

**The Kingdom of Saudi Arabia's Compliance with the Convention on the Elimination of All
Forms of Discrimination against Women
Suggested List of Issues Relating to the Death Penalty**

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC since 1996,
European Saudi Organization for Human Rights,
ALQST,
Reprieve,
The Cornell Center on the Death Penalty Worldwide,
and
World Coalition Against the Death Penalty

**88th Session of the CEDAW (Pre-Sessional Working Group)
30 October–3 November 2023**

Submitted 11 September 2023

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

ALQST for Human Rights is an independent NGO founded in 2014 with the purpose of defending and promoting human rights in Saudi Arabia. 'Al-qist' means 'justice' in Arabic, and a passion for justice lies at the heart of all our work. Through its extensive network of sources within the country, ALQST monitors and documents human rights violations on the ground and brings them to the attention of the international community through legal and public advocacy, media work, and campaigns on behalf of victims.

The European Saudi Organization for Human Rights (ESOHR) is a nonprofit organization establishment, established by a group of activists aiming to strengthen the commitment of human rights principles in Saudi Arabia. ESOHR vision is to expand the area of human rights in all fields in full measure, by working to urge the concerned as legislative or executive to activate it, raise awareness and empower citizens of their rights through education.

Reprieve is a charitable organization registered in the United Kingdom (No. 1114900), with special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. Reprieve's clients belong to some of the most vulnerable populations in the world, as it is in their cases that human rights are most swiftly jettisoned and

the rule of law is cast aside. In particular, Reprieve protects the rights of those facing the death penalty and delivers justice to victims of arbitrary detention, torture, and extrajudicial execution.

The Cornell Center on the Death Penalty Worldwide is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

The World Coalition Against the Death Penalty is a volunteer-based non-governmental organization committed to strengthening the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

SALAM for Democracy and Human Rights endorses this report.

EXECUTIVE SUMMARY

1. This report addresses the Kingdom of Saudi Arabia's (Saudi Arabia's) compliance with its obligations under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW Convention) in the context of Saudi Arabia's laws, policies, and customs concerning the death penalty. The report suggests questions for the Committee to raise with the Government of Saudi Arabia with respect to the death penalty and the effect of the death penalty on women, in particular.
2. Saudi Arabia is a signatory to the CEDAW Convention but is not a signatory to its Optional Protocol. Saudi Arabia also made a reservation to its ratification of the Convention in the event of conflict between the Convention and the "norms of Islamic law."
3. Saudi Arabia has not abolished the death penalty or implemented a moratorium on executions, nor has it limited the application of the death penalty to the "most serious" crimes within the meaning of Article 6(2) of the International Covenant on Civil and Political Rights. People under sentence of death in Saudi Arabia also experience inadequate detention conditions, including torture and solitary confinement in "condemned cells," in violation of the Nelson Mandela Rules.
4. The number of women on death row in Saudi Arabia is unknown. But between 2010 and 2021, Saudi authorities executed 31 women.¹ As is the case worldwide, most women in Saudi Arabia are executed for murder,² and in the global context these crimes often involve murders of family members in a context of gender-based violence.³ Women are disproportionately affected by laws criminalizing conduct that does not meet the threshold of the "most serious" crimes, including laws criminalizing, and imposing a sentence of death for, extramarital sex, drugs, and sorcery (witchcraft).
5. Women who face extensive gender-based violence are disproportionately affected by the death penalty in Saudi Arabia, including women who seek to protect themselves against their abusers. Further, long histories of gender-based violence can result in complex trauma, yet sentencing courts fail to take these effects into account as factors in mitigation of a death sentence. Further, women who survive physical and sexual violence, but do not prove their perpetrators' responsibility, may be prosecuted for committing a *zina* offense such as extramarital sex or adultery, and sentenced to death.
6. Women who are foreign nationals working in Saudi Arabia are disproportionately affected by the death penalty because they are routinely subjected to economic, physical, and mental abuse and, in the event of a criminal charge imposing a sentence of death, are denied access to legal counsel and interpreters.

¹ European Saudi Organisation for Human Rights and Reprieve, *Bloodshed and Lies: Mohammed bin Salman's Kingdom of Executions* (Jan. 2023), <https://reprieve.org/wp-content/uploads/sites/3/2023/01/Bloodshed-and-Lies-Mohammed-bin-Salmans-Kingdom-of-Executions.pdf>, at 17.

² *Ibid.*

³ The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 11. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

I. Laws authorizing the death penalty discriminate against women and reinforce harmful stereotypes (Concluding Observations paragraphs 15 and 16).

