



# **Enforcing the International Prohibition on the Juvenile Death Penalty**

**A Human Rights Watch submission for the Secretary-General's report on follow-up to General Assembly resolution 62/149 on a death penalty moratorium**

**May 30, 2008**

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## Introduction

The prohibition on the death penalty for crimes committed by juvenile offenders—persons under age 18 at the time of the offence—is well established in international treaty and customary law.<sup>1</sup> The overwhelming majority of states comply with this standard: only five states are known to have executed juvenile offenders since 2005.

In recent years the United States (US), Pakistan, and China have taken steps toward abolishing the juvenile death penalty, with varying levels of success. For example, in March 2005 the US Supreme Court ruled that the execution of juvenile offenders violated the US Constitution's ban on cruel and unusual punishment.<sup>2</sup> In 2000, Pakistan issued a juvenile justice ordinance banning the death penalty for persons under 18 at the time of the offense (see below). In 1997, China amended its Criminal Code to ban executions of persons under 18 at the time of the crime.<sup>3</sup>

Nevertheless, the number of known executions of juvenile offenders by those who retain the practice remains shockingly high: 29 known executions over the last five years, including seven in 2007 alone. An even larger number of juvenile offenders are on death row, awaiting the outcome of a judicial appeal, or in some murder cases,

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<sup>1</sup> Both the Convention on the Rights of the Child, with 193 states party, and the International Covenant on Civil and Political Rights, with 161 states party, prohibit capital punishment of persons under 18 at the time of the offense. A similar prohibition applies to states party to the Fourth Geneva Convention relative to Protection of Civilian Persons in Time of War and states party to the American Convention on Human Rights, while Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms prohibits the death penalty in all circumstances. In 1994 the UN Human Rights Committee stated that it considered the prohibition against executing children to be part of international customary law, and thus not open to reservations. Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 37(a); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 6(5); Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950, art. 68; American Convention on Human Rights ("Pact of San José, Costa Rica"), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), art. 4(5); Protocol No. 13 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. 187, entered into force July 1, 2003; Human Rights Committee General Comment 24, on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.6, para.8.

<sup>2</sup> "US: Supreme Court Ends Child Executions," A Human Rights Watch news release, March 1, 2005, <http://hrw.org/english/docs/2005/03/01/usdom10231.htm>.

<sup>3</sup> Criminal Code of China, art. 49. Despite this advance, in January 2003 China executed Zhao Lin, who was reported to be 16 at the time of the offense, and on March 8, 2004 executed Gao Pan, who is believed to have been 16 or 17 at the time of the offense. Amnesty International, "Death penalty: Executions of child offenders since 1990," <http://www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990> (accessed May 26, 2008).

the outcome of negotiations for pardons in exchange for financial compensation.<sup>4</sup> In a small minority of cases these sentences are the result of deliberate state policies to retain the juvenile death penalty; in other cases they are the result of poorly enforced legislation, long periods of pretrial detention and low levels of birth registration that make it difficult for children to prove their age at the time of the offense, and criminal justice systems that fail to provide children with fundamental protections.

This submission looks at the implementation of the juvenile death penalty in the five states known to have executed juvenile offenders since 2005: Iran (16 executions), Saudi Arabia (3 executions), Sudan (2 executions), Yemen (1 execution), and Pakistan (1 execution).

Meaningful action by this small handful of states to abolish the use of the death penalty against juvenile offenders would result in universal adherence with the well-established prohibition against the practice, and result in demonstrable progress towards a global moratorium on the death penalty.

## Iran

Iran is a state party to both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,<sup>5</sup> and high-ranking Judiciary officials have repeatedly said that no juvenile executions take place in Iran.<sup>6</sup> However, Iran has no law prohibiting executions of persons under 18 at the time of the offense. Iran

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<sup>4</sup> For example, human rights defenders in Iran report that at least 107 juvenile offenders were on death row in May 2008. “Urgent Appeal to Stop Imminent Juvenile Execution,” International Campaign for Human Rights in Iran, May 21, 2008, <http://www.iranhumanrights.org/themes/news/single-news/article/22/iran-urgent-appeal-to-stop-imminent-juvenile-execution.html> (accessed May 21, 2008).

<sup>5</sup> When acceding to the Convention on the Rights of the Child on July 13, 1994, Iran stated it “reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect.” At its 2000 review of Iran’s implementation of the convention, the Committee on the Rights of the Child, which monitors the convention’s implementation, expressed concern that the “broad and imprecise nature of the State party’s general reservation potentially negates many of the Convention’s provisions and raises concern as to its compatibility with the object and purpose of the Convention.” Concluding Observations of the Committee on the Rights of the Child: Iran, CRC/C/15/Add.123, 28 June 2000, para 7.

<sup>6</sup> For example, on October 1, 2006 the chief of Tehran’s Judiciary, Alireza Avaii, told reporters that “our current policy is that execution sentences for juveniles not be implemented and it has been a long time that any such executions have taken place.” “Iran Leads the World in Executing Children: New Executions Highlight Arbitrary Nature of Iranian Justice,” Human Rights Watch news release, June 20, 2007, <http://hrw.org/english/docs/2007/06/20/iran16211.htm>.

executed at least 317 people in 2007,<sup>7</sup> including six juvenile offenders. To date it is known to have executed at least one juvenile offender in 2008.

