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The Last Holdouts

**Ending the Juvenile Death Penalty in Iran,
Saudi Arabia, Sudan, Pakistan, and Yemen**

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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 offense—is well established in international treaty and customary law. The overwhelming majority of states comply with this standard: only five states are known to have executed juvenile offenders since January 2005.

In the recent past even the United States (US), a country which in 2005 had 70 juvenile offenders on death row, has implemented the ban on the death penalty for juvenile offenders: in March 2005 the US Supreme Court ruled the execution of juvenile offenders illegal because it violated the US Constitution's ban on cruel and unusual punishment.¹

Yet since January 2005 five other states are known to have executed at least 32 juvenile offenders: Iran (26), Saudi Arabia (2), Sudan (2), Pakistan (1), and Yemen (1).² Well over one hundred juvenile offenders—and possibly twice that number—are believed to be on death row, awaiting the outcome of a judicial appeal, or in some murder cases, the outcome of negotiations for pardons in exchange for financial compensation.

Why do a handful of states still execute juvenile offenders when the rest of the world has moved toward full implementation of the prohibition of the juvenile death penalty? In Iran and Saudi Arabia, the two countries that account for the largest number of executions of juvenile offenders, these sentences are the result of deliberate state policies to retain the juvenile death penalty, combined with criminal

¹ "US: Supreme Court Ends Child Executions," Human Rights Watch news release, March 1, 2005, <http://hrw.org/english/docs/2005/03/01/usdom10231.htm>. Other states have also moved to ban the juvenile death penalty. For example, in 1997, China amended its Criminal Code to ban executions of persons under 18 at the time of the crime. 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. Human Rights Watch has received no further evidence of death sentences against juvenile offenders. Criminal Code of China, art. 49; 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).

² Known executions of juvenile offenders between January 1, 2005 and August 27, 2008, compiled from public sources and Human Rights Watch interviews.

justice systems that fail to provide children with fundamental protections against unfair trials.

In Sudan, Yemen, and Pakistan, laws prohibiting the death penalty for crimes committed by persons under age 18 are not always implemented. Sudan has yet to clarify conflicting legislation for the north and autonomous south, while Pakistan has yet to issue regulations needed to implement the ban in all parts of its territory. In all three states juvenile offenders are at risk of being treated as adults in capital cases when they lack birth registration or other documents to prove their age at the time of the crime, when the court of first instance does not record their age, or when they lack competent legal assistance at crucial points during arrest and trial.

The Juvenile Death Penalty in International Law

The prohibition on the juvenile death penalty is absolute in international and customary law, and applies even in times of war.³ Both the Convention on the Rights of the Child, with 193 states parties, and the International Covenant on Civil and Political Rights, with 161 states parties, specifically prohibit capital punishment of persons under 18 at the time of the offense.⁴ 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.⁵ Regional human rights treaties for Africa, the Americas, and Europe all ban the juvenile death penalty in all circumstances.⁶

³ 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.

⁴ 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).

⁵ 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.

⁶ For example, the ban on the juvenile death penalty is absolute in the African Charter on the Rights and Welfare of the Child, and 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. African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, art. 5(3); 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.

Moving Backward: The Juvenile Death Penalty in the Arab Human Rights Charter

The revised Arab Human Rights Charter, of 2004, is unique among regional and international treaties addressing the death penalty in that the ban on the juvenile death penalty in it is not absolute. The Arab Human Rights Charter postdates all other regional human rights treaties, and has been ratified by seven of the 22 members of the League of Arab States.⁷

Article 7(1) of the 2004 Arab Human Rights Charter states “Sentence of death shall not be imposed on persons under 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime.”⁸ This substantially weakens protections in an earlier version of the charter, adopted in 1994, which had stated simply that “The death penalty shall not be inflicted on a person under 18 years of age.”⁹

In addition to falling short of an absolute ban, Article 7(1) is incompatible with international and customary law because it focuses on age at the time of sentencing or execution, leaving open the possibility that an individual who commits an offense while under age 18 would still be executed after turning 18. In March 2008 members of Saudi Arabia’s National Commission for Childhood and of the Council of Ministers’ committee drafting Saudi Arabia’s first child law told Human Rights Watch that the new law would define a child as anyone under age 18 but that judges could still issue death sentences to juvenile offenders and execution would be postponed until after the child turned 18.¹⁰ Such a law would violate Saudi Arabia’s legal obligation to prohibit the death penalty—which includes issuing death sentences—for persons under age 18 at the time of the offense, regardless of their age at trial, sentencing, or execution.

