.

According to the CEDAW Committee, the "failure of a state party to provide services and the criminalization of some services that only women require is a violation of women's reproductive rights and constitutes discrimination against them."¹⁹¹

The CEDAW Committee also called on states to fully decriminalize abortion and – at the very least – legalize it in cases of rape, incest, threats to the life and/or health of the mother or severe fetal impairment, stating:

"[V]iolations of women's sexual and reproductive health and rights, such as ... forced pregnancy, criminalization of abortion, denial or delay of safe abortion and post-abortion care, [and] forced continuation of pregnancy ... are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment."192

According to the World Health Organization:

"Evidence shows that restricting the right to abortion does not reduce the number of abortions; however, it does affect whether the abortions that women and girls [obtain] are safe and dignified. The proportion of unsafe abortions is significantly higher in countries with highly restrictive abortion laws than in countries with less restrictive laws."193

Moreover, according to the UN Special Rapporteur on the Right to Health, laws criminalizing abortion:

"[C]onsistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes ... Creation or maintenance of criminal laws with respect to abortion may amount to violations of the obligations of States to respect, protect and fulfil the right to health ... and generates new forms of stigmatization."194

Amnesty International recognizes the right of every woman or girl to abortion, provided in a manner that respects their rights, autonomy, dignity and needs in the context of their lived experiences, circumstances, aspirations and views.

Saudi Arabia's draft penal code would present a significant regression from current practices in Saudi Arabia. It criminalizes both undergoing an abortion and aiding in performing an abortion – with or without a medical reason – with prison terms and/or fines.

Under the draft penal code, a woman who undergoes – or allows another person to carry out – an abortion without a medical reason faces up to three years in prison and/or a fine of up to SAR 100,000 (around USD 27,000).¹⁹⁵ Further, aiding a pregnant woman in obtaining an abortion by providing her with medications or by using tools that lead to abortion is punishable by a prison term of up to three years and a fine of up to SAR 100,000. If a medical professional carries out an abortion without a medical reason, the punishment is increased to between two and five years and a fine of up to SAR 300,000 (USD 80,000).¹⁹⁶ Carrying out an abortion without the consent of the woman is considered an aggravated circumstance and

¹⁹⁰ Interview by voice call with Hala Aldosari (previously cited).

¹⁹¹ CEDAW Committee, "Statement of the Committee on the Elimination of Discrimination against Women on Sexual and Reproductive Health and Rights: Beyond 2014 ICPD review," 57th Session, 10-28 February 2014, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf>

¹⁹² UN CEDAW General Recommendation 35 (gender-based violence against women, updating General Recommendation 19), UN Doc. CEDAW/C/GC/35, 2017, para. 18.

¹⁹³ UN WHO, "Abortion", 25 November 2021, <https://www.who.int/news-room/fact-sheets/detail/abortion>

¹⁹⁴ UN General Assembly, "Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", 3 August 2011, UN Doc. A/66/254, paras 21, 34.

¹⁹⁵ Draft Penal Code, Article 131.

¹⁹⁶ Draft Penal Code, Article 130.

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the perpetrator faces a harsher penalty – which is not specified in the law and thus determined at the discretion of the judge. The draft Penal Code does not define any “medical reason(s)” under which abortions are permitted.

Hala Aldosari told Amnesty International:

“The criminalization of abortion under the draft Penal Code elevates the risks for the health and lives of women who undergo abortions at home or using unsafe methods and will discourage them from seeking medical attention. This would have disastrous consequences on women’s physical and mental well-being throughout their life”.¹⁹⁷

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to:

- ensure that any penal code adopted does not criminalize abortion and provides universal access to abortion, post-abortion care and evidence-based, non-biased abortion-related information, free of force, coercion, violence and discrimination;
- repeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the various actions and decisions of persons and that have a negative impact on their human rights, particularly their right to health;
- remove abortion from any criminal laws and ensure that criminal or other punitive laws, policies and practices are not applied to those seeking or obtaining an abortion or to healthcare providers and others solely for having performed abortions or assisted or facilitated abortion medication or services;
- immediately drop criminal charges, expunge resulting criminal records and release all individuals who have been imprisoned for having an abortion, miscarriage or another pregnancy-related complication or for having procured abortion medication; and
- put in place mechanisms to enable persons, civil society organizations and human rights defenders to participate fully, meaningfully and effectively in the design, decision-making, implementation and monitoring of laws and policies affecting their interests.