## Iranian Legislation

Iran retains the death penalty for a large number of offenses, among them cursing the Prophet, certain drug offenses, murder, and certain *hadd* crimes, including adultery, incest, rape, fornication, drinking alcohol, “sodomy,” same-sex sexual conduct between men without penetration, lesbianism, “being at enmity with God” (*mohareb*), and “corruption on earth” (*mofsed fil arz*).<sup>8</sup>

Article 49 of the Islamic Penal Code exempts children from criminal responsibility. However, the article’s accompanying note defines a child as someone who has not reached the age of puberty (*bulugh*) as stipulated by the Sharia and as specified in the 1991 Civil Code as 15 lunar years for boys and 9 lunar years for girls.<sup>9</sup>

The majority of juvenile executions in Iran are for *hadd* crimes or for intentional murder. Intentional murder, which includes “cases where the murderer intentionally makes an action that is inherently lethal, even if he does not intend to kill the victim,” is considered to be a crime punishable by retribution in kind (*qisas-e-nafs*).<sup>10</sup> While the judiciary is responsible for carrying out the trial and implementing the sentence in *qisas* cases, Iranian law treats these cases as private disputes between two civil parties, where the state facilitates the resolution of the dispute. The victim’s survivors retain the right to claim retribution in kind, to pardon the killer, or to accept compensation in exchange for giving up the right to claim retribution.

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<sup>7</sup> Amnesty International, “Death Sentences and Executions in 2007,” AI Index: ACT 50/001/2008, April 15, 2008, <http://www.amnesty.org/en/library/asset/ACT50/001/2008/en/b43a1e5a-ffe8-11dc-b092-bdb020617d3d/act500012008eng.html> (accessed May 26, 2008).

<sup>8</sup> The vaguely defined crimes of “enmity with God” and “corruption on earth” include but are not limited to “resorting to arms to cause terror, fear or to breach public security and freedom,” armed robbery, highway robbery, membership of or support for an organization, that seeks to overthrow the Islamic Republic; and plotting to overthrow the Islamic Republic by procuring arms for this purpose. Islamic Penal Code, arts. 81, 126 133, 183. For a discussion of types of crimes and penalties in Iranian law, see Amnesty International, “Iran: The last executioner of children,” MDE 13/059/2007, June 2007, <http://web.amnesty.org/library/index/engmde130592007> (accessed May 22, 2008).

<sup>9</sup> Islamic Penal Code, art. 49; Civil Code of November 1991, art. 1210. For a discussion of prevailing debates over puberty and criminal responsibility in Iran, see the article by Iranian human rights defender Emad Baghi, “The Issue of Executions of Under-18s in Iran,” July 2007, <http://www.emadbaghi.com/en/archives/000924.php?> (accessed May 21, 2008)

<sup>10</sup> Iranian Penal Code, arts. 205, 206.

In July 2006 the Iranian parliament gave an initial reading to a draft Juvenile Crimes Investigation Act that officials have said would end executions for juvenile offenders. However, article 33 of the proposed legislation makes clear that reduction of sentences in *qisas* and *hadd* crimes shall be applied only when the judge determines that “the complete mental maturity of the defendant is in doubt.” Article 31(3) of the proposed law allows a sentence of the death penalty or life imprisonment, if imposed on juvenile defendants ages 15 to 18, to be reduced to a term of imprisonment ranging from two to eight years in a juvenile correctional facility. Judges would continue to have discretion to order executions, if the mental maturity of the defendant is determined by the judge not to be in doubt.

## Examples of Recent Executions of Juvenile Offenders

### Javad Shoja’i

Javad Shoja’i was executed at Isfahan Central Prison on February 26, 2008 for a murder committed in March 2000, when he was 16.<sup>11</sup>

### Makwan Mouloudzadeh

Authorities in Kermanshah executed Makwan Mouloudzadeh on December 4, 2007, for crimes allegedly committed when he was aged 13.<sup>12</sup> The execution appears to contravene a November 3, 2007 order by the head of Iran’s judiciary, Ayatollah Shahrudi, requiring a branch of the Review and Follow-up Unit of the Judiciary to investigate the case and then refer it back to the Penal Court of Kermanshah.<sup>13</sup>

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<sup>11</sup> See “A youth is hanged in Isfahan,” *Radio Farda*, February 26, 2008, [http://www.radiofarda.com/Article/2008/02/26/02\\_child\\_offender\\_executed.html](http://www.radiofarda.com/Article/2008/02/26/02_child_offender_executed.html) (accessed May 27, 2008); and Niusha Boghrati, “Iran Putting Its Children on Death Row,” *Worldpress.org*, April 15, 2008, <http://www.worldpress.org/Mideast/3118.cfm>.

<sup>12</sup> See “Iran: Prevent Execution of Juvenile Offender: Prisoner Convicted on Recanted Testimony Now Faces Death,” Human Rights Watch news release, December 5, 2007, <http://hrw.org/english/docs/2007/12/05/iran17482.htm>; and “Iran: Revoke Death Sentence in Juvenile Case: Dubious Conviction Based on Recanted Testimony Requires Re-Trial,” Human Rights Watch news release, November 3, 2007, <http://hrw.org/english/docs/2007/11/03/iran17242.htm>

<sup>13</sup> On December 3, Mouloudzadeh’s lawyer told Human Rights Watch that the Kermanshah court had informed him that the sentence could now be carried out even though the required judicial review had not been completed.

On June 5, 2007, Branch Seven of the Penal Court of the city of Kermanshah sentenced Mouloudzadeh to death for raping three boys in 2000, based on a complaint brought seven years after the alleged rape.

Mouloudzadeh's conviction followed an investigation and trial filled with irregularities. Arresting police humiliated Mouloudzadeh by shaving his head, placing him on a donkey, and parading him around the town. The Kermanshah public prosecutor violated Iranian law by investigating and bringing to trial a "crime of chastity," an investigation that should be undertaken by a criminal court judge. During the trial, the judge refused to accept testimony from Mouloudzadeh's accusers withdrawing their accusations or Mouloudzadeh's assertion that police obtained his confession by coercion.

### **Syed Mohammad Reza Mousavi Shirazi**

Syed Mohammad Reza Mousavi Shirazi was executed in Adel Abd prison in the city of Shiraz on April 22, 2007, for a murder he allegedly committed when he was 16.<sup>14</sup> His family was not notified of the planned execution and did not see him prior to it.

