



Sacrifice to the State: Capital Punishment in Bahrain and Saudi Arabia

A. Introduction

Saudi Arabia and Bahrain stand in increasingly stark opposition to global norms on the death penalty. As the international community edges toward the unanimous abolition of capital punishment, Amnesty International reports that more than 72% of the world's recorded executions in 2014 occurred in the Gulf region.¹ Of this majority (around 550 people), Saudi Arabia executed at least 90, marking a 14% increase over the execution rate in 2013.² Recently, the Kingdom has further accelerated its use of the death penalty and is on pace to carry out over 100 executions by the end of 2015. At time of writing Saudi Arabia has already executed between 48³ and 54⁴ individuals. The present death toll has exceeded half the Kingdom's annual average in less than three months; the rate of execution is roughly five times that of the same period in 2014.

Bahrain, albeit on a much smaller scale, is exhibiting a similar upward trend. Following an unofficial moratorium on the death penalty during the early 2000s, Bahrain resumed the practice in 2006 with the execution of three individuals.⁵ Although its last execution took place in 2010, Bahraini courts have continued to hand down more death sentences every year,⁶ including two issued as recently as 22 March 2015.⁷ While a renewed capital punishment system in Bahrain does not threaten to produce as high a body count as its Saudi counterpart, its situation within a similarly broken and abusive criminal justice system, replete with arbitrary detention, torture, and coerced testimony, is equally disturbing. That the cumulative number of death sentences has mounted in proportion to civil unrest is especially alarming.

In both Bahrain and Saudi Arabia, the capital punishment mechanism rises to meet perceived challenges facing domestic security and state control. To this effect, the Saudi and Bahraini governments apply capital punishment not only with general disregard for due process, but also with targeted political prejudice. The death penalty, and in particular the common Saudi practice of public beheading, is explicitly employed as a means of criminal deterrence writ large⁸. While this is grounds enough for

¹ Amnesty International. "Death Sentences and Executions 2014". (Amnesty International: 2015). Retrieved from <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

² Ibid.

³ The Nation. "Pakistani among 3 beheaded in Saudi Arabia." (The Nation: 2015). Retrieved from <http://nation.com.pk/national/18-Mar-2015/pakistani-among-3-beheaded-in-saudi-arabia>

⁴ The Daily Star. "Saudi beheads drug smuggler as executions surge". (The Daily Star: 2015) Retrieved from http://www.dailystar.com.lb/News/Middle-East/2015/Mar-25/292111-saudi-beheads-drug-smuggler-as-executions-surge.ashx?utm_source=Magnet&utm_medium=Related%20Articles%20popup&utm_campaign=Magnet%20tools

⁵ Bahrain Center for Human Rights. "Migrant Workers and the Death Penalty in Bahrain & Saudi Arabia." (BCHR: 2010) Retrieved from <http://www.bahrainrights.org/en/node/3054>

⁶ International Commission Against the Death Penalty. "The Death Penalty and The 'most serious crimes': A Country-by-Country Overview of the Death Penalty," (ICADP: 2013). Retrieved from http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes_final_6Feb2013.pdf

⁷ Amnesty International. "Bahrain Sentences Two Bangladeshis to Death". (Amnesty International: 2015). Retrieved from <https://www.amnesty.org/en/documents/mde11/1293/2015/en/>

⁸ Amnesty International. "Death Sentences and Executions 2014". (Amnesty International: 2015). Retrieved from <https://www.amnesty.org/en/documents/act50/0001/2015/en/>



concern, capital punishment in the Kingdoms also operates as a thinly-veiled mechanism for general intimidation and selective political suppression.