8.4 PROTECT AGAINST HUMAN TRAFFICKING

Saudi Arabia’s 2009 Anti-Trafficking in Persons Law defines trafficking in persons in line with the Palermo Protocol as the “use, recruitment, transportation, harbouring, or receipt of a person for the purpose of exploitation”¹⁹⁸ and criminalizes any act of trafficking, including sexual assault and forced labour.¹⁹⁹ The law prescribes punishments of up to 15 years’ imprisonment or a fine not exceeding SAR 1 million (around USD 266,000), or both.

Trafficking in persons is a serious crime under international law and must be punishable with “sanctions that take into account the gravity of that offence.”²⁰⁰ As such, a fine in lieu of imprisonment is not a proportionate punishment.

Article 15 of the anti-trafficking law includes protective measures for trafficked persons, including making them aware of their legal rights; admitting the victim to a medical, psychological or social rehabilitation centre if necessitated by their medical or psychological condition or age; admitting the victim to a specialized centre if they need shelter; and providing police protection for the victim if necessary. If the victim is a non-Saudi and there is a need for the victim to stay or work in the kingdom during investigation or prosecution, the public prosecution or competent court shall have the discretion to decide upon such matters.²⁰¹

According to the U.S. Department of State’s 2023 Trafficking in Person’s Report, Saudi Arabia does not fully meet the minimum standards for the elimination of trafficking. The report found that authorities “did not

¹⁹⁷ Interview by voice call with Hala Aldosari (previously cited).

¹⁹⁸ The Kingdom of Saudi Arabia, Anti-Trafficking in Persons Law, 2009, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/4e09c59d-f173-4971-8a38-a9a700f27025/1>, Article 1.

¹⁹⁹ The Kingdom of Saudi Arabia, Anti-Trafficking in Persons Law (previously cited), Article 2.

²⁰⁰ UN Convention Against Transnational Organized Crime, Article 11.

²⁰¹ The Kingdom of Saudi Arabia, Anti-Trafficking in Persons Law (previously cited), Article 15.

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consistently screen vulnerable populations for trafficking indicators, which may have resulted in the penalization of some victims for unlawful acts traffickers compelled them to commit, such as immigration or 'prostitution' violations".²⁰²

Amnesty International has documented cases of dozens of migrant workers who faced treatment that may amount to human trafficking for the purposes of labour exploitation. This includes employees who:

- were deceived by recruitment agencies in Saudi Arabia about the nature of their employer and the terms and conditions of their jobs before leaving their home countries;
- have had their wages withheld by third-party contractors;
- were housed in wholly inadequate accommodation; and
- were in some cases subject to verbal or physical abuse or threats thereof, particularly when they raised complaints about their living and working conditions.

Once these workers were terminated from engagement, third-party contractors often failed to find them alternative jobs and stopped paying them their contractual wage when they were rendered "jobless". Contractors also provided these workers with limited or no support and failed to give them the required documents to allow them to change jobs or leave the country, thereby restricting their freedom of movement and job mobility.²⁰³

Human trafficking is a grave human rights violation and states are obligated under international human rights and international criminal law to ensure that it is recognized as a criminal offence.²⁰⁴ States must investigate, prosecute and bring traffickers to justice and guarantee victims' access to justice and reparation, including all necessary levels of support. Victims are entitled to protection and remedies, regardless of their sex, nationality, health status, sexual orientation, gender identity, prior work history, willingness to contribute to prosecution efforts and/or other factors and should never be criminalized.

The Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the Office of the High Commissioner for Human Rights require that states consider "Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked".²⁰⁵

The draft Penal Code does not distinguish between sex work and human trafficking, failing to protect victims of human trafficking for the purposes of sexual exploitation and subjecting them to criminal charges.

The draft Penal Code criminalizes sex work and defines prostitution as "intercourse with another person for monetary gain."²⁰⁶ Criminalizing sex work is incompatible with the human right to personal autonomy and privacy, and it exposes sex workers to abuse, coercion and exploitation. In addition, the criminalization of sex work often results in impunity for abusers because sex workers may fear prosecution if they reported crimes or abuses to the police.