7. In its 2018 Concluding Observations, the Committee expressed concern about Saudi Arabia’s reluctance to withdraw its general reservation to the CEDAW Convention, whereby “precedence is given to the sharia in case of any conflict between the provisions of the Convention and those of the sharia.”⁴ The Committee noted that the general reservation “is incompatible with the object and purpose of the Convention and is thus impermissible under article 28 of the Convention.”⁵ The Committee recommended that Saudi Arabia review its general reservation and its reservation to article 9(2) of the Convention in consultation with leaders of religious communities, religious scholars, and women leaders, with “a view to withdrawing the reservations within an established time frame, taking into consideration the best practices of countries that are members of the Organization of Islamic Cooperation and have similar cultural and religious backgrounds and legal systems.”⁶
8. The Committee also expressed concern about Saudi Arabia’s understanding of the principle of equality, which implies “complementarities and harmony” rather than equal rights for women and men.⁷ The Committee recommended that Saudi Arabia adopt and implement comprehensive anti-discrimination legislation including a definition of discrimination against women, encompassing both direct and indirect discrimination in the public and private spheres and in all areas covered by the CEDAW Convention.⁸
9. Additionally, the Committee “remained concerned” with the persistence of discriminatory laws in Saudi Arabia, in particular the legal provisions relating to personal status, the Civil Status Code, the Labour Code, the Nationality Act, and the system of male guardianship, which subjects women’s enjoyment of most of their rights under the Convention to the authorization of a male guardian.⁹ The Committee noted the obligation of Saudi Arabia “to ensure that traditions, religion and culture are not used to justify discrimination against women and violation of the rights enshrined in the Convention.”¹⁰
10. The Committee did not mention the death penalty specifically. Worldwide, however, women are “discriminatorily targeted with or disproportionately impacted by capital laws,”¹¹ As is the case in Saudi Arabia.
11. Consideration of the types of crimes for which a sentence of death may be imposed highlights how laws authorizing the death penalty and laws calling for a mandatory sentence of death for certain crimes discriminate against women in practice. Further, Saudi Arabia’s general reservation to the Convention in the event of conflict between the Convention and Islamic law undermines any effort to eliminate this discriminatory effect on women.

⁴ Committee on the Elimination of Discrimination against Women, Concluding observations on the third periodic report of Saudi Arabia, UN Doc. No. CEDAW/C/SAU/CO/3-4, 14 Mar. 2018, ¶ 9.

⁵ *Id.* ¶ 10.

⁶ *Ibid.*

⁷ *Id.* ¶ 13.

⁸ *Id.* ¶ 14.

⁹ *Id.* ¶ 15.

¹⁰ *Id.* ¶ 16.

¹¹ Alexander, C. ‘Gendered Nature of the Death Penalty: in Law and Practice’ (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 18.

12. Saudi Arabia retains the death penalty for a wide range of offenses across three categories of Islamic law: *al had* (mandatory), *qisas* (retributive), and *ta'zir* (discretionary).¹²
13. *Al had* is imposed in cases stipulated by the Quran, Sunnah, and agreed upon by the Four (Islamic) Schools of Law, and it includes, among other things, the apostasy of Islamic faith and consensual same-sex sexual activity between adults.¹³ Crimes classified as *qisas* are crimes for which a perpetrator can be punished in a similar manner to the actions the perpetrator committed against the victim.¹⁴ These often include crimes involving bodily harm and, in instances in which an individual's conduct has caused a death, a court may sentence that person to death. It is possible for a victim or victim's family to grant forgiveness to a perpetrator in exchange for payment called *al diah*, commonly referred to as "blood money."
14. Courts issue death sentences under *ta'zir* for crimes that did not exist at the time that the Qur'an was written, such as the trafficking, sale, and smuggling of drugs.¹⁵ The punishment for these crimes is not fixed and can range from simple reprimands to executions. The judge has the sole discretion to determine the punishment for the offense.¹⁶
15. Within these categories, judges in Saudi Arabia retain wide-ranging powers to determine what behavior may constitute a criminal offense and whether to issue a death sentence.¹⁷ Courts in Saudi Arabia may issue death sentences for a wide variety of crimes, including murder, drug-related crimes, sexual offenses (including consensual same-sex sexual activity between adults), kidnapping, burglary, sedition, treason, witchcraft, and sorcery.¹⁸
16. Many of the offenses that carry a death sentence in Saudi Arabia do not meet the threshold of "most serious" crimes under international law. The Human Rights Committee has clarified that only crimes in which the person subject to the death penalty committed an intentional killing meet this threshold.¹⁹
17. Human Rights Watch reports that Saudi Arabia has one of the world's highest execution rates and applies the death penalty to nonviolent offenses, including drug offenses.²⁰
18. According to Shari'a, the punishment for consenting women who have engaged in same-sex sexual activity can vary depending on the marital status of the individuals involved. In the case of unmarried women engaging in such activity, the prescribed punishment for each of them is

¹² Reprieve, *Saudi Arabia and the Death Penalty*, (England, Reprieve, January, 2023). Available at <https://reprieve.org/uk/2023/01/31/saudi-arabia-and-the-death-penalty-everything-you-need-to-know-about-the-rise-in-executions-under-mohammed-bin-salman/>.

¹³ Ministry of Justice, Judiciary System, accessed Apr. 26, 2020, www.moj.gov.sa/Documents/Regulations/pdf/06.pdf.