B. Capital Punishment in the Kingdoms – Formal Structure

(a) Saudi Arabia

Capital punishment, in both the Kingdoms, is officially described as a mechanism of criminal deterrence. Saudi officials routinely attribute the “generally low” crime rate⁹ to the imposition of violent punishment, or the threat thereof.¹⁰ The deterrent function of the death penalty, as well as the act of punishment itself, is reinforced by Saudi authorities as a key tenet of Islamic law. Dr. Zuhair Al-Harth, a member of the Shura Council’s Foreign Affairs Committee, states: “[Saudi] Muslims consider [the] implementation of capital punishment as deepening the concept of justice...prescribed in Shariah.”¹¹ Dr. Mohammed Badahdah, assistant secretary general of the state-funded World Assembly of Muslim Youth, writes, “The Qur’an has clearly stated... [that death sentences are] imposed to ensure the safety of society”.¹² The Governor of Qassim Province, Faisal bin Mishaal bin Saud bin Abdulaziz, summarizes the standard state position: “The punishments that are in the Quran - after Allah, the gracious and almighty - are what preserve security in this country.”¹³

Thus the state system of capital punishment is ostensibly organized according to “divine and legal instruction that has been clearly and categorically mentioned in the religious text”.¹⁴ Islamic law is understood to guide the appropriate application of capital punishment in order to secure society and deter criminality. The Saudi criminal code reflects this, as offenses such as murder, rape, adultery, apostasy, and sorcery or witchcraft are all traditionally classified as capital crimes according to the Wahhabi reading of Sharia.¹⁵

However, Wahhabism also dispenses with notions of legal precedent and jurisprudence. For the Saudi legal system, this manifests in the near-complete discretionary power of individual Saudi judges to determine not only convictions but also sentences for these crimes. Indeed Saudi courts have historically eschewed precedent in favor of the judge’s individual interpretation of the Sharia, before and after its first official law of criminal procedure in 1970.¹⁶ As a consequence, crimes that do not legally carry

⁹ US Department of State. OSAC. “Saudi Arabia 2013 Crime and Safety Report.” (DOS: 2014). Retrieved from <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13573>

¹⁰ P.K. Abdul Ghafour. “Behind Sweden’s tirade is a hidden Western agenda to tarnish Islam”. (Arab News: 2015). Retrieved from <http://www.arabnews.com/featured/news/720221>

¹¹ Dr. Zuhair al-Harthi. “Can KSA abolish capital punishment?” (Arab News: 2013). Retrieved from <http://www.arabnews.com/can-ksa-abolish-capital-punishment>

¹² Ghafour, (2015)

¹³ Ben Hubbard. “Saudi Justice, Harsh but Able to Spare the Sword.” (New York Times: 2015) Retrieved from http://www.nytimes.com/2015/03/23/world/middleeast/a-murder-a-death-sentence-and-the-unpredictable-nature-of-saudi-justice.html?_r=0

¹⁴ Al-Harthi, (2013).

¹⁵ The Economist. “The other beheaders.” (The Economist: 2014). Retrieved from <http://www.economist.com/news/middle-east-and-africa/21618918-possible-reasons-mysterious-surge-executions-other-beheaders>

¹⁶ ADHRB. *The Pretense of Progress*. (2015).



mandatory death sentences may still result in the execution of the offender. These crimes have come to include arson, burglary, drug trafficking, and even recidivist drug or alcohol abuse.¹⁷

Moreover, as the UN Special Rapporteur on the Independence of Judges and Lawyers noted after his 2002 visit to the Kingdom, judges are not separate from the general civil service.¹⁸ While they maintain substantial independence from established law in the determination of their judicial decisions, judges are simultaneously embedded in the general government hierarchy. “Certain structural conditions” exist that could facilitate common corruption and, more worrisome, direct state influence.¹⁹ The Saudi government has failed to address the Rapporteur’s concerns, even reaffirming the status of judges as civil servants in the 2007 Law of the Judiciary²⁰.