The draft code also criminalizes "inciting, luring or seducing a person by any means to prostitution."²⁰⁷ "Inciting to prostitution" in a public place is punishable by a prison term of between two and five years and a fine of up to SAR 300,000 (around USD 80,000); doing so through the internet is considered an "aggravated circumstance."²⁰⁸ The penalties for inciting to prostitution are also increased if the perpetrator is a civil servant who used their position to commit this crime; if the incitement is against the victim's consent; or if the victim was a child, a blood relative, or someone who the perpetrator is responsible for or has power over. In those cases, the draft code stipulates prison terms ranging between seven and 15 years and a fine of up to SAR 1 million (USD 266,000).

²⁰² U.S. Department of State, 2023 Trafficking in Persons Report: Saudi Arabia, <https://www.state.gov/reports/2023-trafficking-in-persons-report/saudi-arabia/> (accessed 4 October 2023).

²⁰³ Amnesty International, *Saudi Arabia: 'Don't worry, it's a branch of Amazon': Exploitation of migrant workers contracted to Amazon in Saudi Arabia* (Index: MDE 23/7229/2023), 10 October 2023, <https://www.amnesty.org/en/documents/mde23/7229/2023/en/>

²⁰⁴ Amnesty International, *Body politics: a primer on criminalization of sexuality and reproduction* (previously cited).

²⁰⁵ UN OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, OHCHR, 2002, p. 3, <https://www.ohchr.org/sites/default/files/Documents/Publications/Traffickingen.pdf>

²⁰⁶ Draft Penal Code, Article 193.

²⁰⁷ Draft Penal Code, Article 195 (2).

²⁰⁸ Draft Penal Code, Article 194.

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RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to ensure that any penal code adopted:

- addresses harm to sex workers, including through clearly defined prohibitions on acts of coercion or exploitation, such as compelling a person to sell sex (including through the abuse of authority); such laws should not be applied in a way that conflates all sex work with violence and/or exploitation or that acts as a de facto prohibition on sex work;
- distinguishes between human trafficking for the purposes of sexual exploitation and consensual sex work between adults;
- repeals existing laws and refrains from introducing new laws that criminalize or penalize directly or in practice the various actions and decisions of persons and that have a negative impact on their human rights; and
- repeals existing laws and refrains from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration.

9. PROTECT WOMEN AND GIRLS FROM GENDER-BASED VIOLENCE

9.1 ABOLISH EXEMPTION FROM PROSECUTION FOR “HONOUR” CRIMES

Women and girls face discrimination in law and practice in Saudi Arabia, and domestic legislation does not adequately protect them from gender-based violence.

Gender-based violence against women in the name of patriarchal notions of “honour” (so called “honour crimes”) are acts of violence “disproportionately, though not exclusively, committed against girls and women, because family members consider that certain suspected, perceived or actual behaviour will bring dishonour to the family or community.”²⁰⁹ Such acts of violence can range from domestic abuse to killing in the name of “honour”.

There are no reliable statistics about the prevalence of so-called “honour” crimes in Saudi Arabia, and such crimes are often not properly categorized as gender-based violence against women.

In recent years, individuals have taken to social media to report “honour” killings and demand justice. In January 2021, a hashtag calling to #SaveManalSisterofQamar circulated widely on Twitter following the murder of Qamar, a 26-year-old woman. Days before Qamar’s murder, her sister, Manal, said on social media that her two brothers planned to kill her sister after she set up an account on Snapchat. Days later, Qamar’s body was found in the desert and the police department of Riyadh Province announced the arrest of two male suspects.²¹⁰ Authorities reportedly arrested Manal, confiscated her phone and interrogated her about her tweets, according to activists.²¹¹ Social media users started the hashtag #SaveManalSisterofQamar over fears for Manal’s safety.

Under international law, culture, custom, religion, tradition or so-called “honour” cannot ever be considered a justification for any act of violence against women.²¹² According to the CEDAW Committee and the CRC Committee, such an exemption is a harmful practice that “allows for the defence of honour to be presented

²⁰⁹ Joint general recommendation/General Comment 31 of the CEDAW/general comment 18 of the CRC on harmful practices, 14 November 2014, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, para. 29.

