



IBAHRI input for the report of the UN Secretary-General on the question of the death penalty

March 2022

1. The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 170 countries. The International Bar Association's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.
2. The IBAHRI welcomes the opportunity to provide input for the 2022 report of the UN Secretary-General on the question of the death penalty, to be presented at the 51st session of the UN Human Rights Council. This input focuses on the implementation of safeguards guaranteeing the protection of the rights of those facing the death penalty in relation to persons under 18 years of age at the time of the offence and persons with mental or intellectual disabilities.

Persons under 18 years of age at the time of the offence: Iran and Saudi Arabia

3. **Iran:** Despite being a State party to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, both of which prohibit the use of the death penalty against persons under 18,¹ there are currently over 85 juvenile offenders on death row in Iran.² Under Article 49 of the Islamic Penal Code of Iran, children, as defined as a person who has not reached the age of puberty as stipulated in Islamic *Shari'a*, are exempt from criminal liability.³
4. In late 2021, Arman Abdolali was executed, despite being under 18 at the time of the alleged crime.⁴ Hossein Shahbazi was arrested at 17 years-old, reportedly tortured into confessing and denied access to legal representation and his family. He was due to be executed on 5 January 2022, which was temporarily halted.⁵
5. **Saudi Arabia** is a State party to the Convention on the Rights of the Child. Despite Article 15 of the 2018 Juvenile Law and the April 2020 Royal Decree, which supposedly abolished the

¹ Article 6(5), International Covenant on Civil and Political Rights; Article 37(a), Convention on the Rights of the Child. See also: UN Human Rights Committee. *General Comment No. 36: Article 6: Right to Life* (3 September 2019) UN Doc CCPR/C/GC/36 [48].

² OHCHR. *Experts urge Iran to halt imminent execution of juvenile offender* (13 January 2022) available at: <<https://news.un.org/en/story/2022/01/1109732>>.

³ Iran Human Rights Documentation Center. *IHRDC Translation of the Islamic Penal Code of the Islamic Republic of Iran* (2012) available at: <<https://www.icj.org/wp-content/uploads/2013/06/Iran-Islamic-Penal-Code-of-the-Islamic-Republic-of-Iran-1991-eng.pdf>>.

⁴ Amnesty International. *Execution of tortured youth highlights cruelty of Iran's qesas system* (26 November 2021) available at: <<https://www.amnesty.org/en/documents/mde13/5049/2021/en/>>.

⁵ OHCHR. *Experts urge Iran to halt imminent execution of juvenile offender* (13 January 2022) available at: <<https://news.un.org/en/story/2022/01/1109732>>.

death penalty for minors,⁶ Saudi Arabia has confirmed that *hudud* and *qisas* offences are excluded.⁷

6. On 7 February 2021, the sentences for minors Ali al-Nimr, Dawood al-Marhoon and Abdullah al-Zaher were commuted.⁸ However, on 15 June 2021, Mustafa al-Darwish was executed after being charged with protest-related offences committed when he was 17.⁹ As of November 2021, the European Saudi Organisation for Human Rights reported that at least four juvenile offenders, Hassan Zaki al-Faraj, Jalal al-Labbad, Sajjad al-Yassin and Youssef al-Mansaf, remained at risk of execution.¹⁰ On 3 March 2022, Abdullah al-Howaiti was sentenced to death for a second time following a retrial, after being arrested at 14 for alleged murder and robbery.¹¹ Human Rights Watch reported that CCTV footage showed that he was not at the scene of the crime and that he was tortured into signing a false confession.¹²

Persons with mental or intellectual disabilities: India, Pakistan, Singapore, and the USA

7. The UN Human Rights Committee has held that States parties must “refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial or intellectual disabilities impede their effective defence, and on persons who have limited moral culpability. They should also refrain from executing persons who have a diminished ability to understand the reasons for their sentence...”.¹³
8. **India:** India has seen a large increase in the number of prisoners on death row. Project 39A reported that 488 people were on death row in 2021; the highest figure since 2016 and an increase of nearly 21% from 2020.¹⁴ Based on a study conducted between December 2016 and February 2018 and published in October 2021, Project 39A found that over 60% of death row prisoners interviewed had a mental illness and 11% had an intellectual disability.¹⁵ On 3 March

⁶ See, e.g., Working Group on the Universal Periodic Review. *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Kingdom of Saudi Arabia* (20 August 2018) UN GA Doc A/HRC/WG.6/31/SAU/1 [61].