Saudi legal practitioners portray the discretionary power as a positive hallmark of judicial flexibility, permitting both the progressive application of Sharia to modern crimes and, as *The New York Times* recently put it, “built-in avenues for mercy”.²¹ Judges, and the families of victims if applicable, are well within their rights to spare convicts the sword. Though capital punishment can and will be employed by the state, “the goal is [ultimately] not to carry out these punishments,” says a Saudi judge quoted in that article, “but to scare people.”²²

(b) Bahrain

Although the application of capital punishment in Bahrain is far less prolific, the general structure of the system does not differ markedly from that of its Saudi neighbors. For example, Bahraini criminal code classifies many of the same offenses as “serious crimes”²³ deserving of a death sentence, including apostasy and drug trafficking.²⁴ As well, every execution legally requires the final consent of the monarch.²⁵

Unlike Saudi Arabia, however, Bahraini law is deeply ambiguous in regard to mandatory death sentences.²⁶ While a Saudi judge is permitted to downgrade the sentence for a capital crime if extenuating circumstances warrant an unusual interpretation of Sharia, he is at least ostensibly required to consider it. The Bahraini criminal code, conversely, allows for an even wider range of sentencing discretion for capital or “serious” crimes. According to the code, “the penalty for a serious crime shall be capital punishment or imprisonment and civil disqualification for a period of at least 3 years and no more than 15 years”²⁷. Only for crimes constituting a form of treason, or “offences affecting external state security”,

¹⁷ International Commission Against the Death Penalty. “The Death Penalty and The ‘most serious crimes’: A Country-by-Country Overview of the Death Penalty,” (2013).

¹⁸ Office of the High Commissioner for Human Rights. “Special Procedures of the Human Rights Council.” Retrieved from <http://www.ohchr.org/en/HRBodies/SP/Pages/Welcomepage.aspx>.

¹⁹ Ibid.

²⁰ ADHRB. *The Pretense of Progress*. (2015).

²¹ Hubbard, (2015).

²² Ibid.

²³ Bahraini Criminal Code. “Chapter 1: Original Punishment, Article 49”.

²⁴ ICADP, (2013).

²⁵ Bahraini Criminal Code. “Chapter 1: Original Punishment, Article 51”.

²⁶ ICADP, (2013).

²⁷ Bahraini Criminal Code. “Chapter 1: Original Punishment, Article 49”.



does the law appear to demand the imposition of capital punishment.²⁸ Even so, what constitutes such an offense is similarly vague: “capital punishment shall be inflicted upon any person who deliberately commits an act having the consequence of affecting the country's independence, unity or territorial integrity”.²⁹ Like in Saudi Arabia, a Bahraini judge can find justification for any application of the death penalty if the Kingdom's independence, unity, or integrity appears threatened. It is no coincidence, then, that Bahrain's de facto moratorium on the death penalty occurred precisely between two periods of significant unrest: the democratic ‘uprising of dignity’ in the 1990s and the Arab Spring uprising of 2011. When judges in Bahrain do impose the death penalty, they consistently justify it on the nebulous grounds of “state security”.³⁰

Unsurprisingly, these formal systems fail to provide any uniform guidelines for the application of capital punishment in Saudi Arabia or Bahrain. Contrary to state rhetoric, if law does control the use of the death penalty in the Kingdoms, it often facilitates its arbitrary imposition. Indeed, one of the few distinctly unambiguous aspects of these two criminal systems is their grounds for broad judicial power. Judges in Saudi Arabia and Bahrain are granted an extremely wide range of sentencing authority, so long as it serves the state to which they are legally bound.

Deterrence, as a function of an ostensibly legitimate criminal justice system, is only functional and legitimate inasmuch as it is consistent and objective. The would-be criminal knows crime x will result in sentence y , so he or she can rationally weigh the risks and choose to refrain accordingly. For the Saudi and Bahraini capital punishment mechanisms, this arrangement is unclear. What is more, both systems have legal structures antithetical to the proper production of such an arrangement. This is because they are not organized to function merely as a criminal deterrent, but as an added tool of intimidation. The legally arbitrary imposition of capital punishment on specific offenders, first manufactured by state security forces, is used to create an illusion of state omnipotence, and to “scare people” away from politics altogether.³¹ An examination of recent cases in Saudi Arabia and Bahrain will be illustrative.

