



NEW YORK
CITY BAR

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The Honorable John F. Kerry
Secretary of State
United States Department of State
2201 C Street, NW
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Dear Secretary Kerry:

I write on behalf of the New York City Bar Association to convey our serious concern over recent executions by the Kingdom of Saudi Arabia, including that of Sheikh Nimr Baqir al-Nimr, as well as upcoming executions of several youths who allegedly committed crimes when they were under the age of eighteen.¹ The execution of Sheikh al-Nimr and the planned executions are in violation of settled principles of international law and highlight the fundamental lack of fairness and due process afforded to criminal defendants charged with “terrorism”-related offenses in Saudi Arabia. We implore you to take diplomatic action necessary to ensure that the Kingdom protects basic human rights in its criminal processes.

On January 2, 2016, Saudi Arabia executed 47 individuals who were, according to the Saudi state news agency, all convicted of “terrorism”-related charges tied to a series of violent attacks that took place in 2003 and 2004.² However, it is not clear which of these individuals, if any, participated in the actual planning or commission of the violent attacks. At least in the case of Sheikh al-Nimr, a Shi’a cleric, it is clear that he was not convicted of any crime directly tied to the terrorist attacks, but of “breaking allegiance with the ruler,” “calling for demonstrations,” and “inciting sectarian strife.”³ As has been widely reported in the press, the Saudi government evidently prosecuted and ultimately executed Sheikh al-Nimr largely because he was a vocal but peaceful opponent of Saudi

¹ The Association is an independent nongovernmental organization of over 24,000 lawyers, judges, law professors, and government officials from the United States and over 50 other countries. Throughout its 145-year history, the Association has consistently maintained that respect for the rule of law is essential in all jurisdictions and has a long history of investigating and reporting on human rights concerns in the United States and around the world, particularly through the work of its Committee on International Human Rights. In addition, principally through the work of its Committee on Capital Punishment, the Association has advocated for the end of capital punishment in the United States and abroad for various reasons, including that the substantive and procedural deficiencies with capital punishment increase the risk of wrongful convictions and execution of innocent individuals.

² Angus McDowall, “Shi’ite cleric among 47 executed in Saudi Arabia, stirring anger in region,” Reuters, Jan. 2, 2016, <http://www.reuters.com/article/us-saudi-security-idUSKBN0UG03B20160102>.

³ Ben Brumfield, Yousuf Basil, and Catherine E. Shoichet, “Saudi Arabia severs ties with Iran as Mideast protests rage,” CNN, Jan. 4, 2016, <http://www.cnn.com/2016/01/03/middleeast/saudi-arabia-executes-dozens-terror/>.

Arabia's discrimination against the Shi'a minority that resides in the Kingdom's oil-rich Eastern Province.⁴ Moreover, any assertion that Sheikh al-Nimr encouraged violence is belied by the widespread reports that he resoundingly rejected violent resistance to the Saudi monarchy and instead called on his followers to use "the roar of the word against authorities rather than weapons."⁵

More recently, a Saudi government newspaper reported that the Kingdom will soon engage in another wave of executions for "terrorism"-related offenses.⁶ It is widely believed that this new wave will include Ali Mohammed al-Nimr, Dawood Hussein al-Marhoon, and Abdullah Hasan al-Zaher, who were all arrested by the Saudi government for crimes that they had allegedly committed while under the age of eighteen.⁷ Each of the three—like Sheikh al-Nimr—belongs to Saudi Arabia's Shi'a Muslim minority.⁸ Ali Mohammed al-Nimr was arrested at the age of 17 in February 2012, and sentenced to death in May 2014 for purportedly participating in anti-government protests, attacking security forces, possessing a machine-gun, and engaging in an armed robbery.⁹ Al-Marhoon and al-Zaher were arrested a few months later at the ages of 17 and 16, respectively, and sentenced to death in October 2014 on similar charges.¹⁰

According to Amnesty International, all three have said that their "confessions," which were used to convict them, were obtained under torture and ill-treatment in detention. However, the Saudi Specialized Criminal Court, the Kingdom's anti-terrorism tribunal that convicted them, refused to order an investigation into these allegations.¹¹ Moreover, al-Nimr's mother has reported that when she visited him in prison, she saw "wounds and swollen bruises" on his body and that he looked visibly frail and weak.¹²

As several United Nations human rights experts observed last September, the executions of these individuals would violate international law, which prohibits execution

⁴ Human Rights Watch, "Saudi Arabia: Mass Execution Largest Since 1980," Jan. 4, 2016, <https://www.hrw.org/news/2016/01/04/saudi-arabia-mass-execution-largest-1980>.