²¹⁰ Middle East Eye, “MBS, they killed my daughter: Outcry after missing woman found dead in Saudi desert, 26 January 2021, <https://www.middleeasteye.net/news/saudi-arabia-woman-killed-desert-snapchat>

²¹¹ Lina Alhathloul, Twitter [X] post: “Update !! They have arrested and imprisoned the sister Manal because she tweeted about the murder of her sister Qamar by their brothers. The mother crying and begging for help”, 27 January 2021, <https://twitter.com/LinaAlhathloul/status/1354311566238355459>

²¹² The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Article 12 (5).

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as an exculpatory or a mitigating circumstance for perpetrators of such crimes, resulting in reduced sanctions or impunity.”²¹³

Contrary to Saudi Arabia’s obligations under the CEDAW and CRC,²¹⁴ which contain legally binding obligations for Saudi Arabia to eliminate such harmful practices, the draft Penal Code justifies gender-based violence against women in the name of patriarchal notions of “honour”.

The draft code protects the perpetrators of abuse and killings of women and girls by exempting individuals from criminal investigations if they committed crimes, including assault or killing, to protect their or another person’s “honour”.²¹⁵

According to Saudi academic Hala Aldosari:

“[T]he cycle of violence perpetuated by crimes in the name of ‘honour’ won’t stop as long as our legislative framework continues to codify patriarchal norms to justify impunity in violence against women. As long as crimes in the name of ‘honour’ are exempted from criminal investigations, there will be no deterrence for such crimes.”²¹⁶

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to:

- ensure that any penal code adopted does not exempt individuals from criminal investigations or provide for any mitigating circumstances if they committed a crime to protect their or another person’s so-called “honour”;
- hold perpetrators of so-called “honour” crimes accountable in fair trials, with the punishment being commensurate with the gravity of the crime, without resorting to the death penalty; and
- ensure that survivors of sexual and gender-based violence are systematically given information about psycho-social support, legal aid and judicial remedies at health facilities and police stations, and that they are referred to such services when needed.

9.2 PROTECT AGAINST DOMESTIC VIOLENCE AND MARITAL RAPE

Existing legislation, such as the Law of Protection from Abuse and the newly enacted Family Law, include provisions that place women at risk of exploitation and abuse and do not adequately protect them from domestic violence or marital rape, which Saudi laws do not criminalize.²¹⁷

The 2013 Law of Protection from Abuse defines abuse as:

“all forms of exploitation, or bodily, psychological, or sexual abuse, or threat of it, committed by one person against another, bypassing the boundaries over whom [that person] has guardianship, power, responsibility or family or other dependency relationship. The abuse includes the refusal or failure of a person to fulfil their duties or obligations in providing the basic needs of another person from their family or for whom they are legally responsible.”²¹⁸

The law stipulates a punishment of between one month and one year of imprisonment and/or a fine of SAR 5,000–50,000 (around USD 1,333–13,330) for anyone who commits an act of abuse as defined in Article 1.²¹⁹

²¹³ Joint general recommendation/General Comment 31 of the CEDAW/general comment 18 of the CRC on harmful practices (previously cited), para. 29.

²¹⁴ Joint general recommendation/General Comment 31 of the CEDAW/general comment 18 of the CRC on harmful practices (previously cited).

²¹⁵ Draft Penal Code, Article 68.

²¹⁶ Interview by voice call with Hala Aldosari (previously cited).

²¹⁷ Amnesty International, “Saudi Arabia: New Personal Status Law Codifies Discrimination Against Women” (previously cited).

²¹⁸ The Kingdom of Saudi Arabia, Law of Protection from Abuse, 2013, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/83f450eb-7985-461f-b053-a9a700f2ba08/1>, Article 1.

²¹⁹ The Kingdom of Saudi Arabia, Law of Protection from Abuse (previously cited), Article 13.

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The Law of Protection from Abuse introduces a flawed definition of abuse, situating it within the male guardianship system, assuming that bodily, psychological or sexual abuse or exploitation can happen only in relationships where the perpetrator has a legal obligation or other dependency relationship with the victim.

Since 2019, Saudi Arabia has been introducing some women's rights reforms, including eliminating major restrictions imposed on women through the male guardianship system, which placed every Saudi woman and girl, regardless of age, under the authority of a male relative, commonly her father or husband, and gave that guardian the power to make decisions on her behalf. However, while these reforms have had some positive impact on women's rights and their freedom of movement, they did not entirely eliminate the male guardianship system.