C. Capital Punishment in Practice - Cases

(a) Nimr Baqir al-Nimr

On 8 July 2012, Nimr Baqir al-Nimr was arrested by armed Saudi security forces. Nimr Baqir al-Nimr is a 53-year-old human rights defender and political activist. He also holds distinction as the only senior Shia cleric to publicly endorse the 2011 non-violent demonstrations calling for the release of political prisoners in Saudi Arabia.³²

Between 2003 and 2009, the government arrested and detained al-Nimr three times on charges relating to his religious sermons and travel. In 2003 and 2006 he was detained for weeks at a time, and, in the latter case, subjected to physical and psychological torture by Saudi authorities. In 2009 government forces coerced him into signing documents that barred him from public speech and religious activity. As a

²⁸ Bahraini Criminal Code. “Special Section: Part 1: Chapter 1: Offences Affecting External State Security, Article 112”.

²⁹ Ibid.

³⁰ Bahraini Criminal Code. “Special Section: Part 1: Chapter 1: Offences Affecting External State Security, Article 112”.

³¹ Hubbard, (2015).

³² Toby Matthiesen. *The Other Saudis: Shiism, Dissent, and Sectarianism*. (New York: Cambridge University Press, 2015).



consequence, al-Nimr, unable to abandon his defense of human rights and concerned for his safety, was forced into hiding.

Upon al-Nimr's reappearance during the regional unrest of 2011, the state resumed its targeting of the cleric. On 8 July 2012, Saudi forces discovered al-Nimr and engaged him in a car chase³³. When al-Nimr was eventually cornered and forced to crash, Saudi authorities removed him from the car and shot him in the leg. Al-Nimr lost conscience and later awoke in custody with further injuries including a head wound, bruises across his body, and missing teeth.

On 25 March 2013, 265 days after his arrest, the public prosecutor brought al-Nimr to court and called for the death penalty. To this end, the prosecutor claimed al-Nimr had participated in a litany of supposedly seditious activities, among them inciting sectarian strife, defaming the monarchy, and banditry.³⁴ Despite the defendant having spent eight months in jail without a charge, and without treatment for his severe injuries, the court accepted these claims as grounds for a trial.

During the proceedings Saudi authorities denied al-Nimr his most basic legal rights, including any form of due process. The government refused to provide Al-Nimr's defense information regarding the case details, preliminary access to the charges, and even an accurate schedule of the hearings³⁵. The prosecution, in contrast, was permitted to make unsubstantiated claims and, with the influence of the judge, effectively set the pace of the trial. When it did provide evidence, the prosecution presented it improperly (e.g. written rather than oral testimony from police witnesses) or out of context (e.g. selective recordings of al-Nimr's speeches). Amnesty International has reviewed the texts offered by the prosecution and confirms that "Sheikh Nimr Baqir al-Nimr was exercising his right to free expression and was not inciting violence."³⁶ Nonetheless, on 15 October 2014, the judge sentenced Nimr al-Nimr to death.³⁷ The prosecution sought *haraba*, an Islamic punishment involving crucifixion and dismemberment,³⁸ but the method is believed to have been commuted to beheading.

(b) Lalia Bint Abdul Muttalib Basim

Saudi authorities publicly beheaded Lalia Bint Abdul Muttalib Basim in Mecca on 13 January 2015; she was the tenth individual executed this year.³⁹ Basim, a Burmese resident, was convicted of "torturing and killing her husband's seven-year-old daughter".⁴⁰ The only available information regarding the case

³³ Amnesty International. "Death Sentences and Executions 2014". (Amnesty International: 2015). Retrieved from <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

³⁴ United Nations Office of the High Commissioner of Human Rights. "Joint Communication SAU 09/2014." Retrieved from [https://spdb.ohchr.org/hrdb/28th/public_-_UA_Saudi_Arabia_28.08.14_\(9.2014\).pdf](https://spdb.ohchr.org/hrdb/28th/public_-_UA_Saudi_Arabia_28.08.14_(9.2014).pdf)

³⁵ Amnesty International. "Death Sentences and Executions 2014". (Amnesty International: 2015). Retrieved from <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

³⁶ Ibid.