¹⁴ Quran, Surah Al-Baqarah

¹⁵ Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (2010).

¹⁶ US Department of Justice, *Sharia penalties and the ways of their implementations in the Kingdom of Saudi Arabia*, (US Department of Justice, 1980) Available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/sharia-penalties-and-ways-their-implementation-kingdom-saudi-0>.

¹⁷ Reprieve, *Saudi Arabia and the Death Penalty*, (England, Reprieve, January, 2023). Available at <https://reprieve.org/uk/2023/01/31/saudi-arabia-and-the-death-penalty-everything-you-need-to-know-about-the-rise-in-executions-under-mohammed-bin-salman/>.

¹⁸ *Ibid.*

¹⁹ Human Rights Committee, General Comment No. 35, (3 September 2019), U.N. Doc. CCPR/C/GC/36, ¶ 35.

²⁰ Saudi Arabia: Forthcoming Penal Code Should Protect Rights | Human Rights Watch (hrw.org).

one hundred lashes. If both women are married, however, the prescribed punishment is death by stoning. Fornication carries the same punishment.²¹

19. In 2018, Saudi authorities executed at least 149 people (men and women).²² In 2019, at least 184 people were executed.²³ In 2020, 27 people were executed.²⁴ In 2021, 69 people were executed.²⁵ In 2022, at least 196 people were executed.²⁶ The Saudi Human Rights Commission has suggested that the drastic drop in executions in 2020 was due to a moratorium on capital punishment for drug offenses as Saudi Arabia had proposed removing the death penalty for those and other nonviolent offenses.²⁷
20. Saudi Arabia does not report gender disaggregated data on death sentences or executions.²⁸ Reprieve and the European Saudi Organization for Human Rights recorded 31 executions of women between 2010 and 2021, amounting to 2.5% of all executions in the country during that period.²⁹ 23 of 31 women executed were foreign nationals, and of these, a majority (13) were domestic workers; at least 1 was a child at the time of committing the alleged offence; 3 of 31 women were convicted of non-lethal offences (2 for drug offences and 1 for sorcery and witchcraft); 10 of 31 women were executed following mandatory death sentences; 15 of 31 women were executed following retributive death sentences; and 6 of 31 women were executed following discretionary death sentences.³⁰ It is unknown how many women in Saudi Arabia are on death row.³¹ Examination of the types of crimes for which a court may impose a sentence of death highlights how laws authorizing the death penalty discriminate against women in practice.
21. According to Human Rights Watch, Saudi Arabia punishes people “for a range of ‘moral crimes’ that criminalize private consensual relations such as *khilwa* (meeting of an unrelated man and woman, especially alone), *zina* (extramarital sex), sorcery and witchcraft, abortion and other acts relating to expression of nonconforming gender identity or sexual orientation.

²¹ Al Hoda Center, Meaning of Lesbianism, Its Ruling, and Punishment. Accessed on July 11, 2023, available at: <https://www.alhodacenter.com/article/831>.

²² Death Penalty Worldwide, *Kingdom of Saudi Arabia*, (Cornell Law School: New York, April 2023). Available at <https://deathpenaltyworldwide.org/database/#/results/country?id=64>

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Human Rights Commission (@HRCSaudi_EN), (Twitter, 18 January 2021), available at: https://twitter.com/hrcsaudi_en/status/1351087958565281793?lang=en-GB.

²⁸ The Cornell Center on the Death Penalty Worldwide, One Believed Me: A Global Overview of Women Facing the Death Penalty for Drug Offenses, September 2021, available at: "No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses (deathpenaltyworldwide.org) at p. 15 ("[G]ender disaggregated death row data is not available for China, Saudi Arabia, Singapore or Vitamin.")

²⁹ European Saudi Organisation for Human Rights and Reprieve, *Bloodshed and Lies: Mohammed bin Salman's Kingdom of Executions* (Jan. 2023), <https://reprieve.org/wp-content/uploads/sites/3/2023/01/Bloodshed-and-Lies-Mohammed-bin-Salmans-Kingdom-of-Executions.pdf>, at 17.

³⁰ Ibid.

³¹ The Cornell Center on the Death Penalty Worldwide, One Believed Me: A Global Overview of Women Facing the Death Penalty for Drug Offenses, September 2021, available at: "No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses (deathpenaltyworldwide.org) at p. 64.