⁷ They are Algeria, Bahrain, Jordan, the Occupied Palestinian Territories, the Syrian Arab Republic, and the United Arab Emirates. League of Arab States, Revised Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int’l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008.

⁸ League of Arab States, Revised Arab Charter on Human Rights, art. 7(1).

⁹ Arab Charter on Human Rights, adopted by the League of Arab States on September 15, 1994, reprinted in 18 Hum. Rts. L.J. 151 (1997), art. 12.

¹⁰ Human Rights Watch interview with Dr. `Abd al-Rahman al-Sabih, National Commission for Childhood, and Dr. Khalid bin Suliaman al-Obaid, Human Rights Commission, Riyadh, March 11, 2008.

Iran and Saudi Arabia: Laws that Treat Children as Adults

Iran is a state party to both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, while Saudi Arabia is a state party to the Convention on the Rights of the Child.¹¹ Despite this, judges in both Iran and Saudi Arabia can impose the death penalty in capital cases if the defendant has attained his or her majority (a concept based on puberty). In some cases these determinations are made at the time of trial, rather than at the time of the offense.

In 2007 Iran executed at least 317 people,¹² including eight juvenile offenders; Saudi Arabia executed at least 158 people, including at least two juvenile offenders.¹³ At the time of writing Iran is known to have executed at least six juvenile offenders in 2008, and over 130 other juvenile offenders are under sentence of death.¹⁴

¹¹ 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. Saudi Arabia entered a similar reservation when it acceded to the CRC on January 26, 1996, entering a reservation “with respect to all such articles as are in conflict with the provisions of Islamic law.”

¹² 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-ffea-11dc-b092-bd020617d3d/act500012008eng.html> (accessed May 26, 2008).

¹³ A third individual, Abdullah bin Mohammed al-Otaibi, executed August 20, 2007, may also have been a juvenile offender. See, “Saudi Arabia beheads man convicted of murdering stepmother while minor,” *Associated Press*, August 20, 2007. According to Amnesty International, Saudi Arabia executed at least 158 people in 2007. 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>.

¹⁴ Iranian authorities executed juvenile offenders Behnam Zare on August 26, 2008; Seyyed Reza Hejazi on August 19, 2008; Hassan Mozafari and Rahman Shahidi on July 22, 2008; Mohammad Hassanzadeh on June 10, 2008; and Javad Shojai on February 26, 2008. See “Iran: Executions of Juvenile Offenders Rising: Iran Executes Sixth Juvenile Offender This Year, Twenty-Sixth Since 2005,” Human Rights Watch news release, August 27, 2008, <http://www.hrw.org/english/docs/2008/08/26/iran19697.htm>; “Iran: Spare Four Youths From Execution: Enforce International Prohibition on Death Penalty for Juvenile Offenders,” Human Rights Watch joint news release, July 7, 2008, <http://hrw.org/english/docs/2008/07/07/iran19270.htm>; “Iran: End Executions of Juvenile Offenders: 29 Adults and 2 Juvenile Offenders Hanged,” July 29 2008, Human Rights Watch joint news release, July 29, 2008, <http://hrw.org/english/docs/2008/07/29/iran19492.htm>.

Iranian Legislation and Practice

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*).¹⁵

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.¹⁶

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*).¹⁷ 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.

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, but which actually still leaves judges with discretion to sentence juvenile offenders to death. Article 31(3) of the proposed law would allow but not require judges to reduce a sentence of death or life imprisonment against juvenile defendants ages 15

¹⁵ 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).

¹⁶ 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).

¹⁷ Iranian Penal Code, arts. 205, 206.

to 18 to a term of imprisonment ranging from two to eight years in a juvenile correctional facility. In addition, 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.”

The Case of Seyyed Reza Hejazi

On August 19, 2008 the Iranian authorities executed Seyyed Reza Hejazi at Isfahan Central Prison for his role in a murder committed in 2003, when he was 15, and thus an adult under Iranian but not international law.¹⁸ The authorities did not notify Hejazi’s lawyer 48 hours prior to the execution, as required by Iranian law. Instead, his lawyer only learned of the pending execution from a journalist the night before, who had heard that Hejazi would be executed at 4 am the following morning. Hejazi’s lawyer immediately left Tehran for Isfahan, and arrived at the prison before the scheduled execution. However, prison authorities did not allow him to see his client, and he left the prison at 10 am after prison officials assured him that Hejazi’s execution had been stayed. However, upon returning to Tehran the lawyer learned that authorities had executed Hejazi at 11 am.

