

Defying World Trends - Saudi Arabia's extensive use of capital punishment ¹

While the news of the execution of Timothy McVeigh in the United States of America travelled to every corner of the globe, with the minute details of how his life was destroyed, the world barely noticed that at least eight people were put to death in Saudi Arabia during the seven days just before and after his execution. This brought the number of people executed in Saudi Arabia to at least 78 in the first nine months of this year, and edged the total over the last decade to almost 1,000.² These figures beg the question as to why Saudi Arabia, with a population of some 19 million, has a yearly average of 100 executions, at a time when the number of countries which have abolished the death penalty in law or practice has increased to 109 in all regions and legal systems in the world. The defiance of this trend is sustained by a mixture of legal, judicial and political factors, whose redress requires a strong political will from the Saudi Arabian government together with a consistent concern and assistance by the international community.

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, in her report to the UN Commission on Human Rights in 2001, outlined the international human rights standards relevant to the application of the death penalty. These include the prohibition of the application of the death penalty against children under the age of eighteen at the time of the crime being committed, the recommendation not to implement the death penalty on persons suffering from mental retardation or extremely limited mental competence, the prohibition of the death penalty for crimes that are not intentional with lethal or other extremely grave consequences, or for any offences other than the most serious crimes. She emphasised that "It is imperative that legal proceedings in relation to capital offences conform to the highest standards of impartiality, competence, objectivity and independence of the judiciary, in accordance with the pertinent international legal instruments. In that context, defendants facing the death penalty must fully benefit from the right to adequate legal counsel at every stage of the proceedings and shall be presumed innocent until their guilt has been proved beyond reasonable doubt. The legal proceedings must, in all cases, respect and ensure the right of review of both the factual and legal aspects of the case by a higher instance."³

I. Legal and Judicial factors

¹ Based on a paper compiled by Amnesty International for the 1st World Congress Against the Death Penalty, 21-23 June 2001 - Strasbourg.

² Executions carried out in Saudi Arabia recorded by Amnesty International by end of September 2001.

³ Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2000/31, UN Doc. E/CN.4/2001/9, paras 76-78, 82, 83, 86, and 88

The extensive use of the death penalty in Saudi Arabia is primarily perpetuated by legal and judicial factors. These include an extremely wide range of capital offences, secret and summary criminal judicial processes, and discriminatory practices disadvantageous to foreign workers and women.

1.1 Wide range of capital offences

The scope for the use of the death penalty in Saudi Arabia is extremely wide both in terms of offences and offenders.

With regard to the nature of offences, these are so wide-ranging that it is hard to draw the line between morality and criminality. These offences are regulated by a mixture of *Shari'a* (Islamic law) rules and government legislated laws, most of which are extremely vague and therefore open to abuse. *Shari'a* based rules providing for the use of the death penalty are *Qisas* (retribution), *Hudud* (fixed punishments), and *Ta'zir* (discretionary punishments for offences that have no fixed punishment under *Hudud* or *Qisas*).

Under *Qisas*, the death penalty is prescribed for murder, but relatives of the murder victims are invested with the right to decide if the offender should be executed or pardoned, with or without compensation, in which case the death penalty is dropped. It should, however, be noted that while all Islamic schools of jurisprudence agree on the death penalty for intentional murder, they differ on what actually constitutes intentional murder, and whether quasi-intentional murder should also receive the same punishment, or merely compensation.⁴

The death penalty under *Hudud* is invoked in at least three instances: for adulterers where the sentence is carried out by stoning, for apostasy, and for highway robbery when the offence results in loss of life, according to the majority of Islamic jurists. However, in Saudi Arabia people have been executed for this offence even when it did not result in lethal consequences.

Government legislation includes at least two vaguely worded laws, one relating to drug offences based on *Fatwa* (a religious edict) No. 138 issued by the Council of Senior 'Ulama and approved by the government in March 1987, and the other on sabotage and "corruption on earth" based on *Fatwa* No. 148 issued in August 1988.