Both the lower court and the Supreme Court acknowledged in court documents that Mousavi was wrongly tried in an adult court. Nevertheless, the Supreme Court rejected Mousavi's request for a retrial before a juvenile court, accepting the lower court's argument that it was in effect "acting in place of a juvenile court." The Supreme Court confirmed the death sentence, stating "in the light of the direct confession of the accused and the rest of the evidence presented against him, the court sees no significant flaws or shortcomings in the proceedings." Torture and ill-treatment are common in Iranian detention centers, making the court's willingness to accept a child's confession in a death penalty case particularly disturbing.

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<sup>14</sup> See "Iran Leads the World in Executing Children: New Executions Highlight Arbitrary Nature of Iranian Justice," Human Rights Watch news release, June 20, 2007, <http://hrw.org/english/docs/2007/06/20/iran16211.htm>.

## Examples of Juvenile Offenders Sentenced to Death

### Mohammad Reza Haddadi

The Criminal Court in Kazeroon sentenced Mohammad Reza Haddadi to death on January 6, 2004, for the August 2003 kidnapping and murder of a taxi driver.<sup>15</sup> Haddadi was 15 at the time of the murder. His co-defendants in the case, all over 18 at the time of the crime, received lesser sentences despite testimony directly implicating them in the murder.

According to the lawyer who took up the case during appeal, Haddadi was the last of the co-defendants arrested, and confessed to the murder in exchange for his co-defendants promise that they would pay his mother. When he learned his mother had not received payment, he wrote to the court on November 4, 2003, retracting his confession. Despite his withdrawal of his confession, the court proceeded to sentence him to death for the murder, as well as to 15 years in prison for kidnapping and one year in prison for hiding the body.

Branch 42 of the Supreme Court upheld the death sentence on July 3, 2005, despite the fact that Haddadi's appeal papers included statements in which his co-defendants withdrew their earlier testimony that had implicated him in the murder.

### Seyyed Reza Hejazi

On June 6, 2006, Branch 28 of the National Supreme Court upheld the death sentence against Seyyed Reza Hejazi for his role in a death resulting from a fight involving several people.<sup>16</sup> Hejazi was 15 at the time of the crime. Hejazi has alleged that he was attempting to separate a group of his friends during a fight when one of them punched him in the face. Hejazi then took out a knife and stabbed the man in the chest, and the man later died in hospital. Hejazi has repeatedly stated that he did not intend to kill the victim.

In upholding the *qisas* ruling by Branch 106 of the General Criminal Court of Isfahan, the Supreme Court discounted the fact that the original trial had not taken place in a

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<sup>15</sup> See "Iran: Halt Execution of Juvenile Offender," Human Rights Watch news release, February 22, 2008, <http://hrw.org/english/docs/2008/02/22/iran18136.htm>.

<sup>16</sup> Email communication from individual familiar with the case to Human Rights Watch, March 3, 2008 (name withheld).



juvenile court, and the judge had not encouraged the victim's family to pardon Hejazi or accept compensation for the killing.

## Saudi Arabia

Saudi Arabia acceded to the Convention on the Rights of the Child on January 26, 1996, entering a reservation "with respect to all such articles as are in conflict with the provisions of Islamic law." Saudi Arabia has no law prohibiting executions of persons under 18 at the time of the offense, and Human Rights Watch is aware of at least 14 cases where individuals have been sentenced to death for crimes committed while children.<sup>17</sup> In 2007 Saudi Arabia executed at least 158 people, including three juvenile offenders; one was a 15-year-old boy who was 13 years old at the time of the alleged crime.<sup>18</sup>

### Saudi Arabian Legislation

The Saudi government does not publish an official interpretation of Sharia, a written penal code, or an interpretative text carrying the force of law of the precise definitions of acts that constitute criminal offenses.<sup>19</sup> As a result, judges have broad discretion in determining what acts are crimes and setting sentences, and courts impose the death penalty for a broad variety of offenses. Capital offenses include adultery, apostasy, "corruption on earth," drug trafficking, sabotage, (political) rebellion, and murder during armed robbery.<sup>20</sup> Under interpretations of Sharia prevailing in Saudi Arabia, murder and manslaughter are considered to be primarily offenses against a private right (*qisas*). Thus, while courts often impose the death penalty for murder or manslaughter, in these *qisas* cases the deceased's family

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<sup>17</sup> For a detailed discussion of Saudi Arabia's juvenile justice system, including the juvenile death penalty, see Human Rights Watch, *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, vol. 20, no. 4(E), March 2008, <http://www.hrw.org/reports/2008/saudicrdo308/>.

<sup>18</sup> On April 8, 2008 Amnesty reported that Saudi Arabia had executed at least 158 people in 2007, and at least 37 in 2008. See "Saudi Arabia: Further information on Death Penalty/Fear of imminent execution," Amnesty International Urgent Action, AI Index: MDE 23/012/2008, April 8, 2008, <http://www.amnesty.org/en/library/asset/MDE23/012/2008/en/3f3291c7-0589-11dd-bd68-81b1e430d9f9/mde230122008eng.html>.

<sup>19</sup> For a detailed discussion of Saudi Arabia's criminal justice system, see Human Rights Watch, *Precarious Justice: Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia*, vol. 20, no. 3(E), March 2008, <http://hrw.org/reports/2008/saudijustice0308/>.

<sup>20</sup> For a discussion of death penalty offenses, see Amnesty International, "Defying World Trends: Saudi Arabia's extensive use of capital punishment," AI Index: MDE 23/015/2001, November 1, 2001, <http://web.amnesty.org/library/Index/engMDE230152001> (accessed July 5, 2007).

retains the right to insist on execution, accept monetary compensation, or issue a pardon. The court can also impose the death penalty as a discretionary punishment (*ta'zir*) for any other actions it deems to be criminal.

Saudi Arabia has set but does not effectively enforce 12 years as the minimum age of criminal responsibility for boys. The minimum age of criminal responsibility does not apply in *qisas* case, or in cases involving girls. In addition, Saudi Arabia has no law specifying when a child of either sex should be treated as an adult in criminal cases, and no law requiring judges to assess a child on his or her characteristics at the time of the offense and not at the time of trial, sentencing, or execution of sentence.