Hejazi was tried as an adult by Branch 106 of the Isfahan General Court and sentenced to death on November 14, 2005, for his role in a death resulting from a September 2003 fight involving several people. According to his lawyer, Hejazi 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 repeatedly stated that he did not intend to kill the victim. Nevertheless the judge did not encourage the victim’s family to pardon Hejazi or accept compensation for the killing, and Branch 28 of the National Supreme Court upheld the death sentence on June 6, 2006.

¹⁸ Human Rights Watch telephone interview with Mohammad Mostafaei, lawyer, Tehran, August 21, 2008. See also Mohammad Mostafaei, “To Defend the Defenseless” (Defa az bidefa), <http://mostafaei.blogfa.com/> (last accessed August 26, 2008); “Iran: Further Information on Fear of Execution,” Amnesty International Urgent Action, AI Index: MDE 13/120/2008, August 19, 2008, <http://www.amnesty.org/en/library/asset/MDE13/120/2008/en/03737b7d-6ea2-11dd-8e5e-43ea85d15a69/mde131202008en.html> (accessed August 22, 2008); email communication from individual familiar with the case to Human Rights Watch, March 3, 2008 (name withheld).

Saudi Arabian Legislation and Practice

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.¹⁹ 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. 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 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* cases, 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 nor at the time of trial, sentencing, or execution of sentence.

In practice, judges base determinations of majority (*bulugh*) in *qisas* cases on the defendant’s physical characteristics. According to a 2002 Council of Senior Scholars decree, majority in *qisas* cases 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.²⁰

¹⁹ 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.

²⁰ 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. 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*). Human Rights Watch interviews with Dr. Eisa AbdulAziz al-Shamekh, Human Rights

The Case of 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.²¹ According to Hakami's father, the authorities violated Saudi Arabian laws governing investigation, trial, and execution: authorities prevented him from attending his son's interrogation, which was held at a police station and not a juvenile detention center, did not allow him to attend the trial, did not inform him of the execution until days later, and have not returned his son's body.²² 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.²³

Unlike Iran, Saudi Arabia has only a handful of lawyers specializing in criminal defense cases, and much less is known about the number of persons sentenced to death for crimes committed while children.²⁴ Investigations conducted by Saudi Arabian journalists suggest that a significant number of children have been or are at risk of 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.²⁵ In November 2005 *alarabiya.net*, the online arm of Saudi Arabia's al-`Arabiya satellite news station, reported that Saudi Arabia's Ministry of

Commission board member, Riyadh, March 9, 2008, and Dr. `Abd al-Rahman al-Sabih, National Commission for Childhood, March 11, 2008.

²¹ See "The Qisas Execution of a Perpetrator for Killing a Boy after Trying to Rape Him" (al-Qatl Qisas 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 (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.

²² Samir Al-Saadi, "Father Seeks Justice for Son's 'Wrongful' Execution in Jizan," *Arab News*, January 30, 2008, <http://www.arabnews.com/?page=1§ion=0&article=106240&d=30&m=1&y=2008> (accessed February 7, 2008).

²³ Samir Al-Saadi, "Government Rep. Fails to Show Up for Hakami Case," *Arab News*, February 4, 2008, <http://www.arabnews.com/?page=1§ion=0&article=106448&d=4&m=2&y=2008> (accessed February 7, 2008); Samir Al-Saadi, "al-Hakami Case Hearing Put Off," *Arab News*, April 26, 2008, <http://www.arabnews.com/?page=1§ion=0&article=109327&d=26&m=4&y=2008> (accessed May 26, 2008).

²⁴ At this writing, Human Rights Watch is aware of at least 13 cases where individuals have been sentenced to death for crimes committed while children. 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/>.

²⁵ Saeed Al-Abyad, "Helping Troubled Kids Integrate," *Arab News*, October 11, 2006, <http://www.arabnews.com/?page=1§ion=0&article=88005&d=11&m=10&y=2006> (accessed May 22, 2008).

Social Affairs held 126 children in juvenile detention centers “for committing murder.”²⁶

²⁶ 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`l’ 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 home [a juvenile detention center for boys known as a 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.”