The implementing regulations of the Law of Protection from Abuse stipulate that the Social Protection Centre must report an incident of abuse to the police and public prosecutor if the centre determines that an abuse incident amounts to a criminal act. The law also allows the court to impose alternative non-custodial punishments, without stipulating any guidelines for when these alternatives should be imposed.

Saudi Arabia's Family Law, which came into effect in June 2022, does not resolve gaps in the 2013 Law of Protection from Abuse. According to Amnesty International's analysis of the law, women still require the consent of their male legal guardian to get married. During marriage, a woman is expected to "obey" her husband, and her right to financial support, such as food and accommodation, from her husband during marriage is conditional on her "submit[ting] herself"²²⁰ to him and may be denied if she, among other things, "refuses herself to her husband ... without a legitimate reason."²²¹ The Family Law fails to define "legitimate reason." Such provisions place women at risk of exploitation and abuse, including marital rape. The law also limits the ability of women to end abusive marriages. In addition, the male guardianship system, which the Family Law does not abolish, enables abuse.²²²

Research conducted in public healthcare centres across Saudi Arabia shows that domestic violence is endemic in the country despite the authorities' lack of reliable reporting.²²³ Statistics gathered in several studies indicate that at least one-third of Saudi women are victims of domestic violence.²²⁴

According to a UN expert who examined Saudi Arabia's periodic reports on the implementation of the provisions of CEDAW, data on violence against women is lacking, including the number of cases of domestic violence reported to courts.²²⁵

In relation to gender-based violence against women in Saudi Arabia, the CEDAW Committee noted with concern, among other issues:

- "The prevalence of gender-based violence against women, in particular domestic and sexual violence, which remains largely under-reported and undocumented;
- the non-criminalization of rape, including marital rape, sexual assault, sexual harassment and economic violence, in the Law on Protection from Abuse;
- the absence of comprehensive legislation to criminalize all forms of gender-based violence against women;
- that male relatives may bring legal claims against "disobedient" female dependants who flee domestic violence;
- the low rates of prosecution and conviction and the lenient penalties imposed on perpetrators of gender-based violence against women;
- the frequent recourse to reconciliation in cases of domestic violence, leading to revictimization, and the frequent forceful return by law enforcement officials of fleeing women to their abusers; and

²²⁰ The Kingdom of Saudi Arabia, Family Law, 2022, <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/4d72d829-947b-45d5-b9b5-ae5800d6bac2/1>, Article 51.

²²¹ The Kingdom of Saudi Arabia, Family Law (previously cited), Article 55.

²²² Amnesty International, "Saudi Arabia: New Personal Status Law Codifies Discrimination Against Women" (previously cited).

²²³ Kazzaz YM, AlAmeer KM, AlAhmari RA, Househ M, El-Metwally A. "The epidemiology of domestic violence in Saudi Arabia: a systematic review", November 2019, *Int J Public Health*, Volume 64(8):1223-1232, <https://pubmed.ncbi.nlm.nih.gov/31628522/>

²²⁴ Wali, R., Khalil, A., Alattas, R. et al. "Prevalence and risk factors of domestic violence in women attending the National Guard Primary Health Care Centers in the Western Region, Saudi Arabia, 2018", 17 February 2020, *BMC Public Health*, Volume 20, <https://doi.org/10.1186/s12889-020-8156-4>

²²⁵ UN OHCHR, "Committee on the Elimination of Discrimination against Women examines Saudi Arabia's report", 27 February 2018, <https://www.ohchr.org/en/press-releases/2018/02/committee-elimination-discrimination-against-women-examines-saudi-arabias>

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- the lack of support services for women who are victims of gender-based violence and the fact that they are not allowed to leave State-run shelters without their male guardian's consent."²²⁶

General Recommendation 35 of the CEDAW on gender-based violence against women requires states parties to “ensure that the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances”.²²⁷

Despite the prevalence of domestic violence against women, the draft Penal Code does not address domestic violence or adequately protect women and girls from all forms of gender-based violence.