The law on drug offences made the death penalty mandatory for drug smugglers, importers as well as recidivist distributors.⁵ It contains no definition of "drugs" or any limitation of the death penalty to a particular substance.

⁴ See J.N.D Anderson "Homicide in Islamic Law", Bulletin of the School of Oriental and African Studies, London 1951.

⁵ See the Arabic daily al-Jazeera of 11 March 1987.

The law on sabotage and corruption on earth states that the death penalty will be imposed on:

*“Anyone proved to have carried out acts of sabotage and corruption on earth which undermines security by aggression against persons and private or public property such as the destruction of homes, mosques, schools, hospitals, factories, bridges, ammunition dumps, water storage tanks, resources of the treasury such as oil pipelines, the hijacking and blowing up of air planes, and so on...”*⁶

The use of the term “corruption on earth”, in the absence of any clear definition, leaves the door open for the death penalty to be invoked even when offences do not result in lethal consequences.

The provision of the death penalty can be extended further under *Ta‘zir*. If an act escapes the net of the death penalty under all the above rules, the death penalty can be invoked by the judge under *Ta‘zir* on the grounds of the severity of the act, or the character of the offender. Examples of this include the execution of people for practising magic or witchcraft. As recently as 28 February 2000, Hassan bin ‘Awad al-Zubair, a Sudanese national, was beheaded in Riyadh after being convicted of “*magic, charlatanism and sorcery*”.

As regards offenders, Saudi Arabia does not have unequivocal safeguards preventing the use of the death penalty against particular categories of society such as children and the mentally ill. Children under the age of eighteen should be protected from the death penalty, because Saudi Arabia is a state party to the UN Convention on the Rights of the Child (CRC). The United Nations safeguards guaranteeing the protection of the rights of those facing the death penalty prohibits the carrying out of the death penalty against persons who have become insane. This Safeguard also prohibits the death penalty being carried out on persons who were below the age of eighteen when they committed the crime. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions notes that Saudi Arabia is one of six countries which were reported to have executed persons who were under the age of eighteen at the time of the crime being committed.⁷ After that report, the Special Rapporteur wrote to the six governments, requesting information about their current laws and practice in regard to the use of the death penalty for juvenile offenders. However, Saudi Arabia did not respond to this request by the time the new report of the Special Rapporteur was published.⁸ In practice, however, a number of children have been sentenced to death after Saudi Arabia acceded to the Convention in 1996. Death sentences were

⁶ For full text of the Fatwa see for example the Arabic daily al-Jazeera of 30 August 1988.

⁷ Report of the special rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/35, E/CN.4/2000/3, cited in E/CN.4/2001/9, para 81

⁸ “The Special Rapporteur takes action in cases of capital punishment in which there is no reason to believe that international restrictions...[on the death penalty] are not respected” E/CN.4/2001/9, paragraph 77. Also see E/CN.4/2000/9 paragraph 81

reported to have been imposed on two children aged 14 and 16. A 16-year-old boy was reportedly convicted on murder charges and sentenced to death in 1996, after the Convention came into force in Saudi Arabia. According to Saudi Arabian press reports, he was saved from execution only because his mother paid blood money, 500,000 SR (approx US\$135,000) to the relatives of the murder victim. A 14-year old boy was reportedly detained in 1997 in Dammam in connection with the murder of an Egyptian woman and her 13-year old daughter. Saudi Arabian newspapers reported that police sources had disclosed that the boy had ‘confessed’ to the crime, that his confession was video-recorded by police, and that he was expected to face the death penalty. Amnesty International sought clarification from the government of both these cases, but received no response. The Committee on the Rights of the Child has recommended that the Saudi Arabian government “take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons under eighteen”⁹