⁵ *Id.*

⁶ Lizzie Dearden, "Saudi Arabia due to 'complete' January mass executions with four more deaths," Independent, Mar. 12, 2016, <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-due-to-complete-january-mass-executions-with-four-more-deaths-a6927486.html>.

⁷ *Id.*

⁸ *Id.*

⁹ Amnesty International, "Saudi Arabia: Fears grow that three young activists could soon be executed," Oct. 16, 2015, <https://www.amnesty.org/en/latest/news/2015/10/saudi-arabia-three-young-activists-could-soon-be-executed/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Amnesty International, "My heart is exhausted": A mother's story of death row in Saudi Arabia," Feb. 12, 2016, <https://www.amnesty.org/en/latest/campaigns/2016/02/my-heart-is-exhausted-a-mothers-story-of-death-row-in-saudi-arabia/>.

of children for crimes committed under the age of eighteen.¹³ Moreover, the convictions were obtained through a flawed trial process and confessions obtained through the application of torture, in violation of international law.¹⁴ It has been widely reported that the Saudi legal system did not provide any meaningful due process to the three young individuals and Sheikh al-Nimr. For instance, Saudi authorities detained the younger al-Nimr for almost a year without providing him a copy of his charge sheet and held three sessions before appointing a lawyer who could prepare his defense.¹⁵ Even after a lawyer was appointed, according to Human Rights Watch, prison officials refused to allow him to visit al-Nimr.¹⁶ Similarly, the Saudi trial court refused to allow the elder Sheikh al-Nimr to meet with his lawyer or to cross-examine the Kingdom's witnesses against him, and denied him adequate medical care.¹⁷

The conviction and execution of Sheikh al-Nimr also raises concerns about the Saudi practice of executing individuals who have not committed any lethal offenses. For instance, according to Amnesty International, of the 157 executions carried out by Saudi Arabia in 2015, at least 40% were for drug-related offenses.¹⁸ A Saudi royal decree from 2005 provides Saudi judges with discretion in imposing death sentences on individuals found guilty of drug-related offenses.¹⁹ And, according to Amnesty International, Saudi judges have discretion to impose the death penalty in a variety of contexts, including for theft and similar offenses, and even where convictions are based on suspicion alone; such discretionary power has led to arbitrary imposition of the death penalty in a manner that flouts international law.²⁰

The Saudi government's use of the death penalty for crimes committed by children, and its convictions of those individuals without any meaningful due process, are both fundamentally at odds with settled principles of international law and common

¹³ See, e.g., Convention on the Rights of the Child, art. 37(a); see also "Saudi Arabia must immediately halt execution of children – UN rights experts urge," Sept. 22, 2015, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487#sthash.fOXzoS6n.dpuf>.

¹⁴ See, e.g., Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2; see also Amnesty, "My heart is exhausted," *supra*.

¹⁵ Adam Coogle, "Saudi Arabia's troubling death sentence," CNN, Oct. 9, 2015, <http://www.cnn.com/2015/09/25/opinions/coogle-saudi-arabia-death-sentence/>.

¹⁶ Human Rights Watch, "Saudi Arabia: Alleged Child Offender at Risk of Execution," Sept. 15, 2015, <https://www.hrw.org/news/2015/09/15/saudi-arabia-alleged-child-offender-risk-execution>.

¹⁷ Amnesty International, "Saudi Arabia: Upholding of Sheikh Nimr al-Nimr's death sentence signals ongoing assault on dissent," Oct. 27, 2015, <https://www.amnesty.nl/nieuwsporaal/pers/saudi-arabia-upholding-sheikh-nimr-al-nimr-s-death-sentence-signals-ongoing-assau>.

¹⁸ "Saudi Arabia: beheadings reach highest level in two decades," Associated Press, Jan. 1, 2016, <http://www.theguardian.com/world/2016/jan/02/saudi-arabia-beheadings-reach-highest-level-in-two-decades>.

¹⁹ Cornell Law School, Death Penalty Database: Saudi Arabia, Apr. 4, 2011, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=saudi+arabia>.

²⁰ Amnesty International, "Killing in the Name of Justice: The Death Penalty in Saudi Arabia," Aug. 2015, https://www.amnesty.nl/sites/default/files/public/killing_in_the_name_of_justice_-_the_death_penalty_in_saudi_arabia_final.pdf.

decency. We urge you to leverage the relationship of the United States with Saudi Arabia to require that the Kingdom commute the death sentences of all children who committed a crime while under the age of eighteen and to place a moratorium on the death penalty until the Saudi government is able to guarantee that the individuals on its death row were convicted during a fair trial consistent with the requirements of international law. We stand willing to assist you in seeking to accomplish these goals.

Respectfully,



Debra L. Raskin

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