³⁷ Ian Black. "Saudi Arabia faces outcry over death sentence for Shia faith leader". (The Guardian: 2014). Retrieved from <http://www.theguardian.com/world/2014/oct/16/saudi-arabia-death-sentence-shia-nimr-baqir-human-rights>

³⁸ Al-Akhbar. "Saudi: Sheikh Nimr's Crucified Fate". (Al-Akhbar: 2013). Retrieved from <http://english.al-akhbar.com/node/15395>

³⁹ Harriet Salem. "Woman Is Publicly Beheaded in Saudi Arabia's Tenth Execution of 2015." (VICE: 2015). Retrieved from <https://news.vice.com/article/woman-is-publicly-beheaded-in-saudi-arabias-tenth-execution-of-2015>

⁴⁰ Ben Tufft. "Saudi Arabia publicly beheads woman in holy Mecca as blogger lashings are postponed." (Independent: 2015). Retrieved from <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-publicly-beheads-woman-in-holy-mecca-as-blogger-set-to-receive-second-lashing-9982134.html>



comes from the state-owned media and the Ministry of the Interior. According to these sources, the woman's lack of "mercy or pity...led to her death". Her "sentence was warranted due to the severity of the crime,"⁴¹ as well as to "restore security [and] realize justice".⁴²

While the details regarding Basim's arrest and trial proceedings are unknown, the nature of the execution is unusually clear: rare footage was taken by a policeman assigned to prepare for the event.⁴³ The recording, which has since been removed from video streaming sites like YouTube for "shocking and disgusting content", shows four Saudi policemen dragging Basim through the streets of Mecca.⁴⁴ When they came upon the designated location, the policemen held her down as the executioner used a sword to decapitate her. It took three blows to separate the woman's head from her body. Although in many cases Saudi officials offer those to be executed painkilling drugs, "this woman was beheaded without painkillers," according to human rights activist Mohammed al-Saeedi, because "they wanted to make the pain more powerful for her".⁴⁵ Throughout the video, Basim can be heard to scream, "I did not kill. I did not kill".⁴⁶ Saudi security forces have arrested the policemen who filmed the execution; he is to face "unspecified charges" in both a military and criminal Sharia court.⁴⁷

(c) Maher al-Khabbaz

On 19 February 2014, four months after al-Nimr's trial in Saudi Arabia, the Bahraini government sentenced Maher al-Khabbaz (alternatively known as Maher Abbas Ahmad) to death for his alleged role in a murder.⁴⁸ Al-Khabbaz was accused of employing a flare gun and explosive materials to kill a police officer at an event near Manama on 14 February 2013. The prosecution held that the murder was premeditated, and politically motivated.

Maher al-Khabbaz was arrested three days after the alleged crime took place, on 17 February. Despite the absence of a warrant and the presence of an alibi, plainclothes police officers effectively disappeared al-Khabbaz from his place of business, the Golden Tulip Hotel in Manama, to a local police station.⁴⁹ There, he was denied access to legal counsel and any external communication for seven days. Bahraini authorities physically tortured al-Khabbaz for the duration of his detention. They beat him with their fists, as well as with wires and sticks. They also subjected him to *falaka*, a specialized whipping of the most sensitive areas of the feet and hands, and electrocution of the body.⁵⁰ In addition to physical abuse, Al-

⁴¹ Ibid.

⁴² Harriet Salem. "Woman Is Publicly Beheaded in Saudi Arabia's Tenth Execution of 2015." (VICE: 2015). Retrieved from <https://news.vice.com/article/woman-is-publicly-beheaded-in-saudi-arabias-tenth-execution-of-2015>

⁴³ Lizzie Dearden. "Man who filmed woman being publicly beheaded in Mecca reportedly arrested in Saudi Arabia". (Independent: 2015). Retrieved from <http://www.independent.co.uk/news/world/middle-east/man-who-filmed-woman-being-publicly-beheaded-in-mecca-reportedly-arrested-in-saudi-arabia-9988062.html>

⁴⁴ Ben Tufft. "Saudi Arabia publicly beheads woman in holy Mecca as blogger lashings are postponed." (Independent: 2015). Retrieved from <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-publicly-beheads-woman-in-holy-mecca-as-blogger-set-to-receive-second-lashing-9982134.html>

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Amnesty International. "Death Sentence for Flare Fatality". (Amnesty International: 2014) Retrieved from <https://www.amnestyusa.org/sites/default/files/uaa25214.pdf>

⁴⁹ Bahrain Center for Human Rights. "NGOs Condemn Capital Punishment Sentence for Maher al-Khabbaz." (BCHR: 2014). Retrieved from <http://www.bahrainrights.org/en/node/7144>

⁵⁰ Ibid.