⁷ Reprieve. *Empty Saudi Claims on Death Penalty for Children Exposed* (9 April 2021) available at: <<https://reprieve.org/uk/2021/04/09/empty-saudi-claims-on-death-penalty-for-children-exposed/>>, referencing: Reply of the Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office at Geneva to joint Special Procedures communication reference SAU 6/2020 dated 22 May 2020 (17 July 2020) UN Doc HRC/NONE/2020/SP/69, pgs. 1-2.

⁸ OHCHR. *Saudi Arabia: UN Experts Welcome Commutation of Death Sentences for Three Minors, Urge Charges to be Dropped* (3 March 2021) available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26829&LangID=E>>; Amnesty International. *Saudi Arabia: Withdrawal of death sentences for three Shi’a activists arrested as teenagers a welcome move* (8 February 2021) available at: <<https://www.amnesty.org/en/latest/news/2021/02/saudi-arabia-withdrawal-of-death-sentences-for-three-shia-activists-arrested-as-teenagers-a-welcome-move/>>.

⁹ BBC News. *Mustafa al-Darwish: Saudi Man Executed for Crimes Committed as a Minor* (15 June 2021) available at: <<https://www.bbc.co.uk/news/world-middle-east-57492219>>.

¹⁰ European Saudi Organisation for Human Rights. *Supreme Court Overturns al-Huwaiti Death Sentence, and at Least Four Minors Still at Risk* (11 November 2021) available at: <<https://www.esohr.org/en/%D8%A7%D9%84%D8%B9%D9%84%D9%8A%D8%A7-%D8%AA%D9%86%D9%82%D8%B6-%D8%AD%D9%83%D9%85-%D8%A5%D8%B9%D8%AF%D8%A7%D9%85-%D8%A7%D9%84%D8%AD%D9%88%D9%8A%D8%B7%D9%8A-%D9%88%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF/>>.

¹¹ BBC News. *Abdullah al-Howaiti: Saudi Child 'Offender' Sentenced to Death at Retrial* (3 March 2022) available at: <https://www.bbc.co.uk/news/world-middle-east-60603447?at_medium=RSS&at_campaign=KARANGA>.

¹² Human Rights Watch. *Saudi Arabia: Alleged Child Offender on Death Row* (31 March 2021) available at: <<https://www.hrw.org/news/2021/03/31/saudi-arabia-alleged-child-offender-death-row#>>.

¹³ UN Human Rights Committee. *General Comment No. 36: Article 6: Right to Life* (3 September 2019) UN Doc CCPR/C/GC/36 [49].

¹⁴ Project 39A. *Death Penalty in India: Annual Statistics Report* (2021) National Law University, Delhi. Available at: <<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/61f6d7e8f0e77848cc843477/1643567095391/Annual+Statistics+Report+2021+%281%29.pdf>> pg. 7.

¹⁵ Project 39A. *Deathworthy: A Mental Health Perspective of the Death Penalty* (October 2021) available at: <<https://www.project39a.com/deathworthy>>.

2022, it was reported that a bench of the Supreme Court, headed by Justice Uday U Lalit, made psychological evaluation of condemned prisoners mandatory.¹⁶