In practice, determinations of majority in *qisas* cases are based on factors specified by experts in Islamic jurisprudence, including a 2002 Council of Senior Scholars decree.<sup>21</sup> That decree states that in *qisas* case majority is obtained when any one of four conditions are met: for males or females, 1) attaining 15 years of age; 2) occurrence of wet dreams (*al-ihtilam*); 3) appearance of pubic hair; or, in the case of girls, 4) upon menstruation.<sup>22</sup>

Investigations conducted by Saudi Arabian journalists suggest that a significant number of children have been or are at risk being sentenced to death. For example, an October 2006 investigation of the Jeddah Social Observation Home by *Arab News* that included interviews with the director and detainees reported that 40 of the 220 detainees were boys under age 16 charged with murder.<sup>23</sup> In November 2005 *alarabiya.net*, the online arm of Saudi Arabia's al-`Arabiya satellite news station,

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<sup>21</sup> According to Minister of Justice `Abd Allah bin Mohammad bin Ibrahim Al al-Shaikh, under Sharia an individual who has reached majority (*bulugh*) can be executed, provided he is of sound mind. Other officials told Human Rights Watch that executions could be carried out in *qisas* cases from age 15 if the victim's family demanded it, but not until age 18 in other capital offenses. Human Rights Watch interviews with Dr. Eisa AbdulAzize al-Shamekh, Human Rights Commission board member, Riyadh, March 9, 2008, and Dr. `Abd al-Rahman al-Sabih, National Commission for Childhood, March 11, 2008.

<sup>22</sup> Letter from Minister of Justice `Abd Allah bin Mohammad bin Ibrahim Al al-Shaikh to Human Rights Commission President Turki al-Sudairy, regarding Human Rights Watch's request for clarification on *qisas* cases involving persons under age 18, March 12, 2008; and Council of Senior Scholars Decree 209 of January 23, 2002 (9/11/1422), regarding specifying an age of majority (*bulugh*).

<sup>23</sup> Saeed Al-Abyad, "Helping Troubled Kids Integrate," *Arab News*, October 11, 2006, <http://www.arabnews.com/?page=1&section=0&article=88005&d=11&m=10&y=2006> (accessed May 22, 2008).

reported that Saudi Arabia's Ministry of Social Affairs was detaining 126 children in social observation homes "for committing murder."<sup>24</sup>

## Examples of Recent Executions of Juvenile Offenders

### Abdullah bin Mohammed al-Otaibi

Abdullah bin Mohammed al-Otaibi was executed in Mecca on August 20, 2007, for the murder of his stepmother. According to press accounts, the execution had been postponed until after al-Otaibi reached age 18.<sup>25</sup>

### Dhahiyān bin Rakan bin Sa`d al-Thawri al-Siba`i

Dhahiyān bin Rakan bin Sa`d al-Thawri al-Siba`i was executed on July 21, 2007, for the murder of Hussain bin Bashar bin Batil al-Thawri al-Siba`i during a fight resulting from a quarrel outside a Play Station store in 2005.<sup>26</sup> According to press accounts, in May 2007 the then-18-year-old al-Siba`i made a public plea for well-wishers to intervene to convince his victim's family to spare his life, stating that he was only days away from execution.<sup>27</sup>

### Mu`id bin Husayn bin Abu al-Qasim bin `Ali Hakami

Mu`id bin Husayn bin Abu al-Qasim bin `Ali Hakami was executed on July 10, 2007, for a murder he allegedly committed three years earlier, when he was 13 years old.<sup>28</sup> According to Hakami's father, Saudi authorities prevented him from attending his son's interrogation, which was held at a police station and not a juvenile detention

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<sup>24</sup> Hanan al-Zayr, "Dispute over the 'Age [according to] Sharia for the Qisas Punishment: 126 'Children' in Saudi Arabia Await 'the Sword'" (Jadal hawal 'al-sinal-shara`i' lihad al-qisas: 126 'tiflan' fi al-sa`udiya yantathirun 'al-siyaf'), *al-Arabiya.com*, November 9, 2005 (7/10/1426). The same investigation noted that "generally children sentenced to *qisas* punishment for committing murder ... remain in the [social observation] home until age 18, which is the age specified for implementing the punishment on the murderer if [the murderer] was a male juvenile, while a female is placed in the girls' institution until age 21 and sometimes until age 25 if she had not matured by then, and then the *qisas* punishment is implemented."

<sup>25</sup> "Saudi Arabia beheads man convicted of murdering stepmother while minor," *Associated Press*, August 20, 2007.

<sup>26</sup> "The Qisas Killing of al-Thowry's Killer" (al-Qatl Qisasān li Qatil al-Thowry), *Okaz* (Jeddah), July 22, 2007 (7/8/1428), <http://www.okaz.com.sa/okaz/osf/20070722/Con20070722126825.htm> (accessed September 24, 2007).

<sup>27</sup> Adnan al-Shabarawi, "Hours Away from Qisas: The Child's Killer: Release Me for God's Sake" (Qabl sa`at min al-qasas: Qatil al-hadath: A`taquni athabikum Allah), *Okaz*, May 16, 2007 (29/4/1428), <http://www.okaz.com.sa/okaz/osf/20070516/Con20070516111179.htm> (accessed May 22, 2007).