As mentioned above, Safeguard 3 of the United Nations safeguards guaranteeing the protection of the rights of those facing the death penalty prohibits the carrying out of the death penalty against persons who have become insane. Additionally, it is important to note that under *Shari‘a* rules, insane persons cannot be held criminally responsible. However, an Indonesian domestic worker who is said to be psychologically ill is currently detained in Saudi Arabia on charges of murder. Sit Zainab binti Duhri Rupa, a 33-year-old Indonesian domestic worker and mother of two children, has been held in custody in Medina since September 1999 on charges of murdering her female employer. She was arrested in September 1999 and has apparently admitted to having fatally stabbed her employer 18 times. She is reported to be psychologically ill, and to have “confessed” to the crime during police interrogation. She has not been allowed to see an Indonesian diplomatic representative, have access to a lawyer or to receive visits from family or friends. Amnesty International has been seeking clarification of her legal status and her state of health but has received no response from the Saudi Arabian authorities. Adding together the range of offences and offenders liable for punishment by the death penalty renders the scope for the use of such punishment almost limitless.

1.2 Secret and summary criminal judicial process¹⁰

In an important new development, the first code of criminal procedure was issued in October 2001 by the Council of Ministers, according to official announcements. The text had not been made public at the time of writing this report.

The Council’s Secretary General, Dr Hamoud Ibn ‘Abdul ‘Aziz Al Badr, was quoted as saying that the bill covered directives to be followed by justice enforcement authorities at all

⁹ Concluding observations of the Committee on the Rights of the Child : Saudi Arabia (26/01/2001) UN Doc CRC/C/15/Add.148, para 27.

¹⁰ For further discussion about the secrecy of the justice system in Saudi Arabia and how it violates international human rights standards, see “Saudi Arabia - A justice system without justice” AI Index MDE 23/02/00, 10 May 2000.

stages of arrest, investigation, trial and enforcement of penalties, and that the state would not be the sole authority to drop a case or seek punishment for a crime. He added that the proposed regulations also set certain limits to the activities of inquiry officials and stressed the need to respect and protect witnesses.¹¹

As stated above, the code is yet to be made public, but according to official sources its main objective is to improve the criminal justice process. Any initiative with such objectives is long overdue as can be shown by a close look at the current practices of arrest, detention, court hearings, evidence, and appeal. The fundamental rights of defendants facing capital punishment are disregarded throughout these stages of the criminal justice process.¹²

Arbitrary arrest and incommunicado detention are common practice in Saudi Arabia. Throughout the period of questioning and investigation, the suspect is denied access to the outside world together with access to legal assistance. “...*We don’t consider the presence of lawyers a prerequisite for the delivery of justice*” stated the Saudi Arabian Embassy in London.¹³

At this stage the suspect remains at the mercy of the arresting authorities until a confession is obtained by any means, voluntarily, coercion, torture or deception. The only exception to this known to Amnesty International was the case of the two British nurses, Deborah Parry and Lucille McLauchlan, who were accused of murder in 1996 and were allowed access to a lawyer while in police custody. However, even in this case, access was granted only after international pressure by the media and business community, and diplomatic intervention by the British Foreign and Commonwealth Office, and not on the basis of the fundamental rights of the defendants. In any event, access was only granted after “confessions” had already been obtained from the defendants. Confessions to the police must be ratified by a judge. Once the confession is obtained and ratified, the suspect may be transferred to a prison, but all this is frequently done without the suspect being provided with a clear explanation of his/her rights or what would await him/her. Throughout the process the defendant is rarely, if ever, informed of their rights or the procedures in force.¹⁴

¹¹ Ain Al-Yaqeen, 4 May 2001.

¹² See “Saudi Arabia - A justice system without justice” AI Index MDE 23/02/00, 10 May 2000 and “Saudi Arabia - A secret state of suffering” AI Index MDE 23/01/00, 28 March 2000.

¹³ See undated booklet issued by the Saudi Arabian Embassy in London entitled “ Saudi Arabia: Questions of Human Rights”, P 6.

¹⁴ For further details see report by Amnesty International, Saudi Arabia: A Justice System Without Justice, AI Index: MDE 23/02/00, 10 May 2000, PP 3-5.