Criminalizing these activities contravenes international standards and charges are often applied in a manner that discriminates against women.”³²

22. Under Shari’a, both men and women may be sentenced to death for adultery. It has been reported, however, that courts convict women of *zina*, or extramarital sex, at a “disproportionate rate” to men.³³ The Cornell Center on the Death Penalty Worldwide suggests that this disproportionality is the result, at least in part, of “structural biases within the judicial system,” where women, when perceived as the instigator of a crime, such as an adulterer or witch, “are more likely to receive a harsher punishment than men accused of similar offen[c]es.”³⁴ The Cornell Center continues: “Particularly with respect to *zina*, the manifestation of such biases is likely the product of persisting social and historical conceptualisations of women’s deviance as tied to sexual deviancy.”³⁵
23. Consensual same-sex relationships are also punishable by death in Saudi Arabia, but the United States Commission on International Religious Freedom reports that Saudi Arabia has not sought the death penalty for that offense in recent years.³⁶
24. Saudi Arabia recognizes the crime of “sorcery” (witchcraft) and it has been reported that “the majority of sorcery-related executions in recent years have taken place in Saudi Arabia, where such laws are used ‘as a convenient way to punish a whole range of transgressive behavior.’”³⁷ Researchers were able to find one instance of a woman in Saudi Arabia being executed on this basis in recent years. In 2011, a woman was beheaded in Saudi Arabia after conviction of “witchcraft and sorcery.”³⁸ In 2019, authorities released from death row two women who had been convicted of practicing witchcraft.³⁹ Saudi Arabia has also executed men on charges of witchcraft.⁴⁰
25. Saudi Arabia also imposes the death penalty for drug-related crimes. The Cornell Center has reported that five states imposing the death penalty for drug-related crimes, including Saudi Arabia, accounted for 40% of all executions between 2008 and 2018.⁴¹
26. The Cornell Center’s research indicates that, at a global level, in drug cases, as well as for other types of crimes, courts are “particularly reluctant to consider gender-specific mitigation evidence.”⁴² Thus, while women “often play a minor role in the drug trade and are sometimes

³² Human Rights Watch, Saudi Arabia: Forthcoming Penal Code Should Protect Rights, April 29, 2022, available at: Saudi Arabia: Forthcoming Penal Code Should Protect Rights | Human Rights Watch (hrw.org)

³³ Alexander, C. ‘Gendered Nature of the Death Penalty: in Law and Practice’ (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 19.

³⁴ Ibid.

³⁵ Ibid.

³⁶ United States Commission on International Religious Freedoms, Fact Sheet: Shari’a and LGBTI Persons, available at: Factsheet: Shari’a and LGBTI Persons (uscirf.gov)

³⁷ Alexander, C. ‘Gendered Nature of the Death Penalty: in Law and Practice’ (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 22.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ The Cornell Center on the Death Penalty Worldwide, *One Believed Me: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, September 2021, available at: “No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses (deathpenaltyworldwide.org) at p. 14.

⁴² Ibid.

manipulated or coerced into committing drug offenses, they are easy targets for the enforcement authorities,” resulting in a dramatic increase in the number of women imprisoned and sentenced to death.⁴³ Saudi authorities executed at least two women for drug offenses in 2019, and both were foreign nationals.⁴⁴

27. In 2018, Reuters reported that Saudi Arabia’s prosecutors sought the death penalty against five human rights activists, including a woman, Israa al-Ghomgham.⁴⁵ Saudi activists reported that Ms. Al-Ghomgham was the first woman to face execution for human-rights related work in Saudi Arabia. She was charged with incitement to protest and providing moral support to rioters. In response to international pressure, Saudi authorities dropped the request for the death penalty.⁴⁶ Ms. Al-Ghomgham was sentenced to eight years in prison in February 2021.

II. Saudi Arabia’s failure to address gender-based violence and improve women’s access to justice for gender-based violence puts women at risk of committing death-eligible offenses (Concluding Observations paragraphs 31-34, 19-20).

28. In its 2018 Concluding Observations, the Committee expressed concern about Saudi Arabia’s failure to address widespread gender-based violence. The Committee noted that Saudi Arabia enacted a Law on Protection from Abuse in 2013, which criminalizes domestic violence, and established shelters throughout the country. The Committee noted concern, however, about “the prevalence of gender-based violence against women, in particular domestic and sexual violence, which remains largely underreported and undocumented.”⁴⁷ The Committee also expressed concern about the non-criminalization of rape, including marital rape, in the Law on Protection from Abuse, and the law’s failure to criminalize sexual assault, sexual harassment, and economic violence.⁴⁸ The Committee further expressed concern about the absence of comprehensive legislation to criminalize all forms of gender-based violence against women; that male relatives may bring legal claims against ‘disobedient’ female dependents who flee domestic violence; the persistent use by male guardians of physical violence to discipline women and children under their guardianship; low rates of prosecution and conviction against perpetrators, and lenient penalties imposed on perpetrators of gender-based violence against women; forceful return by law enforcement officials of fleeing women to their abusers; lack of support services; and inability of women to leave state-run shelters without the consent of their male guardian.⁴⁹
29. The Committee also raised concern that a victim who reports rape or sexual assault may face criminal prosecution.⁵⁰ A woman who does not prove her claim may be deemed to have confessed to sexual relations outside of marriage or adultery, *zina* offenses that are punishable by flogging, stoning, or even death.⁵¹ The Committee recommended that Saudi Arabia amend

⁴³ *Ibid.*

⁴⁴ *Id.* at 16.

⁴⁵ Middle East Monitor, Saudi Arabia seeks death penalty for woman activist – Middle East Monitor.