Sudan and Pakistan: Legal Loopholes

Sudan and Pakistan are states parties to the Convention on the Rights of the Child; Sudan is also a state party to the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, and Pakistan has signed but not yet ratified the covenant.²⁷

Sudan's 2004 Child Law sets reduced sentences for children age 15 to 18 who commit capital offenses. However, this law 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, nor with provisions of the 1991 Penal Code, which allows judges to try as adults children over age 15 who show signs of puberty.

In July 2000 Pakistan issued a Juvenile Justice System Ordinance banning the death penalty for crimes committed by persons under 18, but the ordinance requires juvenile courts and other mechanisms not provided for by law in all parts of Pakistan, leaving juvenile offenders at risk of trial as adults in capital cases.

Children's ability to benefit from the Sudanese and Pakistani legislation is further limited by low rates of birth registration—64 percent for Sudan and 29.5 percent for Pakistan—which make it difficult for juvenile offenders to prove their age at the time of the crime.²⁸

²⁷ 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. Pakistan ratified the Convention on the Rights of the Child on November 12, 1990 and signed the International Covenant on Civil and Political Rights on April 17, 2008.

²⁸ The Sudan rate is for the period from 1999 to 2006, and is the percentage of children less than five years of age that were registered at the moment of the Multiple Indicator Cluster Survey. However, the reliability of MICS surveys in Sudan is disputed, and according to at least one estimate birth registration may be closer to 47 percent. See UNICEF, Sudan Statistics, http://www.unicef.org/infobycountry/sudan_statistics.html (accessed August 11, 2008); New Sudan Centre for Statistics and Evaluation in association with UNICEF, "Towards a Baseline: Best Estimates of Social Indicators for Southern Sudan," May 2004, <http://www.unsudanig.org/docs/Towards%20A%20Baseline%20Best%20Estimates%20of%20Social%20Indicators%20for%20Southern%20Sudan,%202004,%20NSCSE,%20UNICEF.pdf> (accessed September 4, 2008). The Pakistan rate is the result of a survey conducted by Plan International in collaboration with Provincial Governments, in conjunction with a 2005-2007 government project to improve birth registration. Government of Pakistan, Third and Fourth Consolidated Report to the Committee on the Rights of the Child, undated, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.PAK.4.pdf> (accessed August 12, 2008), para. 159.

Sudanese Legislation and Practice

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*.²⁹ Under the 1991 Penal Code, applicable in all parts of Sudan, *hadd* crimes punishable by execution include waging war against the state, espionage, apostasy, adultery, sodomy, running a place of prostitution, and armed robbery resulting in death or rape.³⁰ Intentional murder is a *qisas* offense punishable by execution, and includes killings resulting from an intentional act that was likely to result in death.³¹

The 2004 Child Law applicable in all parts of Sudan states that as a matter of principle courts should not sentence children to death, and sets a maximum sentence of ten years’ detention in a juvenile reformatory for capital offenses committed by persons age 15 to 18.³² 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.”³³ This raises the possibility that a person under 18 could still be sentenced to death under the 1991 Penal Code. Article 9 of the Penal 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.”³⁴ The 2004 Child Law also lacks clarity on when children over 15 can benefit from the specialized courts and other juvenile justice protections created under the 2004 Child Law, and in practice few juvenile courts exist.³⁵

²⁹ 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.

³⁰ Penal Code of Sudan, arts. 51, 53, 126, 130, 146, 148, 168.

³¹ Penal Code of Sudan, arts. 27, 28, 130.

³² Child Law of 2004, arts. 61(d), 68(1)(a).

³³ Child Law of 2004, art. 4.

³⁴ Penal Code of Sudan, arts. 3, 8, 9.

³⁵ Article 55 gives juvenile courts jurisdiction over cases involving juvenile offenders (*al-atfal al-janihun*, defined in the law as children over seven years and under 15 years at the time of the crime) and cases of children at risk of committing crimes or who are victims of violations, which would seem to exclude children over age 15. However, article 58 requires criminal courts to transfer children’s cases to the juvenile court and permits the juvenile court to take appropriate measures. In cases of

The 2005 Interim Constitution of Southern Sudan banned the death penalty for persons under 18 without resolving the contradiction with the juvenile death penalty provision in the Interim National Constitution.³⁶ The Southern Sudan Legislative Assembly has yet to finalize a draft Child Code that would ban the juvenile death penalty.³⁷