<sup>28</sup> See "The Qisas Execution of a Perpetrator for Killing a Boy after Trying to Rape Him" (al-Qatl Qisasān li Janin Hawal Fi`l al-Fahisha fi Sabi wa Qatalahu) *al-Bilad newspaper* (Jiddah), July 11, 2007, [http://www.albilad-daily.com/files/the\\_newspaper/11-7-2007/local/main.html](http://www.albilad-daily.com/files/the_newspaper/11-7-2007/local/main.html) (accessed February 7, 2008). Under the shorter lunar calendar used in Saudi Arabia, Hakami would have just turned 14 years old at the time of the killing, and 16 at the time of his execution.

center, did not inform him of the execution until days later, and have not returned his son's body.<sup>29</sup> As of this writing the Board of Grievances had twice postponed hearing the complaint brought by the family against the Ministry of Interior's Department of Public Security.<sup>30</sup>

## Examples of Juvenile Offenders Sentenced to Death

### Sultan Bin Sulayman Bin Muslim al-Muwallad

#### `Issa bin Muhammad `Umar Muhammad

In February 2008 the Madina General Court sentenced Sultan Bin Sulayman Bin Muslim al-Muwallad and `Issa bin Muhammad `Umar Muhammad to death for their roles in a gang that carried out a series of robberies and assaults in Medina.<sup>31</sup> The two were arrested in 2004, when they were both 17, and charged with theft, robbery, and physical assault. The court also sentenced to death three adults arrested in the same case, and sentenced two younger children, then ages 13 and 15, to 1,250 and 1,500 lashes respectively. All seven defendants alleged that police held them incommunicado and beat them to attempt to obtain confessions. As of April 2008 the case was before the Mekkah Court of Cassation.

### Rizana Nafeek

Rizana Nafeek, a Sri Lankan national, was sentenced to death on June 16, 2007, for the murder of her employer's four-month-old baby in 2005, when she was 17 years old.<sup>32</sup> Nasik did not have access to a lawyer until July 2007, and may have been tried as an adult based on her passport, which lists her date of birth as 1982, although her birth certificate lists her year of birth as 1988. In April 2008 the Supreme Judicial

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<sup>29</sup> Samir Al-Saadi, "Father Seeks Justice for Son's 'Wrongful' Execution in Jizan," *Arab News*, January 30, 2008, <http://www.arabnews.com/?page=1&section=0&article=106240&d=30&m=1&y=2008> (accessed February 7, 2008).

<sup>30</sup> Samir Al-Saadi, "Government Rep. Fails to Show Up for Hakami Case," *Arab News*, February 4, 2008, <http://www.arabnews.com/?page=1&section=0&article=106448&d=4&m=2&y=2008> (accessed February 7, 2008); Samir Al-Saadi, "al-Hakami Case Hearing Put Off," *Arab News*, <http://www.arabnews.com/?page=1&section=0&article=109327&d=26&m=4&y=2008> (accessed May 26, 2008).

<sup>31</sup> "Saudi Arabia: Death Penalty/Flogging," Amnesty International Urgent Action, AI Index: MDE 23/019/2008, April 3, 2008, <http://www.amnesty.org/en/library/asset/MDE23/019/2008/en/683b188a-022d-11dd-9f22-c78dcd6ee044/mde230192008eng.html> (accessed May 27, 2008).

<sup>32</sup> "Saudi Arabia: Fair Appeal for Domestic Worker on Death Row: Sri Lankan Under 18 at Time of Alleged Killing," Human Rights Watch new release, July 30, 2007, <http://hrw.org/english/docs/2007/07/30/saudia16531.htm>; Mohammed Rasooldeen, "Sri Lankan Maid Sentenced to Death for Murdering Infant," *Arab News*, June 20, 2007, <http://www.arabnews.com/?page=1&section=0&article=97710&d=20&m=6&y=2007&pix=kingdom.jpg&category=Kingdom> (accessed June 20, 2007).

Council, the last stage of judicial review, returned the case to the trial court for “clarifications,” and the chief justice of the trial court then ordered that any further objections must be presented to the Supreme Judicial Council.<sup>33</sup>

### **Ahmad `Abd al-Murdi Mahmud al-Dukkani**

Ahmad `Abd al-Murdi Mahmud al-Dukkani, an Egyptian national, was sentenced to death in July 2005 for the April 2004 murder of three-year-old Wala' `Adil `Abd al-Badi`, also an Egyptian resident in Damman.<sup>34</sup> According to information provided by his father, al-Dukkani was 13 at the time of the crime, and the court refused the family's request for a psychological evaluation.<sup>35</sup> Al-Dukkani had no access to a lawyer during questioning or trial and was kept in solitary confinement for several months after his arrest. At this writing he remains in detention while his family attempts to negotiate a settlement with the victim's family.<sup>36</sup>

## **Yemen**

Yemen is a state party to the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.<sup>37</sup> Yemen's Penal Code provides reduced sentences for crimes committed by persons under 18, including capital offenses. In practice, courts sometimes still sentence to death persons under age 18 at the time of the crime when the individual cannot prove age at the time of the offense. In February 2007, Yemen executed Adil Muhammad Saif al-Ma'amari for a crime allegedly committed when he was 16.

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<sup>33</sup> Mohammed Rasooldeen, “Rizana Case Moves to Supreme Judicial Council,” *Arab News*, March 9, 2008, <http://www.arabnews.com/?page=1&section=0&article=107656&d=9&m=3&y=2008> (accessed March 11, 2008); Dawadmi Mohammed Rasooldeen, “Court Sends Rizana Case Back to Judicial Council,” *Arab News*, April 9, 2008, <http://www.arabnews.com/?page=1&section=0&article=108770&d=9&m=4&y=2008> (accessed May 26, 2008).

<sup>34</sup> See Human Rights Watch letter to King Abdullah Ibn Abdul Aziz Al Saud, “Commute the death sentence of Egyptian boy,” September 22, 2005, <http://hrw.org/english/docs/2005/10/27/saudia11927.htm>.

<sup>35</sup> Human Rights Watch telephone interview with human rights activist Ibrahim al-Mugaitaab, September 7, 2005.

<sup>36</sup> Human Rights Watch interview with Sherif Bedeir, Embassy of the Arab Republic of Egypt to Saudi Arabia, Riyadh, March 11, 2008.