9. **Pakistan:** In February 2021, the Supreme Court banned the execution of prisoners with certain mental illnesses in the case of *Inspector General of Prisons Punjab v Mst. Safia Bano & Others*, holding that “if a condemned prisoner, due to mental illness, is found to be unable to comprehend the rationale and reason behind his/her punishment, then carrying out the death sentence will not meet the ends of justice.”¹⁷ The Supreme Court also directed, *inter alia*:
 - i. “The Federal Government and all the Provincial Governments shall immediately make necessary amendments in the relevant laws and the rules in the light of observations given in this judgment...”.
 - ii. “The Federal Government (for Islamabad Capital Territory) and all the Provincial Governments shall immediately establish/create High Security Forensic Mental Health Facilities in the teaching and training institutions of mental health for assessment, treatment and rehabilitation of under trial prisoners and convicts who have developed mental ailments during their incarceration”.
 - iii. “The Federal Government (for Islamabad Capital Territory) and each Provincial Government, shall immediately constitute and notify a Medical Board...for examination and evaluation of the condemned prisoners who are on death row and are suffering from mental illness to ensure that such mentally ill condemned prisoners who no longer have the higher mental functions to appreciate the rationale and reasons behind the sentence of death awarded to them are not executed.”
 - iv. That training programs and short certificate courses on forensic mental health assessment are provided for judges, lawyers, court staff, psychiatrists, clinical psychologists, social workers, police and prison personnel.¹⁸
10. **Singapore:** In November 2010, Nagaenthran Dharmalingam was convicted of trafficking 42.72 grams of heroin into Singapore and sentenced to death under Singapore’s Misuse of Drugs Act.¹⁹ The Act was amended in 2012 to mandate life imprisonment instead of the death penalty where the accused, *inter alia*, “was suffering from such abnormality of mind...as substantially impaired his mental responsibility for his acts and omissions...”.²⁰ The court reportedly dismissed psychiatric evidence, refusing to recognise and consider the impact of Mr Dharmalingam’s intellectual disabilities on his culpability and capacity to commit a criminal offence.²¹ During a hearing on 1 March 2022, the Court of Appeal reportedly reserved its judgement on Mr Dharmalingam’s appeal and said that they would give their decision soon.²²
11. On 9 March 2022, the Singapore Court of Appeal rejected the argument of Roslan Bakar and Pausi Jefridin that it is unlawful to execute people with an IQ lower than 70 on the basis that

¹⁶ Law Insider. *Psychological Evaluation of Condemned Prisoner Mandatory: Supreme Court* (3 March 2022) available at: <<https://www.lawinsider.in/news/psychological-evaluation-of-condemned-prisoner-mandatory-supreme-court>>.

¹⁷ Supreme Court of Pakistan. *The Inspector General of Prisons Punjab v Mst. Safia Bano & others* [2021] C.R.P. No. 420 etc. Available at: <<https://perma.cc/JYL9-2573>> [66]

¹⁸ Supreme Court of Pakistan. *The Inspector General of Prisons Punjab v Mst. Safia Bano & others* [2021] C.R.P. No. 420 etc. Available at: <<https://perma.cc/JYL9-2573>> [87(i), (iii), (iv), (vi) and (vii)].

¹⁹ IBAHRI. *Singapore: IBAHRI Calls for Revocation of Scheduled Execution of Nagaenthran Dharmalingam* (8 November 2021) available at: <<https://www.ibanet.org/Singapore-IBAHRI-calls-for-revocation-of-scheduled-execution-of-Nagaenthran-Dharmalingam>>.

²⁰ Misuse of Drugs (Amendment) Act 2012 (7 December 2012) available at: <<https://sso.agc.gov.sg/Acts-Supp/30-2012/Published/20121227?DocDate=20121227>>, Section 33B (Discretion of Court Not to Impose Sentence of Death in Certain Circumstances).

²¹ IBAHRI. *Singapore: IBAHRI Calls for Revocation of Scheduled Execution of Nagaenthran Dharmalingam* (8 November 2021) available at: <<https://www.ibanet.org/Singapore-IBAHRI-calls-for-revocation-of-scheduled-execution-of-Nagaenthran-Dharmalingam>>.