The draft code defines rape as “intercourse with another person without their consent, and intercourse being an obscene act by penetration.”²²⁸ The draft law does not explicitly recognize marital rape as a crime and includes penetration as a requirement to prove a rape. Moreover, vaguely describing rape as “an obscene act” presents the risk of the law being used to criminalize other conduct such as consensual sexual relations, including same-sex relationships.

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to:

- ensure that the definition of rape in any penal code adopted is consent-based, does not require penetration or proof of physical resistance, and explicitly recognizes and includes marital rape as a crime;
- amend the Law on Protection from Abuse to revise the definition of abuse to prohibit all forms of mental, physical, verbal and sexual violence against women and girls and ensure that the definition of rape is consent-based and explicitly criminalizes marital rape;
- ensure that authorities have a robust confidential reporting mechanism for survivors to report domestic violence and abuse and to seek redress and access to shelter and basic services without fear of reprisal; and
- amend the Family Law to strike out provisions that include problematic and stereotypical gender roles that require wives to “obey” and “submit themselves” to their husbands, such as in Articles 42(5), 51 and 55, and give women rights equal to those of men to end their marriages, including in situations of abuse.

9.3 ADEQUATELY PROTECT WOMEN AND GIRLS FROM HARRASMENT

Saudi Arabia's 2018 Anti-Harassment Law defines a harasser as: “Anyone who has done or said anything indicative of sexual suggestiveness by an individual that intrudes another's body or dignity, or that infringes on their modesty through any means, including through modern technological means.”²²⁹ In January 2021, the Council of Ministers approved an amendment to the anti-harassment law allowing for publicizing the names of individuals convicted of harassment in local newspapers.²³⁰

The overly broad and vague definition of harassment as an act indicative of sexual suggestiveness could criminalize consensual speech or acts such as flirting, including on social media or private messaging apps. In addition, this definition enables the discriminatory application of this law against women and LGBTI people. As a result of the overly broad definition, media commentators and lawyers have provided vague interpretations of what would amount to harassment to the Saudi public, including “asking for someone's social media account”.²³¹

²²⁶ CEDAW, Concluding observations on the combined third and fourth periodic reports of Saudi Arabia, 14 March 2018, UN Doc. CEDAW/C/SAU/3-4, para. 31.

²²⁷ CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (previously cited), para. 29 (e).

²²⁸ Draft Penal Code, Article 181-182.

²²⁹ Draft Penal Code, Article 189.

²³⁰ Okaz, “مجلس الوزراء: التشهير بالمتحرش في الصحف على نفقة المحكوم عليه” [“Council of Ministers: Defamation of the harasser in newspapers is at the expense of the convict” 12 January 2021, <https://www.okaz.com.sa/news/local/2054628> (in Arabic)].

²³¹ Eman Alhussein, “Saudi Arabia Walks the Line With Social Opening and Curbing Harassment”, 20 January 2022, The Arab Gulf States Institute in Washington, <https://agsiw.org/saudi-arabia-walks-the-line-with-social-opening-and-curbing-harassment/>

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The definition also fails to include an element of unwanted conduct in defining harassment. The Istanbul Convention on Violence Against Women defines sexual harassment as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”.²³²

The draft Penal Code adopts the definition of harassment included in the 2018 law and fails to remedy the problems of that law. The punishment for harassment is a prison term of up to three years and/or a fine of up to SAR 100,000 (around USD 27,000).

Members of the LGBTI community would face harsher punishments under the draft law because it includes “individuals from the same gender”²³³ as an “aggravated circumstance”.

Other “aggravated circumstances” stipulating harsher punishments include the victim being a child or having special needs, the perpetrator having direct or indirect authority over the victim, or the victim being asleep or unconscious.²³⁴ Here again, the draft code does not identify what these harsher punishments are, leaving it up to the judge’s discretion.

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to:

- amend the definition of harassment in the draft Penal Code and 2018 Anti-Harassment Law in line with the Istanbul Convention on Violence Against Women; and
- remove “individuals from the same gender” as an aggravated circumstance from any penal code adopted.

²³² Istanbul Convention, Article 40.

²³³ Draft Penal Code, Article 190(5).

²³⁴ Draft Penal Code, Article 190.