According to Saudi Arabian law, court hearings should be held public¹⁵, but in practice the opposite is true. As a rule, the defendant appears before a judge or judges with a member or members of the arresting authorities or the prosecutor, and often an interpreter in the case of non-Arabic speakers. The only exception to this rule is that in some cases consular representatives or their lawyers have been allowed to attend lower court sessions as observers or interpreters. Relatives, members of the public or journalists are not allowed access to hearings. An official statement issued by the Saudi Arabian Embassy in the UK explained that:

*“...trials in Saudi Arabia are not covered by the press. There is no precedent in our judicial history of journalists being allowed into a courtroom, and the Saudi Government does not intend to change this rule in this case.”*¹⁶

Behind closed doors, defendants, including those charged with capital offences, face questioning by the judge or judges without a lawyer or a legal representative present. The questioning focuses on the content of the confession, which is obtained by the police and then ratified by a judge prior to the trial. This may even be the same judge who hears the subsequent trial. The hearings can last between a matter of minutes and two hours, and verdicts can be delivered in one or two sessions. Those sentenced to death are not informed of their sentence, and the dossier of their case proceeds automatically to the Court of Cassation for review, and then to the Supreme Judicial Council for approval. The Supreme Judicial Council, whose members are appointed by the King, is responsible for interpreting *Shari‘a* and reviews all court verdicts resulting in the imposition of the death penalty, amputation and stoning. The Court of Cassation’s review is not an appeal, however, as it does not review laws and facts - such cases proceed to “... *the Court of Cassation just to make sure that the judge has paid sufficient attention to the point of objection...*”¹⁷. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern about appeal procedures which review only legal aspects and not facts. In connection with proceedings before the State Security Court in Kuwait, he said

*“defendants do not benefit fully from the right to appeal as set forth in the pertinent international instruments, since they are deprived of a stage of appeal which fully reviews the case, both with regard to the facts and legal aspects.”*¹⁸

¹⁵ See Article 33 of the Statute of the Judiciary of 22 July 1975

¹⁶ See statement issued in connection with the trial of two British nurses by the Saudi Arabian Embassy in London, dated 13 June 1997, P 1.

¹⁷ See Salah al-Hejailan, “Legal Developments in Saudi Arabia”, in *Yearbook of Islamic and Middle Eastern Law 1997-1998*, Vol. 4 P 340, Kluwer Law International, London 1998.

¹⁸ Report of the UN Special Rapporteur on extrajudicial, summary and arbitrary executions, 7 December 1993, E/CN.4/1994/7, paragraphs 113 and 404

The convicted persons play no role in the process once they are sentenced, and they may not even know when the review process takes place, or in what form. Similarly, those sentenced to death may not be informed of their sentence until the very day of their execution.

1.3 Discriminatory practices disadvantageous to foreign nationals and women

In law, the death penalty in Saudi Arabia is applicable to all capital offenders without distinction. However, in practice it disproportionately affects the disadvantaged and the victims of discrimination such as foreign workers and women. More than half of those executed in Saudi Arabia over the last decade were foreign nationals, whose various communities constitute six million of the total population of Saudi Arabia (which is approximately 19 million). Of this total number of executions over the last decade, 30 of those executed were women, 17 of these women being foreign nationals.

Saudi Arabia cannot dismiss this disproportionate number as a mere reflection of these sectors of society being responsible for the problem of mounting crime. The correlation between the status of these sectors of society and the imposition and execution of the death penalty can be illustrated by looking at the impact of the criminal justice process and death penalty pardons under *Qisas*. While the secrecy and summary nature of the criminal judicial process is harsh on everyone who comes into contact with it, it is even harsher for women and foreign nationals - the former for the severe discrimination they are subjected to within society, and the latter for being in a foreign land with no relatives to turn to for help, together with the language complications. Testimonies obtained over the years by Amnesty International from former prisoners consistently suggest that non-Arabic speakers are made to sign confessions without adequate interpretation facilities or understanding what they sign. A former prisoner, who was sentenced to 240 lashes in February 2000, gave a typical account to Amnesty International:

“Being a South Indian, a Sri Lankan translator was provided. He doesn't properly understand my language... If we tell him 10 things, he won't even say two from that to the judge... I talked in broken Arabic and I was asked by the translator to shut up... There is a lot of Keralites in Dammam. In fact, we Keralites are the biggest group (over 70%) of the expat Indian community in Saudi Arabia...There is no difficulty in finding a Keralite translator, but it never happens.”