²² Singapore Today. *Court of Appeal Reserves Judgement Over Drug Trafficker on Death Row, Rebukes Defence for Last-Minute Applications* (1 March 2022) available at: <<https://www.todayonline.com/singapore/court-appeal-reserves-judgement-over-drug-trafficker-death-row-rebukes-defence-last-minute-applications-1831576>>.

both appellants were found to have “no abnormality of mind that impaired their responsibility for the offences they had committed” and that no domestic law or international treaty “expressly prohibits the execution of persons who have IQs of less than 70”.²³

12. **United States of America:** Differing US state laws have created inconsistency and ambiguity on the topic of capital punishment, both generally and in the context of persons with mental or intellectual disabilities. In December 2020, the Ohio legislature passed House Bill 136, which introduces a new section in the Ohio Revised Code that exempts capital punishment for individuals whose serious mental illness significantly impaired their capacity to exercise rational judgment, conform their conduct to the requirements of law, or to appreciate the nature, consequences, or wrongfulness of their conduct.²⁴ On 13 August 2021, Arkansas death row prisoner Alvin Jackson was deemed to be ineligible for the death penalty due to his intellectual disability.²⁵ On 6 December 2021, a judge ordered a stay of execution for Oklahoma death row prisoner Wade Lay pending upcoming competency proceedings so as to ensure that, *inter alia*, “an incompetent person is not irreparably harmed by way of execution, in contravention of his constitutional rights”.²⁶
13. However, on 21 October 2021, intellectually disabled Alabama death row prisoner Willie B Smith III was executed, despite the U.S. Court of Appeals for the Eleventh Circuit agreeing in 2019 that “Smith was intellectually disabled under the accepted medical diagnostic criteria for the disorder and that Alabama’s denial of his claim that he was ineligible for the death penalty because of intellectual disability would be considered unconstitutional under several U.S”.²⁷ On 5 October 2021, death row prisoner Ernest Johnson was executed after the Missouri Supreme Court rejected the request that his sentence be commuted on the basis that he was intellectually disabled.²⁸

²³ Singapore Law Watch. *No law or treaty bars execution of people with IQ under 70: Apex court* (10 March 2022) available at: <<https://www.singaporelawwatch.sg/Headlines/No-law-or-treaty-bars-execution-of-people-with-IQ-under-70-Apex-court>>.

²⁴ Death Penalty Information Centre. *Second Ohio Prisoner Taken Off Death Row Under New Serious Mental Illness Law* (2021) available at: <<https://deathpenaltyinfo.org/capital-case-developments/second-ohio-prisoner-taken-off-death-row-under-new-serious-mental-illness-law>>; Schmidt, E., *Ohio Bill Exempts People with Serious Mental Illness from Death Penalty* (29 September 2021) University of Cincinnati Law Review. Available at: <<https://uclawreview.org/2021/09/29/ohio-bill-exempts-people-with-serious-mental-illness-from-death-penalty/>>.

²⁵ United States Court of Appeals for the Eighth Circuit. *Alvin Bernal Jackson v. Dexter Payne, Director, Department of Correction* (2021) No-20-1830. Available at: <<https://ecf.ca8.uscourts.gov/opndir/21/08/201830P.pdf>>; Death Penalty Information Centre. *Federal Appeals Court Upholds Ruling Barring Death Penalty for Intellectually Disabled Arkansas Death-Row Prisoner Alvin Jackson* (18 August 2021) available at: <<https://deathpenaltyinfo.org/news/federal-appeals-court-upholds-ruling-barring-death-penalty-for-intellectually-disabled-arkansas-death-row-prisoner-alvin-jackson>>.

²⁶ Pittsburg County District Court. *State of Oklahoma. In Re: Wade Greely Lay. Case No. CV-2021-224. Agreed Order Staying Execution* (6 December 2021) available at: <<https://documents.deathpenaltyinfo.org/Wade-Lay-OK-Pittsburgh-County-Stay-Order-2021-12-06.pdf>> [8].

²⁷ Death Penalty Information Centre. *Alabama Executes Intellectually Disabled Death-Row Prisoner* (21 October 2021) available at: <<https://deathpenaltyinfo.org/news/alabama-executes-intellectually-disabled-death-row-prisoner>>.

²⁸ Death Penalty Information Center. *Missouri Moves to Executive Intellectually Disable Death-Row Prisoner, As Former Governor, Court Justice, and Faith and Rights Leaders Seek Mercy* (1 October 2021) available at: <<https://deathpenaltyinfo.org/news/missouri-moves-to-execute-intellectually-disabled-death-row-prisoner-as-former-governor-court-justice-and-faith-and-rights-leaders-seek-mercy>>.