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10. ELIMINATE DISCRIMINATION ON THE BASIS OF NATIONALITY

While Saudi authorities have stated that racial discrimination is prohibited in Saudi Arabia and that it is considered an aggravated circumstance for crimes,²³⁵ there is no legislation criminalizing discrimination on any ground, including on the basis of race, colour, descent, national or ethnic origin, gender, sexual orientation or gender identity.

In March 2021, the *Saudi Gazette* reported that the Ministry of Human Resources and Social Development was working on “a national anti-discrimination policy that will be adopted in the near future” and stressed that “citizens have equal rights to work without discrimination on the basis of gender or any other forms of discrimination.”²³⁶ This policy has yet to be adopted.

Saudi Arabia’s Basic Law of Governance guarantees equality “in accordance with the Islamic Shari’ah,”²³⁷ which does not prohibit discrimination based on sex or gender in line with the country’s obligations under CEDAW.

The Family Law, enacted in March 2022, codifies discrimination against women in all aspects of family life. Only men can be legal guardians under this law, and women must have a male guardian’s permission to marry and are then obliged to obey their husband. Only men can initiate divorce without any conditions, while women face legal, financial and practical barriers when seeking dissolution of their marriage. In addition, the Family Law codifies discrimination between men and women in inheritance, giving men a much larger share of assets than women.²³⁸

Saudi Arabia is a state party to the International Convention on the Elimination of All Forms of Racial Discrimination. In 2018, the Committee on the Elimination of Racial Discrimination stated in its report on Saudi Arabia that “the general principles of non-discrimination, equality and justice were not sufficient to fight or prevent racial discrimination” and suggested that the country adopt a definition of discrimination in line with the convention, adding that there was no law on acts of discrimination.²³⁹

Additionally, CEDAW requires that states parties pursue a policy of eliminating discrimination against women and ensuring equality of men and women, including taking “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”²⁴⁰

CEDAW also requires that states parties take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and to ensure that men and women have the

²³⁵ OHCHR, “Committee on the Elimination of Racial Discrimination examines the report of Saudi Arabia”, 27 April 2018, <https://www.ohchr.org/en/press-releases/2018/04/committee-elimination-racial-discrimination-examines-report-saudi-arabia>

²³⁶ Saudi Gazette, “Saudi Arabia to adopt anti-discrimination policy soon”, 10 March 2021, <https://saudigazette.com.sa/article/604318>

²³⁷ The Kingdom of Saudi Arabia, Basic Law of Governance (previously cited), Article 8.

²³⁸ Amnesty International, “Saudi Arabia: New Personal Status Law Codifies Discrimination Against Women” (previously cited).

²³⁹ OHCHR, “Committee on the Elimination of Racial Discrimination examines the report of Saudi Arabia” (previously cited).

²⁴⁰ CEDAW, Article 2 (f).

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same right to freely choose a spouse and to enter into marriage only with their free and full consent. In 2018, the CEDAW Committee called on Saudi Arabia to remove “discriminatory provisions regulating legal capacity, polygamy, divorce, the guardianship system and inheritance” from its laws.²⁴¹

The draft code criminalizes hate speech and speech promoting racial superiority. Racial superiority is defined in the draft code as: “the preference of one person over another, or a sect, class or group over another on the basis of race, colour, descent, national or ethnic origin.”²⁴²

The definition of hate speech is in line with the CERD Committee’s recommendation to “ensure that the draft law on hate speech included the notion of racial hatred”. However, the draft law introduces a flawed definition of discrimination, which does not consider the “exception, restriction, preference or distinction” between Saudi nationals and others as discrimination if it does not target a specific nationality.²⁴³ This enables individual and institutional discrimination between Saudi citizens and all other foreign nationals.

RECOMMENDATIONS

Amnesty International calls on the Council of Ministers to:

- ensure that any penal code adopted prohibits discrimination on any basis, including sex and gender, and adopts a definition of discrimination in line with the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of Discrimination Against Women; and
- amend the Family Law to ensure that:
 - the law does not discriminate against women, including by codifying patriarchal and stereotypical gender roles;
 - women and men have equal access to divorce;
 - the law does not place disproportionate financial burdens on women that can further limit their ability to end their marriage, including by ensuring that women’s non-financial contributions during marriage are recognized and accounted for in post-marriage financial agreements;
 - men and women have equal rights and responsibilities with regards to guardianship of their children, and that the best interests of the child are prioritized when making any decisions about custody; and
 - men and women have equal inheritance rights.