Women detainees are invariably interrogated by male officers and tried by male judges and are therefore exposed to intimidation and fear of sexual abuse.¹⁹

As regards pardons under the *Qisas* reconciliation process, this can be illustrated by examining the nationality of the beneficiaries of pardons since January 2000, which total at

¹⁹ For more details on discrimination against women and judicial disadvantages see Amnesty International's report “Gross human rights abuses against women”, AI Index: MDE 23/57/00, September 2000.

least 17. Fifteen of these former prisoners were Saudi Arabian nationals. The remaining two cases related to Yemeni nationals who were convicted of murder. The pardon in one of these two cases was a result of family reconciliation, and in the other, the father of the victim pardoned the prisoner as he apparently knelt before the executioner, awaiting beheading, in front of a large crowd in Riyadh in June 2001. As for the 15 cases of Saudi Arabian nationals, one pardon was secured because of strong friendship between the family of the offender and the family of the victim, while the other 14 were a result of reconciliation following interventions by the King, ministers or local dignitaries and tribal leaders. In some cases, the pardons were secured only minutes before the executions were due to be carried out. During this same period (January 2000-August 2001), at least 101 Saudi Arabian nationals and 91 foreign nationals were executed, which illustrates the stark difference between pardons and executions in relation to nationality: almost one pardon for every six executed Saudi Arabian nationals, and two pardons for every 91 executed foreign nationals. Without family, a tribal base or money, foreign workers' chances of receiving a pardon under *Qisas* after being sentenced to death are therefore extremely slim.

2 Political factors

The above legal and judicial realities are cemented further by a state policy of harsh penalties and strict prohibition of political or religious dissent.

2.1 Harsh penal policy and judges' discretionary powers

Saudi Arabia's penal policy puts great emphasis on severe punishments as a solution to the problem of crime, and this policy is facilitated by the wide discretionary powers enjoyed by judges. This partly explains the wide scope given to using the death penalty as a punishment for crimes. The law on sabotage and "corruption on earth" and the law on drugs are a clear illustration of this policy.

The law on drugs was introduced in 1987, in response to mounting drug problems in the country. It has since resulted in the execution of at least 341 people for drug-related offences, although the government has not produced any evidence to suggest that the rate of drug-related crime has dropped. Similarly, the law on sabotage and "corruption on earth" was introduced in 1988, in response to mounting political opposition activities, which in some instances resulted in violent activities. The government also has not produced any evidence that this measure has had a special deterrent effect on such activities.

The judges' role in implementing this policy derives from their particular status in the criminal justice system. On the one hand, they have considerable freedom in categorizing offences and in deciding punishments, particularly under *Ta'zir*. On the other hand, they are under the direct control and influence of the executive branch of the government. The law in Saudi Arabia recognises the independence of the judiciary and judges, however, it subordinates the judiciary to the authority of the executive authority, in particular the Minister of Justice, the Minister of Interior and regional governors, thus undermining the independence of the judiciary. For example, the Minister of Justice is invested with the power of supervision over all courts and judges, and the decision of the Court of Cassation can only

become final upon approval by the Minister of Justice, who refers the case back to the court for reconsideration if he disagrees with their initial decision. The independence of the judiciary is further undermined by the powers invested in the Ministry of Interior, which is responsible for the whole process of arrest and detention, and decides whether a detainee is released, sent to trial or detained indefinitely without trial. The judiciary is denied any role in supervising these processes.²⁰