<sup>37</sup> Yemen ratified the Convention on the Rights of the Child on May 1, 1991, and acceded to the International Covenant on Civil and Political Rights on February 9, 1987.

## Yemeni Legislation

Yemen retains the death penalty for a wide variety of offenses, among them murder of a Muslim, arson or explosion, endangering transport and communications, apostasy, robbery, prostitution, adultery, and homosexuality.<sup>38</sup> In 1994 Yemen amended its Penal Code to provide reduced sentences for crimes committed by persons under 18, including a maximum penalty of ten years' imprisonment for those who commit capital offenses.<sup>39</sup>

## Examples of Recent Executions of Juvenile Offenders

Since 1993, Yemen is only known to have executed one juvenile offender, Adil Muhammad Saif al-Ma'amari, in February 2007.

### Muhammad Saif al-Ma'amari

A court in Rawna sentenced al-Ma'amari to death on October 19, 2002 for the murder of a relative in an argument when he was 16.<sup>40</sup> Al-Ma'amari alleged that police tortured him until he confessed to the murder, and told the court that he was under 18 at the time of the murder. Although the judge ordered a medical examination that resulted in an October 10, 2001 finding that he was under age 17, the court nevertheless imposed a death sentence. Al-Ma'amari had no legal assistance during the trial.

The Taiz Court of Appeal rejected al-Ma'amari's appeal on May 23, 2005, and the Supreme Court upheld the lower court's sentence on February 27, 2006.

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<sup>38</sup> Yemeni Penal Code, arts. 124, 141, 226, 227, 228, 234, 249, 259, 263, 264, 280, 306.

<sup>39</sup> Yemeni Penal Code, art. 31.

<sup>40</sup> See "Yemen: Death sentence/fear of imminent execution: Adil Muhammad Saif al-Ma'amari," Amnesty International Urgent Action, AI Index: MDE 31/003/2006; and "Yemen: Further information on death sentence/fear of imminent execution: Adil Muhammad Saif al-Ma'amari, Amnesty International Urgent Action, AI Index: MDE 31/018/2007, September 18, 2007, <http://www.amnesty.org/en/library/asset/MDE31/018/2007/en/dom-MDE310182007en.html> (accessed May 20, 2008).

## Examples of Juvenile Offenders Sentenced to Death

### Radfan Razzaz Khaled Hassan

In April 2006 the Court of Appeal sentenced Radfan Razzaz Khaled Hassan to death for murder, despite a dispute over his age at the time of the offense.<sup>41</sup> Hassan informed the Ta'iz Court of First Instance that he was 16 at the time of the killing, and the court appears to have taken his age into account in sentencing him to six years in prison and the payment of 725,000 Yemeni riyals (US\$ 3,658) as compensation to the family of the victim. However, following an appeal by the prosecution and the victim's relatives, the Court of Appeal issued a death sentence, rejecting his claim to be 16 based on reports that he had earlier given his age at 20 or 21. Neither court appears to have ordered a medical exam to verify his age.

## Sudan

Sudan is a state party to both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.<sup>42</sup> In 2004 the President of Sudan issued by provisional decree a Child Law that provides reduced sentences for children age 15 to 18 who commit capital offenses. However, this decree is not consistent with Sudan's 2005 Interim Constitution, which allows for the death penalty against persons under age 18 in *qisas* and *hadd* cases, and with provisions of the 1991 Criminal Code.

### Sudanese Legislation

Under the 2005 Interim National Constitution, applicable in all parts of the country, Sudan retains the death penalty for *hadd*, *qisas*, and "extremely serious" crimes, although it excludes persons under 18 or over 70 years of age from execution in cases other than *hadd* and *qisas*.<sup>43</sup> Under the 1991 Criminal Code, applicable in all parts Sudan, *hadd* crimes punishable by execution include waging war against the

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<sup>41</sup> See "Yemen: Death penalty/ imminent execution/ legal concern: Radfan Razzaz Khaled Hassan," Amnesty International Urgent Action, AI Index: MDE 31/027/2007, November 15, 2007, <http://www.amnesty.org/en/library/asset/MDE31/027/2007/en/dom-MDE310272007en.html>

<sup>42</sup> Sudan acceded to the International Covenant on Civil and Political Rights on March 18, 1986, and ratified the Convention on the Rights of the Child on August 3, 1990.

<sup>43</sup> The Constitution also delays for two years the execution of females who are pregnant or lactating. Interim National Constitution of the Republic of Sudan, Republic of Sudan Gazette, Special Supplement no. 1722, July 10, 2005, arts. 3, 36.

state, espionage, apostasy, adultery, sodomy, running a place of prostitution, and armed robbery resulting in death or rape.<sup>44</sup> Intentional murder is a *qisas* offense punishable by execution, and includes killings resulting from an intentional act that was likely to result in death.<sup>45</sup>

The 2004 provisional Child Law applicable in all parts Sudan provides reduced sentences of six to ten years' imprisonment for capital offenses committed by persons age 15 to 18.<sup>46</sup> However, the Child Law also specifies that a child is someone under age 18, "unless the applicable law stipulates that the child has reached maturity."<sup>47</sup> This raises the possibility that a person under 18 could still be sentenced to death under the 1991 Criminal Code. Article 9 of the Criminal Code links criminal responsibility to attaining puberty, and article 3 defines an adult as "a person whose puberty has been established by definite natural features and who has completed 15 years of age ... [or] attained 18 years of age ... even if the features of puberty do not appear."<sup>48</sup> Children over 15 also do not appear to benefit from the specialized courts and other juvenile justice protections created under the 2004 Child Law.<sup>49</sup>

The 2005 Interim Constitution of Southern Sudan bans the death penalty for persons under 18 without resolving the contradiction with the juvenile death penalty provision in the Interim National Constitution.<sup>50</sup> The Southern Sudan Legislative Assembly has yet to take action on a draft Child Code that would ban the juvenile death penalty.<sup>51</sup>

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<sup>44</sup> Criminal Code of Sudan, arts. 51, 53, 126, 130, 146, 148, 168.