⁴⁶ MENA Rights Group, April 15, 2021, Saudi human rights defender Israa Al Ghomgham sentenced to eight years in prison | MENA Rights Group

⁴⁷ Committee on the Elimination of Discrimination against Women, Concluding observations on the third periodic report of Saudi Arabia, UN Doc. No. CEDAW/C/SAU/CO/3-4, 14 Mar. 2018, ¶ 31(a).

⁴⁸ *Id.* ¶ 31(b).

⁴⁹ *Id.* ¶ 31(c)-(i).

⁵⁰ *Id.* ¶ 33.

⁵¹ *Ibid.*

its legislation to ensure that victims of rape and sexual assault do not face punishment if they report a crime that cannot later be proved.⁵²

30. In its 2018 Concluding Observations, the Committee also expressed concern about continuing barriers to women's access to justice, including lack of legal aid services; women's limited knowledge of their rights and complaint mechanisms; lack of knowledge and sensitivity to women's rights issues on the part of law enforcement officials and legal practitioners; fear of reprisals and stigmatization; and the need for women and girls to obtain authorization from a male guardian to file complaints.⁵³
31. Domestic violence is widespread in Saudi Arabia. Research suggests that one in three women in Saudi Arabia have experienced physical or sexual violence.⁵⁴
32. According to the U.S. State Department, officials have reported that the government does not clearly define domestic violence or procedures for domestic violence cases, and that enforcement consequently has varied from one governmental body to another.⁵⁵ Women's rights organizations claim that investigators are hesitant to enter homes without permission of the male head of the household, who may be the abuser.⁵⁶ Activists have reported that this situation has improved in recent years and that there is greater public awareness of resources for domestic violence survivors, including a domestic violence hotline managed by the Ministry of Human Resources and Social Development. Activists have also expressed concern that police still neglect domestic violence cases.⁵⁷
33. Data from the Cornell Center indicate that most women on death row worldwide have been sentenced to death for the crime of murder, with drug-related crimes coming in second.⁵⁸ With respect to murder, the offenses typically occur "in a context of gender-based violence."⁵⁹ Most cases in which a woman is sentenced to death for killing an abusive family member "involve long-term abuse and the absence of effective outside help."⁶⁰
34. Women facing gender-based violence are disproportionately affected by the death penalty. In Saudi Arabia, murder carries a mandatory death penalty. As noted above, 10 of the 31 women executed between 2010 and 2021 were executed pursuant to a mandatory death penalty. In the 26 countries reported to have mandatory death penalties for murder (including Saudi Arabia),⁶¹

⁵² Ibid.

⁵³ *Id.* ¶ 19.

⁵⁴ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Saudi Arabia*, 2022.

<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/saudi-arabia/>.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 11. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ The Cornell Center identifies these 26 countries as: Afghanistan, Botswana, Brunei, Gambia, Ghana, Iran, Libya, Malaysia, Mauritania, Myanmar, Niger, Nigeria, Pakistan, Palestine, Qatar, Saudi Arabia, Singapore, Somalia, South Sudan, Sri Lanka, Sudan, Tanzania, Thailand, Trinidad and Tobago, United Arab Emirates, and Yemen. Alexander, C. 'Gendered Nature of the Death Penalty: in Law and Practice' (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 10 & 21 n 21.

“courts are barred from considering mitigating circumstances, such as histories of gender-based violence, during sentencing.”⁶² A study by the Cornell Center, Eleos Justice, and Monash University found “that it is ‘extremely rare’ for domestic abuse to be considered as a mitigating factor in capital sentencing” and “this is especially so in the 26 countries where murder carries the mandatory death penalty, meaning mitigating factors are altogether excluded from the sentencing calculus.”⁶³

35. In Saudi Arabia, a victim-survivor of gender-based violence may be prosecuted if she is unable to prove her claim. Pregnancy is used as evidence of *zina* offenses, and women who report rape or sexual violence can be deemed to have confessed to having sex outside of marriage and can thereby face prosecution. Such offenses also carry corporal punishment sentences, including floggings and stoning.⁶⁴
36. In its State Party Report, Saudi Arabia responded to a recommendation to ensure that victims of sexual assault are not punished by stating that “women and girls who are victims of sexual assault are not punished, but rather receive redress, by imposing penalties prescribed by law on the perpetrator, and providing them with health, social and legal assistance.”⁶⁵ Saudi Arabia also stated that the Law of Combatting Trafficking in Persons says in Article 5 that “the consent of the victim is not considered in any of the crimes stipulated in this law” and that, in Article 16 of the Law of Criminal Procedures, it states that the victim has a right to file a criminal lawsuit and to initiate a lawsuit before the court, which must notify the public prosecutor.
37. T.T. arrived in Saudi Arabia in September 2009 to work for a family. T.T.’s employer regularly sexually abused her. In May 2010, as her employer attempted to rape her, T.T. hit him with a stick in self-defense, which led to his death. The police arrested T.T. a week later and a court sentenced her to death in June 2011. After eight years in prison, in 2018, Saudi authorities executed her by beheading.⁶⁶ Her case suggests that when women are sentenced to death for killing another human being, legal proceedings ignore the context of gender-based violence and the imbalance in power dynamics between an accused woman and an abusive male figure.
38. Human Rights Watch reports that, while Saudi authorities promised a comprehensive and progressive personal status law, the new personal status law (issued by royal decree on March 8, 2022) actually “entrenches discriminatory provisions on women in marriage, divorce, inheritance, and decisions relating to children,” and the law “codifies male guardianship and sets out provisions that can facilitate and excuse domestic violence including sexual abuse in