Judges' discretionary power over the categorization of offences and punishments stems directly from the absence of clearly defined codes for such offences and punishments, together with the nature of the rules of evidence, particularly with regard to confessions. In no case known to Amnesty International has a judge called witnesses for the defence, and no cross-examination of prosecution witnesses takes place. Any additional evidence that may have been gathered in the course of the case investigation remains hidden from the defendant. Interrogators may use different means to obtain confessions - torture, coercion or deception, to force the person to confess, and such confessions, obtained under the secret system of pre-trial detention, are sometimes the only evidence presented to a court. This is a clear violation of international standards for fair trial, including guarantees necessary for a defence. During interrogation of the detainee following arrest, they are held incommunicado and given little or no information about the reasons for arrest or charges, the procedures to be followed, or about his or her rights. The detainee has no access to a lawyer or any judicial or other authority that could act as a safeguard against these methods. The detainee is then brought before a judge to sign their confession. Once authenticated by the judge, the confession gains the force of sufficient evidence for conviction in trial. In all such cases brought to Amnesty International's attention, the final session of the trial has been attended only by the defendant, the judge, police, a clerk and an interpreter where necessary. For the most serious offences, including those that carry the death penalty, neither the verdict nor the sentence seems to be formally conveyed to the person convicted.²¹

In categorizing offences and deciding punishments, judges are guided mainly by vaguely worded laws and general principles of Islamic jurisprudence on crimes and punishment which are subject to different interpretations by different Islamic jurists. For example, it is the judge who decides what constitutes apostasy. 'Abd al-Karim Mal al Allah, a Shi'a Muslim, was found guilty of apostasy and executed in 1992. It has been reported that he was told by the judge "*abandon your rejectionist beliefs or I will kill you*".

Under *Qisas*, the death penalty is primarily imposed for intentional killing, but how such intention is proved is subject to deferent opinions by Islamic jurists. Media coverage in Saudi Arabia, when prisoners are pardoned by relatives of their murder victims, shows that the offences in some of these cases constituted manslaughter and not a deliberate killing.

²⁰ For further details see report by Amnesty International, Saudi Arabia: A Justice System Without Justice, AI Index: MDE 23/02/00, 10 May 2000, page 3

²¹ For further details see report by Amnesty International, "Saudi Arabia: A Justice System Without Justice", AI Index: MDE 23/02/00, 10 May 2000

Judges are also free to choose to apply *Hudud* or *Ta'zir*. For example, theft, which has a fixed punishment under *Hadd* of amputation (of the right hand, or the right hand and left foot, known as cross amputation, if it is considered to be a highway robbery offence), can also be punished by death under *Ta'zir* if the judge decides that the offence deserves a harsher sentence. “*It is part of the completeness to pass a harsher sentence ...for offences which generate harm.*” stated the Ministry of Interior, quoting a court judgment and announcing the execution of two people convicted of robbing a bank in Riyadh. The robbery did not result in any lethal consequences and most of what was stolen was recovered²². By contrast, a case involving ten men convicted of an armed bank robbery and assault resulted in seven of the men being executed and the remaining three being sentenced to cross-amputation. In this case, the judgement for the death penalty was issued as a *Hadd*, for highway robbery.²³

Similarly, under *Ta'zir*, judges are free in deciding the scale of punishments. Apart from the death penalty, judges can impose as many lashes as they see fit, while under *Hudud* this is limited to 100 lashes for sexual offences by non-married persons. Further, under *Ta'zir*, judges enjoy more freedom with regard to rules of evidence than they do under *Hudud*. According to Judge Dr. Riyadh bin Abdulatif bin Abdulmuhsin al-Mahideb, confession:

*“...is the master of evidence and the decisive factor for ending the conflict before the judge...once the accused confesses to the crime it is proved against him and he receives the punishment he deserves...”*²⁴

Under *Hudud*, if the defendant withdraws a confession at any point in the judicial process, this throws the confession into doubt and the judge cannot apply the *Hadd* punishment. Such strict rules are not applicable in the case of *Ta'zir* or *Qisas*.²⁵ The extraction of confessions under torture or coercion is frequent, and confessions obtained as a result of torture may be accepted by the court as evidence, and may even be the sole evidence on which a conviction is based. However, Saudi Arabia, is a state party to, and therefore obliged to uphold, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 15 of which requires that “any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

The discretionary power of the judge is further cemented by the secrecy of court proceedings which protects judges from any legal challenges by criminal defence lawyers.