<sup>45</sup> Criminal Code of Sudan, arts. 27, 28, 130.

<sup>46</sup> Child Law (provisional) of 2004, art. 85.

<sup>47</sup> Child Law (provisional) of 2004, art. 4.

<sup>48</sup> Criminal Code of Sudan, arts. 3, 8, 9.

<sup>49</sup> Child Law (provisional) of 2004, arts. 48-83.

<sup>50</sup> Schedule F of the Interim Constitution calls for conflicts to be resolved taking into account the sovereignty of the nation while accommodating the autonomy of Southern Sudan, the need for norms or standards, the principle of solidarity, and the need to human rights and fundamental freedoms. Interim Constitution of Southern Sudan, art. 25(2), Schedule F.

<sup>51</sup> Draft Children's Bill for Southern Sudan, 2005, art. 18(a). Copy on file with Human Rights Watch.



## **Examples of Recent Executions of Juvenile Offenders**

Since 1990, Sudan is only known to have executed two juvenile offenders.

### **Mohammed Jamal Gesmallah**

#### **Imad Ali Abdullah**

Mohammed Jamal Gesmallah and Imad Ali Abdullah were executed on August 31, 2005 in Khartoum's Kober Prison.<sup>52</sup> According to their families, they were 16 and 17 years old at the time of the crimes for which they were punished.

## **Examples of Juvenile Offenders Sentenced to Death**

### **Al-Tayeb Abdul Aziz Ishag**

On March 13, 2008 the Khartoum-North Court of Appeals confirmed the death sentence of Al-Tayeb Abdul Aziz Ishag and 9 other people convicted of the September 2006 murder of al-Wifaq newspaper editor Mohammed Taha.<sup>53</sup> Ishag was 15 at the time of the murder.

The Khartoum Criminal Court had convicted Ishag and his co-defendants on November 10, 2007, based on confessions that they alleged in court had been extracted through torture. Nearly all of the 73 people detained in connection with the murder, and all of the 19 who were eventually brought to trial, alleged torture while in custody of police, intelligence, and security services. However, only nine of those brought to trial were acquitted on these grounds.

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<sup>52</sup> See "Sudan: Detainees Suffer Arbitrary Arrest, Execution: Sudanese Government Should Commute Death Sentences, Grant Fair Trials," Human Rights Watch news release, September 7, 2005, <http://hrw.org/english/docs/2005/09/07/sudan11693.htm>

<sup>53</sup> See "Sudan: Death Penalty," Amnesty International Urgent Action, AI Index: AFR 54/011/2008, March 19, 2008, <http://www.amnesty.org/en/library/asset/AFR54/011/2008/en/AFR540112008en.html> (accessed May 22, 2008); "Sudan: Urgent Intervention Against Death Penalty Needed," World Organization Against Torture (OMCT) news release, November 26, 2007, <http://allafrica.com/stories/200711262046.html> (accessed May 22, 2008).

**`Abd al-Rahman Zakaria Mohammad**

**`Abdullah Suleiman**

On May 3, 2007, the Criminal Court in Nyala, South Darfur, sentenced `Abd al-Rahman Zakaria Mohammad and `Abdullah Suleiman to death for their roles in a killing that occurred during a robbery on February 28, 2007.<sup>54</sup> They were both age 16.

The court found Mohammad guilty of murder, causing injury intentionally and robbery for breaking into a house armed with a knife and then stabbing two men who attempted to restrain him when he was discovered. One of the men died of his wounds. After his arrest, Mohammad implicated his friend Suleiman, who was also arrested and charged. The court sentenced Suleiman to death for being an accomplice to the crime.

## **Pakistan**

Pakistan is a state party to the Convention on the Rights of the Child, and signed the International Covenant on Civil and Political Rights on April 17, 2008.<sup>55</sup> In July 2000 the government issued a Juvenile Justice System Ordinance banning the death penalty for crimes committed by persons under 18, and in December 2001 a presidential decree commuted death sentences issued to juvenile offenders prior to December 2001, but these provisions have not been fully implemented.

### **Pakistani Legislation**

Pakistan retains the death penalty for more than 25 offenses, including murder, which is considered a *qisas* offense, and blasphemy, arms trading, drug trafficking, armed robbery, stripping a woman of her clothes in public, extramarital sex, and rape.<sup>56</sup> The Juvenile Justice System Ordinance of 2000 bans the death penalty for crimes committed by persons under 18 at the time of the offense, and requires

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<sup>54</sup> See "Sudan: Death Penalty," Amnesty International Urgent Action, AI Index: AFR 54/022/2007, May 15, 2007, <http://www.amnesty.org/en/library/asset/AFR54/022/2007/en/dom-AFR540222007en.html>.

<sup>55</sup> Pakistan ratified the Convention on the Rights of the Child on November 12, 1990.

<sup>56</sup> For a full list of the relevant legislation, see FIDH and Human Rights Commission of Pakistan, "Slow march to the gallows: Death Penalty in Pakistan," no. 464/2, January 2007, <http://www.fidh.org/IMG/pdf/Pakistan464angconjointpdm.pdf> (accessed May 22, 2008).

juvenile courts to order a medical examination when a defendant's age is in doubt.<sup>57</sup> The ordinance was reportedly extended to apply to Azad Jammu and Kashmir until 2003, and to the Provincially Administered Tribal Areas and the Federally Administered Tribal Areas in late 2004.<sup>58</sup> However, implementation remains very limited because many areas lack the underlying courts and other structures called for in the law.<sup>59</sup> In its 2007 annual report, the Human Rights Commission of Pakistan reported that the ordinance "remained un-implemented in most of the country," noting that Sindh still lacked a juvenile court and the government had given no directives for implementing the ordinance in the Federally Administered Tribal Areas.<sup>60</sup> Pakistan's Supreme Court sometimes rejected death penalty appeals by juvenile offenders when their age was not recorded at the time of the original trial.<sup>61</sup>

A 2001 Presidential Commutation Order commuted death sentences against juvenile offenders issued prior to December 17, 2001 to life imprisonment, but the order excluded juvenile offenders sentenced for *qisas* or *hadd* crimes.<sup>62</sup>

## Examples of Recent Executions of Juvenile Offenders

Pakistan is known to have executed at least one juvenile offender since 2005.