⁶² Alexander, C. ‘Gendered Nature of the Death Penalty: in Law and Practice’ (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 10 & 21 n 21 (listing Saudi Arabia as one of the twenty-six countries in which murder or aggravated murder may carry the mandatory death penalty).

⁶³ Lourtau, D. ‘Women Facing the Death Penalty’ (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 21 & n. 21.

⁶⁴ Saudi Arabia: Forthcoming Penal Code Should Protect Rights | Human Rights Watch (hrw.org)

⁶⁵ State Party Report, Saudi Arabia, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FSAU%2F5&Lang=en

⁶⁶ Reprieve, *Saudi Arabia and the Death Penalty*, (England, Reprieve, January, 2023). Available at <https://reprieve.org/uk/2023/01/31/saudi-arabia-and-the-death-penalty-everything-you-need-to-know-about-the-rise-in-executions-under-mohammed-bin-salman/>. See also Lourtau, D. ‘Women Facing the Death Penalty’ (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 33 n. 47.

marriage.”⁶⁷ Among other things, the law implies a marital right to intercourse and requires a woman to “establish harm” in order to obtain a divorce, leaving to a judge’s discretion how to interpret and enforce the requirement of “harm.” Men, in contrast, can unilaterally divorce.⁶⁸ The personal status law therefore leaves women particularly at risk of abusive relationships that perpetuate violence and place women at risk of being convicted of death-eligible offenses for actions taken in self-defense.

III. Foreign nationals, particularly women migrant domestic workers, are disproportionately affected by the death penalty in Saudi Arabia (Concluding Observations paragraphs 37 and 38).

39. In its 2018 Concluding Observations, the Committee expressed concern about ongoing economic and physical abuse and exploitation of women migrant domestic workers.⁶⁹ The Committee noted with appreciation that Saudi Arabia adopted Regulations concerning Domestic Workers and the Like (2013) but expressed concern about the limited protection that these regulations provided for domestic workers, including exclusion of domestic workers from Labour Code protections and lack of access to labour courts; the confiscation of passports by employers and the de facto persistence of the kafalah system, impeding women’s ability to change employers even in circumstances of physical abuse; that women domestic workers cannot change an employer without facing charges of “absconding”; lack of regular labour inspections of working conditions; and inadequate conditions in State-run shelters for women migrant domestic workers.⁷⁰
40. Migrant workers constitute more than 80% of Saudi Arabia’s private sector workforce. Human Rights Watch reports that “[o]ver 6.3 million migrants fill mostly manual, clerical and service jobs in Saudi Arabia.”⁷¹ Saudi Arabia has the third largest migrant population in the world.⁷²
41. In Saudi Arabia, 74% of the women reported to have been executed between 2010 and 2021 were foreign nationals, more than half of whom were domestic workers.⁷³ According to a report by Reprieve and the European Saudi Organisation for Human Rights, between 2010 and 2021, there were 31 executions of women.⁷⁴ Of those 31 women, 23 were foreign nationals, and a majority of them (13) were domestic workers.⁷⁵ The European Saudi Organization for

⁶⁷ Human Rights Watch, World Report 2023, Country Chapters; Saudi Arabia, available at World Report 2023: Saudi Arabia | Human Rights Watch (hrw.org)

⁶⁸ Ibid.

⁶⁹ Committee on the Elimination of Discrimination against Women, Concluding observations on the third periodic report of Saudi Arabia, UN Doc. No. CEDAW/C/SAU/CO/3-4, 14 Mar. 2018, ¶ 37(a).

⁷⁰ *Id.* ¶ 37(a)-(f).

⁷¹ World Report 2023: Saudi Arabia | Human Rights Watch (hrw.org), citing Yearly Statistics (sama.gov.sa)

⁷² UN Department of Economic and Social Affairs, The number of international migrants reaches 272 million, continuing an upward trend in all world regions, says UN, 17 September 2019, available at: <https://www.un.org/development/desa/en/news/population/international-migrant-stock-2019.html>.

⁷³ Reprieve, *Saudi Arabia and the Death Penalty*, (England, Reprieve, January, 2023). Available at <https://reprieve.org/uk/2023/01/31/saudi-arabia-and-the-death-penalty-everything-you-need-to-know-about-the-rise-in-executions-under-mohammed-bin-salman/>. See also Lourtau, D. ‘Women Facing the Death Penalty’ (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 33.