²² See the Arabic daily newspaper al-Sharq al-Awsat 10 August 1985.

²³ See report from Saudi Press Agency (SPA), 13 May 2000

²⁴ See “Means of evidence for criminal suit in Shari’a”, by Judge Dr Riyadh bin Abdulatif bin Abdulmuhsin al-Mahideb, 1 September 1997, Industrial City of Jubail, Kingdom of Saudi Arabia, P 7.

²⁵ Ibid.p.9

Government penal policy and judges' discretionary powers clearly have complementary roles in continuing the extensive use of the death penalty.

2.2 The death penalty is not for debate

Many people in Saudi Arabia cheer if a prisoner is executed. No doubt, the same people would also cheer if the prisoner was pardoned. Likewise, the media does the same by portraying, sometimes on the same page, the executed as evil, the pardoned as a human being who merely made a mistake, and the pardoner as a prime example of mercy and compassion. But none of these portrayals contribute to serious debate on the death penalty *per se*, or even the process by which it is eventually imposed.

The absence of a debate on the death penalty cannot be attributed to Islam or *Shari'a* rules, because the works of Muslim jurists are full of interesting debates on crime and punishment, including the death penalty, which is reflected in the diversity of penal policies and practices in different Muslim countries. In Saudi Arabia, the fundamental reason for the absence of any debate on the death penalty is due to the threat of the imposition of the death penalty itself, in that anyone other than the state taking the initiative to start a debate risks being categorised as apostate or as "corrupt on earth". This is so because religion and politics are the ownership of the state. Dissent, be it religious or political, can easily be seen as "corruption on earth" or a deed harmful to the unity of the nation, and both of these acts can be categorized as capital offences. This is why Saudi Arabia has no political parties, trade unions or even a bar association. Given these factors, as well as the government's harsh penal policy, linked as closely as it is to religion, a debate on the death penalty in Saudi Arabia seems a distant aim.

The situation is different with regard to the process by which the death penalty is administered. Encouraging signs are beginning to emerge both externally and internally. Externally, the international community is beginning to take note of how criminal justice is arbitrarily meted out in Saudi Arabia. Internally, over the last 12 months the country has witnessed a debate on human rights issues unprecedented in its history. This has covered topics such as the criminal justice system, women's and foreign workers' rights, and government relations with international human rights NGOs. Similarly, the government has recently announced, in addition to the code of criminal procedures, the enactment of a law to regulate the legal profession in Saudi Arabia. This 45-article bill was reportedly approved by the Council of Ministers in October 2001. The Secretary General of the Consultative Council, Dr Hamoud Ibn 'Abdul 'Aziz Al Badr, was quoted as saying that the bill would regulate the relationship between the individual and law enforcement authorities. He said:

"Individuals have the right to safeguard their freedom and dignity, and to be able to defend themselves when charged with an offense. But they have also to respect and apply laws and orders," ²⁶

²⁶ Ain Al Yaqeen, 27 April 2001

If the contents of these two legal initiatives are consistent with international standards for fair trial and the standards for the role of lawyers, this will provide a valuable basis upon which to begin moves toward the eventual abolition of the death penalty. If they result in guaranteeing the right of the defence by expert lawyers during court hearings, this measure alone will without doubt have a positive impact at least by reducing the number of executions. The submission by the lawyers who defended Deborah Parry and Lucille McLauchlan contained a scrutiny of inconsistencies in the confessions obtained by the police, and warned of the risks of miscarriage of justice, referring to such cases in the early history of Islam.²⁷ Criminal courts are deprived of such valuable challenges to evidence produced by police and prosecution. The participation of lawyers in the case of the British nurses was an unprecedented and still unique case, but it is an example which illustrates that, under Saudi Arabia's current political circumstances, debates on the death penalty in the courtroom would be the most promising start for a wider debate on the subject in the country.