### Mutabar Khan

Mutabar Khan was hanged in Peshawar Central Prison on June 13, 2006. A trial court in Swabi had sentenced him to death on October 6, 1998 for the April 1996 murder of

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<sup>57</sup> Juvenile Justice System Ordinance, arts. 2(b),7, 12.

<sup>58</sup> For a detailed discussion of the Juvenile Justice System Ordinance, see Amnesty International, "Pakistan: Protection of juveniles in the criminal justice system remains inadequate," ASA 33/021/2005, October 1, 2005, <http://www.amnesty.org/en/library/asset/ASA33/021/2005/en/dom-ASA330212005en.html> (accessed May 25, 2008).

<sup>59</sup> In addition, in 2004 the Lahore High Court revoked the ordinance, although a February 2005 Supreme Court ruling reinstated it pending a final ruling. The Supreme Court has taken no further action on the case.

<sup>60</sup> Human Rights Commission of Pakistan, State of Human Rights in 2007, pp. 167-168, <http://hrqp-web.org/5-2%20children.pdf> (accessed May 25, 2008).

<sup>61</sup> See for example, "Peshawar: Death sentence to juvenile offender upheld," *Dawn Newspaper*, Karachi, August 24, 2003, <http://www.dawn.com/2003/08/25/local33.htm> (accessed May 25, 2008), and the Supreme Court ruling in the case of Rehmatullah alias Raja vs. Home Secretary, Punjab, Lahore, petition no. 1480 of 2004, decided on June, 28, 2004, reproduced in Supreme Court Monthly Review (SCMR) 1861, vol. XXXVII (2004).

<sup>62</sup> Presidential Commutation Decree, Official Gazette of Pakistan, December 13, 2001, art. 1(a), as reproduced in Supreme Court Monthly Review (SCMR) 1861, vol. XXXVII (2004). Under Pakistani law life imprisonment is for a minimum period of 15 years and a maximum period of 25 years.

five people.<sup>63</sup> During his appeal he provided the court with a school-leaving certificate to support his claim that he was 16 at the time of the killings, and argued that authorities knew he was a juvenile because they held him in the juvenile wing of the Peshawar Central Prison for two years. The Peshawar High Court and the Supreme Court both rejected his appeal, on the grounds that the 2001 Presidential Commutation Order did not apply because his age had not been recorded at trial.

## **Examples of Death Sentences against Juvenile Offenders**

According to a 2007 joint study by FIDH and the Human Rights Commission of Pakistan, as of March 2006, authorities of Mach Central Jail acknowledged holding two juvenile offenders sentenced to death, one a 14-year-old and one who had been found to be 17 at the time of the offence.<sup>64</sup> The same study also noted that in June 2006, 40 children were reportedly lingering in Sargodha District Jail death cells.

On July 27, 2007, the Peshawar Federal Shariat Court commuted to life imprisonment the death sentences against Sohail Fida and Mohammad Rafique.<sup>65</sup> On July 23, 2002, a trial court had sentenced them to death for a murder that took place in May 2000, when they were both under age 18. In April 2003 the Peshawar High Court declined to rule on their appeal, saying the Shariat Court had jurisdiction because they had been charged under the Offence Against Property (Enforcement of Hudood) Ordinance of 1979.

## **Recommendations**

### **To States that have not yet banned the juvenile death penalty for all crimes**

- Enact legislation banning the imposition of capital punishment on persons who were under 18 at the time of the crime, without exceptions.

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<sup>63</sup> See FIDH and Human Rights Commission of Pakistan, "Slow march to the gallows," and "Condemned Prisoner Executed," *Dawn Newspaper*, Karachi, June 14, 2005, <http://www.dawn.com/2006/06/14/nat16.htm>.

<sup>64</sup> FIDH and Human Rights Commission of Pakistan, "Slow march to the gallows," p. 38.

<sup>65</sup> "Peshawar: Death sentence commuted to life imprisonment," *Dawn Newspaper*, July 28, 2007, <http://www.dawn.com/2007/07/28/local31.htm> (accessed May 26, 2008).

- Immediately implement a moratorium on all executions of persons convicted of crimes committed before age 18, pending passage of legislation banning the juvenile death penalty.
- Review all existing death sentences passed on persons who were under 18 at the time of the crime, immediately commute those sentences to custodial or other sentences in conformity with international juvenile justice standards.

### **To States that have banned the juvenile death penalty**

- Ensure that children in conflict with the law have prompt access to legal assistance, including assistance in proving their age at the time of an alleged offense, and require police, prosecution, and judicial authorities to record the ages of children who come before them.
- Promote universal birth registration.
- Ensure that judicial authorities understand and enforce the ban on the juvenile death penalty, including by providing judges and prosecutors with training on its application, and by ordering a review of all death sentences where there is doubt that the individual was over 18 at the time of the offense.

### **To the United Nations**

- Clearly state that the imposition of the death penalty on juvenile offenders is expressly prohibited by international human rights treaties and that the prohibition on such executions is so widely observed that it has attained the status of a peremptory norm of international law.
- Call on those very few remaining countries where juvenile offenders are subject to the death penalty to put an immediate end to the practice and ensure that their legal codes do not permit the execution of persons who were under age eighteen at the time of the offense for which they were convicted.
- Provide states with technical assistance in developing strong mechanisms to protect children at all stages of arrest, investigation, trial, and sentencing, and in developing sentencing options that promote the rehabilitation and social reintegration of children in conflict with the law.