⁷⁴ European Saudi Organisation for Human Rights and Reprieve, *Bloodshed and Lies: Mohammed bin Salman’s Kingdom of Executions* (Jan. 2023), <https://reprieve.org/wp-content/uploads/sites/3/2023/01/Bloodshed-and-Lies-Mohammed-bin-Salmans-Kingdom-of-Executions.pdf>, at 17.

⁷⁵ Ibid.

Human Rights reports that foreign nationals constituted approximately 40% of total executions carried out between 2015 and 2021 in Saudi Arabia.⁷⁶ The European Saudi Organisation for Human Rights and Reprieve found that female domestic workers have been denied access to a fair trial in capital cases, including where the court ignored significant gender-specific mitigation evidence.⁷⁷

42. the European Saudi Organization for Human Rights reports that Saudi Arabia executed a total of 361 foreign nationals of different nationalities from 2015 through the end of 2021.⁷⁸ Similarly, Reprieve reports that, from 2010 to 2021, Saudi Arabia executed 490 foreign nationals, or 39% of the total number of executions.
43. Amnesty International has expressed alarm at the disproportionate number of migrant workers being executed in Saudi Arabia.⁷⁹ In many cases the migrants are subjected to trials where they are unable to understand the proceedings, which are conducted solely in Arabic and without translation.⁸⁰ Additionally, Saudi authorities often deny migrants access to lawyers or to consular assistance.⁸¹
44. Although information is limited because Saudi authorities do not publish official figures regarding people on death row, a report from 2013 stated that more than 45 foreign domestic workers were under sentence of death.⁸² An International Labor Report stated that migrants in Saudi Arabia are at a higher risk of being victims of spurious charges.⁸³ The report also stated that legal protections in Saudi Arabia were weaker for migrants and that the chances of access to justice were remote. Victims of rape and sexual assault are at risk of being accused of adultery and fornication.⁸⁴
45. S.J.A. is an Indonesian maid convicted of murdering her employer and subsequently sentenced to death.⁸⁵ She was in the kitchen cooking when her employer grabbed her hair and tried to hit her head against the wall. S.J.A. defended herself by hitting her employer with some kitchen equipment, striking the nape of her neck and killing her. Three years after the offense,

⁷⁶ European Saudi Organization for Human Rights, ESOHR shares disturbing facts about Saudi executions of foreigners, April 27, 2022, available at:

الأوروبية السعودية تشارك حقائق مثيرة للقلق حول إعدام السعودية للأجانب – المنظمة الأوروبية السعودية لحقوق الإنسان (eso hr.org)

⁷⁷ European Saudi Organisation for Human Rights and Reprieve, *Bloodshed and Lies: Mohammed bin Salman's Kingdom of Executions* (Jan. 2023), <https://reprieve.org/wp-content/uploads/sites/3/2023/01/Bloodshed-and-Lies-Mohammed-bin-Salmans-Kingdom-of-Executions.pdf>.

⁷⁸ Ibid.

⁷⁹ The Guardian. *Saudi Arabia's treatment of foreign workers under fire after beheading of Sri Lankan maid*. 12, Jan. 2012, available at <https://www.theguardian.com/world/2013/jan/13/saudi-arabia-treatment-foreign-workers>.

⁸⁰ Lourtau, D. 'Women Facing the Death Penalty' (2023) In Sato, M. and Babcock, S. (eds.), *Silently Silenced: State-Sanctioned Killing of Women*. Eleos Justice, Monash University and Cornell Center on the Death Penalty Worldwide, p. 33.

⁸¹ See, e.g., Human Rights Council, Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March to 8 April 2022, Opinion No. 36/2022 concerning Hussein Abo al-Kheir (Saudi Arabia), UN Doc. A/HRC/WGAD/2022/36 (20 Oct. 2022), ¶ 28 (“[I]t appears that Mr. Abo al-Kheir was denied access to consular information on arrest.”).

⁸² The Guardian. *Saudi Arabia's treatment of foreign workers under fire after beheading of Sri Lankan maid*. 12, Jan. 2012, available at <https://www.theguardian.com/world/2013/jan/13/saudi-arabia-treatment-foreign-workers>.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

authorities allowed her to call her family and inform them that she was under sentence of death.⁸⁶