3 What should be done?

In recent years, Saudi Arabia has acceded to the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination (albeit with a sweeping reservation to both treaties that the provisions do not contradict Islamic law), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and most recently, last year, the Convention on the Elimination of All Forms of Discrimination against Women. An adviser to Dr Ghazi A. Alghosaibi, the Saudi Arabian Ambassador to the United Kingdom (UK) informed Amnesty International in September 1999 that Saudi Arabia is also planning to ratify additional treaties such as the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Amnesty International welcomes Saudi Arabia's accession to international human rights treaties as an important step forward. The challenge now facing the authorities in Saudi Arabia is to introduce the wide-ranging changes in law and practice that will make the rights in these treaties a reality and ensure both that all authorities in the country know and apply these laws and procedures, and that everyone living in the country is made aware of their rights and is able to seek redress for any violation of them.

However, it is clear that the way the death penalty is applied in Saudi Arabia is unacceptable by any moral or legal standards. This is perpetuated by a penal policy that has been expanding the scope of this punishment in defiance of the progressive restriction called for in this respect by the international community²⁸ to the point where the line between moral

²⁷ See "Saudi Arabia: Defence submission by Salah Ibrahim al-Hejailan in the case of Lucille McLauchlan and Deborah Kim Parry," *Yearbook of Islamic and Middle Eastern Law* 1996, Vol. 3, Kluwer Law International, London 1996.

²⁸ UN General Assembly resolution 32/61 of 8 December 1977 and UN Commission of Human rights resolution 1999/61.

and criminal behaviour for which capital punishment is used has become extremely thin. It is also perpetuated by the secrecy which underpins the criminal justice system with total disregard for both the most basic fundamental rights of fair trial, as well as the United Nations safeguards guaranteeing the protection of the rights of those facing the death penalty²⁹. These two factors are the key for redress, and the introduction of a code of criminal procedure and the law to regulate the legal profession could be a welcome start in this regard, but, alone, this will not be sufficient. Saudi Arabia should declare a moratorium on executions as called for by the UN.³⁰ As the UN Commission on Human Rights stated, this would “contribute to the enhancement of human dignity and to the progressive development of human rights”.³¹

Saudi Arabia should take the following steps without delay:

1. Ensure with immediate effect implementation of the United Nations safeguards guaranteeing the protection of the rights of those facing the death penalty, which guarantee adequate opportunity for defence, appeal and prohibits the imposition of the death penalty when there is room for alternative interpretation of the evidence. (ECOSOC resolution 1984/50 of 25 May 1984);
2. Review the vague laws on crime and punishments with aim of restricting judges’ discretion in the use of the death penalty, and ensure that this punishment is not prescribed for non-violent offences, taking into account Resolution 2001/68 adopted by the UN Commission on Human Rights on 25 April 2001 and the United Nations safeguards guaranteeing the protection of the rights of those facing the death penalty.
3. Review the cases of all prisoners currently under sentence of death with the aim of commuting the death sentence or offering them a retrial in light of points (1) and (2) above;
4. Enact unequivocal laws prohibiting the use of the death penalty against children and the mentally ill in accordance with the Convention on the Rights of the Child, the concluding observations of the CRC on Saudi Arabia and the United Nations safeguards guaranteeing the protection of the rights of those facing the death penalty, as well as the ECOSOC resolution 1989/64, adopted on 24 May 1989, recommending the elimination of the death penalty for the mentally ill;
5. Invite the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Saudi Arabia;

²⁹ Safeguards guaranteeing the protection of the rights of those facing the death penalty, ECOSOC resolution 1984/50, 25 May 1984

³⁰ The question of the death penalty, ECOSOC resolution, 20 April 2001, E/CN.4/RES/2001/L.93, adopted 20 April 2001

³¹ Resolution 2001/68, 25 April 2001

6. Set up a commission to study the discriminatory practices faced by foreign nationals and women facing capital punishment with aim of stopping such practices;

The responsibility for bringing these changes about rests with the Saudi Arabian government. It is also the duty of the international community to ensure that Saudi Arabia fulfils its international human rights obligations relating to the use of the death penalty.