Since 1990, Sudan is known to have executed two juvenile offenders, Mohammed Jamal Gesmallah and Imad Ali Abdullah, on August 31, 2005.³⁸ However, Human Rights Watch is aware of at least 6 other cases of persons sentenced to death who are believed to have been under 18 at the time of the alleged offense.³⁹

The Case of Kamal Hassan `Abd al-Rahman

Kamal Hassan `Abd al-Rahman is currently on death row, awaiting the outcome of an appeal to the Constitutional Court challenging the constitutionality of the death sentence issued against him for a crime committed when he was 15 years old.⁴⁰

The Port Sudan Criminal Court sentenced `Abd al-Rahman to death for a murder committed on March 11, 2004, when he was about 15 years old.<sup>41</sup> According to his lawyer, the Port Sudan Criminal Court rejected the defense's argument at the initial hearing on June 22, 2004 that `Abd al-Rahman was 15 years old and should be transferred to a juvenile court, as required by

children over 15 at the time of the offense, these measures are limited to placement in a juvenile detention facility. Child Law of 2004, arts. 4, 55, 58, 68.

³⁶ 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.

³⁷ Draft Children's Bill for Southern Sudan, 2005, art. 18(a). Copy on file with Human Rights Watch.

³⁸ 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>.

³⁹ These include Mohamed Adam Zariaba, age 16 when sentenced to death on July 31, 2008; Al-Tayeb Abdel Aziz Ishaq, age 16 when sentenced to death on November 10, 2007; Abdelrhman Zakaria Mohamed and Ahmed Abdullah Suleiman, each age 16 when sentenced to death in May 2007; Kamal Hassan Abd al-Rahman, sentenced to death for a crime committed on March 11, 2004, when he was 15; and Nagmeldin Abdallah, age 15 when sentenced to death in May 2003.

⁴⁰ Human Rights Watch telephone interview with Ali Agab, Legal Aid Officer, Khartoum Center for Human Rights and Environmental Development, Khartoum, August 25, 2008.

⁴¹ Appeal to the Constitutional Court in the Case of Kamal Hassan `Abd al-Rahman, Supreme Court Case 56/executions/2007.

Sudanese law. Instead, the court determined that the boy was an adult based on a doctor's written testimony that the boy showed signs of puberty.

On August 5, 2006, the High Court returned the case to the Port Sudan Criminal Court with instructions that it order a forensic age determination. A September 2006 age determination that found `Abd al-Rahman to be between 18 and 20 years old at the time of the determination. As such, he would have been under 18 at the time of the crime and should have been tried as a juvenile and benefited from a reduced sentence, a factor that the court does not appear to have taken into account. The defense also submitted testimony that neither of the age determinations used by the court were forensic examinations, as the first was based on puberty and the second was performed by a dentist and not a forensic panel. However, the judge rejected the defense argument, saying that age determination did not require special expertise.

Pakistani Legislation and Practice

Pakistan retains the death penalty for 26 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.⁴² 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 juvenile courts to order a medical examination when a defendant's age is in doubt.⁴³ The ordinance was extended to apply to Azad Jammu and Kashmir in 2003, and to the Provincially Administered Tribal Areas and the Federally Administered Tribal Areas in late 2004.⁴⁴ However, implementation remains very limited because many parts of

⁴² For a detailed discussion of the death penalty in Pakistan, see Human Rights Watch Letter to Pakistan's Prime Minister to Abolish the Death Penalty, June 17, 2008, <http://hrw.org/english/docs/2008/06/16/pakist19141.htm>; and 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).

⁴³ Juvenile Justice System Ordinance, arts. 2(b), 7, 12.

⁴⁴ 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).

the country lack the courts and other structures called for in the law.⁴⁵ 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.⁴⁶ 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.⁴⁷

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.⁴⁸

Pakistan is known to have executed at least one juvenile offender since 2005, Mutabar Khan, executed on June 13, 2006. 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 offense.⁴⁹

⁴⁵ 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.

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ 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.

⁴⁹ The same study also noted that in June 2006, 40 children were reportedly lingering in Sargodha District Jail death cells, but did not provide additional information. FIDH and Human Rights Commission of Pakistan, “Slow march to the gallows,” p. 38.

The Case of Mutabar Khan

Pakistani authorities hanged Mutabar Khan in Peshawar Central Prison on June 13, 2006.⁵⁰ A trial court in Swabi had sentenced him to death on October 6, 1998 for the April 1996 murder of five people. 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.

⁵⁰ 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>.