46. The global pandemic has heightened risk of abuse for migrant domestic workers. Human Rights Watch reported that, in Saudi Arabia, “[m]igrant domestic workers, predominantly women, faced a range of abuses exacerbated by Covid-19 lockdown restrictions, including overwork, forced confinement, non-payment of wages, food deprivation, and psychological, physical and sexual abuse, for which there was little redress.”⁸⁷
47. A Kenyan domestic worker reported that her Saudi Arabian employer told her she was “bought” and that the employer could do “anything” to her. The Kenyan foreign ministry reported that between 2020 and 2021, 89 Kenyans, more than half female domestic workers, died under suspicious circumstances and that, “[i]n most cases, Saudi Authorities identified the cause of death as non-work related and failed to investigate further.”⁸⁸
48. More broadly, “[f]oreign nationals face particular disadvantages in criminal prosecutions: they often do not speak the language of the police or the courts and have difficulty accessing interpreters; they have little local support in navigating the criminal system; and their families are too far to contribute to the background investigation necessary for an adequate defense.”⁸⁹
49. On April 11, 2019, Saudi authorities executed two Pakistani nationals, husband and wife, Mustafa Muhammad and Ejaz Fatima, after a court convicted them of trafficking heroin.⁹⁰ Authorities arrested them at the airport upon their arrival into Jeddah and immediately separated them. After six months in prison at the Dhaban Central Prison, authorities separated their six-year-old daughter, who had travelled with them, from her mother. Neither Saudi nor Pakistani authorities notified the families of their arrest and detention. The Cornell Center on the Death Penalty Worldwide reports that the criminal process is “rife with fair trial violations.”⁹¹ Neither defendant had a lawyer or an interpreter, although neither spoke Arabic. They did not realize upon sentencing that they had, in fact, been sentenced to death. Human Rights Watch and Justice Project Pakistan report that it is exceedingly rare for Pakistani nationals (and other foreign nationals) to receive legal representation in Saudi courts, including for capital drug cases.⁹² After the executions, the Saudi government did not notify their families of their death and refused to provide their bodies for repatriation.

⁸⁶ Ibid

⁸⁷ Human Rights Watch, 2021 World Report, Saudi Arabia p. 582, available at https://www.hrw.org/sites/default/files/media-2021/01/2021_hrw_world_report.pdf.

⁸⁸ Human Rights Watch, World Report 2023, Country Chapters: Saudi Arabia, available at: World Report 2023: Saudi Arabia | Human Rights Watch (hrw.org)

⁸⁹ The Cornell Center on the Death Penalty Worldwide, No One Believed Me: A Global Overview of Women Facing the Death Penalty for Drug Offenses, September 2021, available at: "No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses (deathpenaltyworldwide.org) at p. 16.

⁹⁰ *Id.* at 18.

⁹¹ Ibid.

⁹² Ibid.

IV. Suggested questions for the Government of Saudi Arabia:

50. The coauthors of this report suggest the following questions for the Government of Saudi Arabia:

- What steps has the State Party taken to ratify the Optional Protocol to the Convention?
- What progress has the State Party made toward ratification of the International Covenant on Civil and Political Rights?
- Please provide data about people under sentence of death or executed since 2018, disaggregated by sex/gender, nationality, profession or occupation prior to the offense, crime of conviction, whether the death penalty was mandatory, legal defenses raised at trial, date of conviction, relationship to any victim or codefendant, court of conviction, whether the defendant had legal representation or interpretation during legal proceedings, status of any appeals or petitions for pardon or mercy, current location, and date of execution (if applicable).
- How do authorities ensure that perpetrators of gender-based violence are held accountable?
- What mechanisms are in place to ensure that women in police custody and other custodial detention are free from coercion, sexual harassment, and gender-based violence?
- What remedies are available to women who allege that they experienced gender-based violence while in police custody and/or during the investigation stage of criminal proceedings?
- What protections are in place to ensure that women who report gender-based violence are not subjected to criminal prosecution for reporting the crime?
- What mechanisms are in place to ensure that women, especially foreign nationals and women charged with capital offenses, have access to a fair trial?
- What mechanisms are in place to ensure that foreign national women have access to consular assistance?
- Under what circumstances is gender-based violence considered a mitigating factor in capital cases?
- What measures are in place to ensure that any woman charged with a capital crime fully understands the charges against her and is able to participate actively and meaningfully in preparing her defense, particularly if she is unable to read or otherwise understand Arabic? How does the criminal legal system accommodate such circumstances? To what extent are such accommodations available at resentencing hearings?
- How does Saudi Arabia ensure that judges, prosecutors, defense counsel, police, and other individuals in positions of power within the criminal legal system are knowledgeable about gender-based discrimination, domestic violence, and tactics of coercive control that may lead women to commit death-eligible offenses? Specifically, what training programs regarding gender-based violence and tactics of coercive control are available for judges and other actors within the criminal legal system?

- How does Saudi Arabia ensure that women who are suspected of committing death-eligible offenses have access to free and quality legal representation with specialization in capital cases, at all points in the proceedings, including the investigation and appeals stages?
- What training do public defenders and other defense counsel in capital cases receive on gender-based discrimination, domestic violence, and tactics of coercive control that may lead women to commit death-eligible offenses? Does Saudi Arabia provide funding for expert witnesses on these topics if they are relevant to a woman's defense?
- What steps has Saudi Arabia taken to build support for abolition of the death penalty among lawmakers and the general public and, in the interim, to institute a de jure moratorium on executions?

What safeguards are in place for woman migrant domestic workers accused of committing capital offenses against their employers when they allege that their employers subjected them to violence and they acted in self-defense?