²⁴¹ CEDAW, Concluding Observations: Saudi Arabia (previously cited), para. 64 (a).

²⁴² Draft Penal Code, Article 218.

²⁴³ Draft Penal Code, Article 217.

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11. CONCLUSION AND RECOMMENDATIONS

The draft penal code analysed by Amnesty International - in the form that was leaked in July 2022 – fails to protect and uphold human rights and gives lie to the authorities' claims that promised legislative reforms are “meant to preserve rights, bolster the principles of justice, enforce transparency, protect human rights.” Instead, the draft codifies and entrenches existing repressive judicial practices that violate Saudi Arabia's stated commitments to advance rights and respect its obligations under international law.

As this analysis shows, the draft penal code is yet another example of how the narrative of reform and modernization that Saudi Arabia is projecting to the world stands in stark contrast to the reality of the human rights situation in the country.

The codification of Saudi Arabia's first penal code is a long overdue step and important opportunity to define crimes and punishments in line with international law and standards, and reform repressive legislation and practices. If the Saudi authorities truly wish to engage in a transformative process, they must conduct meaningful consultations with independent civil society and amend the draft penal code in line with their international obligations prior to its adoption.

Further, the Saudi authorities must end the widespread crackdown on freedom of expression resulting in decades-long prison terms, use of torture and other ill-treatment and widespread use of the death penalty following grossly unfair trials. Such repressive practices emanate from existing flawed legislation such as the counter-terror law and anti-cybercrime law that criminalize acts protected under international law and enable the widespread use of the death penalty for a range of crimes.

In addition to the recommendations for reform shared in each chapter of this report related to the specific chapters of the draft penal code, Amnesty International addresses the following recommendations to:

PRIME MINISTER AND CROWN PRINCE MOHAMMED BIN SALMAN

- Ensure that the Council of Ministers:
 - o conducts meaningful consultation with civil society on the draft Penal Code and considers the input of independent experts and academics prior to its adoption;
 - o ratifies without reservations the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; and
 - o lifts the reservations made to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention Against Torture and Convention on the Rights of the Child that violate the object and purpose of the treaty and limit the enjoyment of rights enshrined in it.

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SAUDI ARABIA'S STRATEGIC ALLIES, INCLUDING THE USA, UK AND EU MEMBER STATES AND THE EU

- Urge the Saudi authorities to fully respect and observe international human rights law and standards, particularly in relation to its use of the death penalty, crackdown on freedom of expression, association and assembly and rights to bodily autonomy.
- Urge the Saudi authorities to amend the draft Penal Code to bring it into full conformity with international law and standards.

THE EUROPEAN UNION

- Ensure that the fourth EU-Saudi Arabia human rights dialogue includes clear objectives, specific benchmarks and human rights indicators to measure progress, as outlined in the EU Guidelines on human rights dialogues. The objectives of the dialogue should be guided by priorities identified in consultation with Saudi Arabian human rights defenders.

UN HUMAN RIGHTS COUNCIL

- Adopt a resolution to set up a monitoring mechanism of the human rights situation in Saudi Arabia. Such a mechanism should have a mandate broad enough to cover the situation of freedom of expression, association and assembly, human rights defenders, as well as efforts to repress civil society in the country, including through repressive laws and tools of the justice system such as the SCC.

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Crown Prince Mohammad bin Salman vowed to reform Saudi Arabia under his flagship “Vision 2030” agenda into “a thriving country in which all citizens can fulfil their dreams, hopes and ambitions.” Amongst these reforms is the country’s first ever penal code that the Crown Prince said would comply with international law and “protect human rights.”

Amnesty International’s analysis of an alleged leaked draft of the penal code shows how it codifies existing repressive practices that have allowed for the imprisonment of dissidents, as well as inhumane practices such as the death penalty. The draft code criminalizes acts of speech that are protected under international law, “illegitimate” consensual sexual relations, homosexuality and abortion, and it fails to protect women and girls from all forms of gender-based violence.

The Saudi authorities should seize this opportunity to transform the abusive criminal justice system into one that respects human rights, rather than issuing a penal code that is essentially a manifesto for repression. Amnesty International urges Saudi authorities to amend the draft penal code in line with the country’s international obligations before the code’s adoption.