Yemen: Barriers to Implementation

Yemen is a state party to the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.⁵¹ Yemen's Penal Code provides reduced sentences for crimes committed by persons under 18, including capital offenses. Yemen's very low birth registration rate makes it difficult for many juvenile offenders to prove their age at the time of the offense, and in these situations courts sometimes sentence to death persons under age 18 at the time of the crime.⁵² In February 2007, Yemen executed Adil Muhammad Saif al-Ma'amari for a crime allegedly committed when he was 16. At least 18 other juvenile offenders are believed to be on death row.⁵³

Yemeni Legislation and Practice

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.⁵⁴ In 1994 Yemen amended its Penal Code to require reduced sentences for crimes committed by persons under 18, including a maximum penalty of ten years' imprisonment for those who commit capital offenses.⁵⁵ However, Yemen lacks adequate mechanisms for

⁵¹ 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.

⁵² UNICEF's 2006 Multiple Indicator Cluster Survey in Yemen found only 22 percent of births of children under age five were registered. UNICEF, *Multiple Indicator Cluster Survey: Monitoring the Situation of Children and women, Yemen 2006, Key Findings*, (Draft), on file with Human Rights Watch.

⁵³ UNICEF Yemen say they have been informed by the Ministry of the Interior (Prison Authority) that "no children under 18" were currently on death row. However, according to Penal Reform International, officials in Yemen's judiciary stated publicly in 2007 that there were 18 juveniles on death row, although nongovernmental organizations believe this number does not include some cases of children wrongly identified as adults. Nor would it include persons who are now adults but who were under 18 at the time of the crime. A Ministry of Interior official confirmed to Human Rights Watch that at least one juvenile offender, Walid Haykel, is currently on death row in Sana'a prison for a crime he committed at age 15. Email communication to Human Rights Watch from Judith Léveillé, chief child protection, HIV and AIDS, UNICEF Yemen, September 1, 2008; and Human Rights Watch telephone interviews with Tahar Boumedra, Middle East and North Africa regional director, Penal Reform International, Amman, August 19, 2008, and Mohammad al-Wadie, director of the Juvenile Directorate, Prison Authority, Ministry of Interior, Sana'a, September 3, 2008.

⁵⁴ Yemeni Penal Code, arts. 124, 141, 226, 227, 228, 234, 249, 259, 263, 264, 280, 306.

⁵⁵ Yemeni Penal Code, art. 31.

determining ages of defendants who lack birth certificates, including adequate forensic facilities with staff trained in conducting age determinations.⁵⁶

The Case of Adil Muhammad Saif al-Ma'amari

Since 1993, Yemen is only known to have executed one juvenile offender, Adil Muhammad Saif al-Ma'amari, in February 2007. 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 16.⁵⁷ 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.

⁵⁶ Human Rights Watch telephone interview with Tahar Boumedra, Amman, August 19, 2008.

⁵⁷ 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).

Recommendations

Meaningful action by a small handful of states to ban the juvenile death penalty in all its forms and to ensure the fundamental rights of children in conflict with the law would result in universal adherence with the well-established prohibition against the juvenile death penalty.

Governments in states that have yet to prohibit the juvenile death penalty for all crimes should

1. Enact as a matter of urgency legislation banning the imposition of capital punishment or life without parole on persons who were under 18 at the time of the crime, without exceptions;
2. 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;
3. Review all existing death sentences passed on persons who were under 18 at the time of the crime, and immediately commute those sentences to custodial or other sentences in conformity with international juvenile justice standards.

Governments in states that have banned the juvenile death penalty should

1. 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;
2. Promote universal birth registration;
3. 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.

The UN and its member states should

1. Support the efforts of governments and civil society to ensure the fundamental rights of children in conflict with the law, including through technical and financial assistance.
2. Request the UN Secretary-General, with the assistance of the Office of the High Commissioner for Human Rights, to submit a report to the 64th session of the General Assembly on compliance with the absolute ban on the juvenile death penalty, including information on
 - a) the number of juvenile offenders currently sentenced to death, and the number executed during the last 5 years;
 - b) rates of birth registration;
 - c) states' implementation of relevant domestic legislation, including mechanisms ensuring juvenile offenders have legal assistance at all stages of investigation and trial;
 - d) any other obstacles to full implementation of the ban on the juvenile death penalty.
3. Provide the Secretary-General with information on legislation and practice relating to the use of the death penalty against juvenile offenders.

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