Khabbaz was repeatedly doused with water, forced to stand for long periods of time, and prevented from praying, eating, or using the bathroom. As they tortured al-Khabbaz, Bahraini authorities presented a flare gun and offered to cease the abuse if he confessed to using it as a weapon. Eventually he yielded, and the authorities had him sign a document. Maher al-Khabbaz is illiterate and was blindfolded; he cannot confirm what it was that he signed.⁵¹

After being forced to confess, al-Khabbaz was brought before the judge where the public prosecutor charged him with the murder of a police officer. The charge came 8 months after his arrest.⁵² Even at this phase, the government denied al-Khabbaz access to a lawyer and led him through a hostile and insulting interrogation. When al-Khabbaz resumed his obstinacy towards cooperation, authorities threatened to resume their violent practices in turn. Once the trial began, the prosecution relied on al-Khabbaz's coerced confession, the false confessions of alleged compatriots, and the testimony of the involved police officers to secure a conviction⁵³. When al-Khabbaz was finally allowed to access an attorney, Bahraini authorities did not permit the defense to call any witnesses and barred them from whole portions of the trial.⁵⁴ No murder weapon was ever presented.⁵⁵

Maher al-Khabbaz is detained at Jaw Prison, where he currently awaits execution by firing squad. The High Criminal Court of Appeal upheld his death sentence on 31 August 2014.⁵⁶ Al-Khabbaz has no domestic recourse; the legal system itself is the perpetrator of his abuse. To challenge the police would only further endanger him or his family.

(d) Sami Mushaima

Following the government assault on the protest movement in 2011, Bahrain's reinvigoration of the capital punishment system has continued unabated. On 3 March 2014, Bahraini security forces raided the family home of Sami Mushaima, a 39-year-old member of the prominent Mushaima clan, a member of which, Hassan Mushaima, is currently serving a life sentence for his role in the 2011 uprising. Prior to this incident, the home had been raided by security forces on at least 23 separate occasions.

During the raid on 3 March, approximately 15 officers, some in plainclothes, entered the home and violently arrested Sami Mushaima. Without a warrant or any sign of provocation, Mushaima was immediately taken from his home and transported to Riffa police station. There and at the Criminal Investigative Directorate (CID) building, where he was also periodically transported, security officers subjected Mushaima to extreme torture and abuse. Over several weeks, he was physically beaten and electrocuted across his body, including on his genitals. Security forces pulled hair out of sensitive areas of his body, penetrated his ear with sharp objects, and applied staples to his wrists. In addition to this, they mutilated his mouth, deliberately broke his teeth, and sexually abused him by stripping him naked,

⁵¹ Ibid.

⁵² United Nations Office of the High Commissioner of Human Rights. "Joint Communication BHR 8/2014". Retrieved from: [https://spdb.ohchr.org/hrdb/28th/Public_-_UA_Bahrain_08.07.14_\(8.2014\)_Pro.pdf](https://spdb.ohchr.org/hrdb/28th/Public_-_UA_Bahrain_08.07.14_(8.2014)_Pro.pdf)

⁵³ Bahrain Center for Human Rights. "Migrant Workers and the Death Penalty in Bahrain & Saudi Arabia." (BCHR: 2010) Retrieved from <http://www.bahrainrights.org/en/node/3054>

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Amnesty International. "Death Sentence for Flare Fatality." (Amnesty International: 2014). Retrieved from <https://www.amnesty.org/en/documents/MDE11/034/2014/en/>



forcibly manipulating his genitals, and inserting objects into his anus. Throughout all this time Mushaima was kept in solitary confinement.

This was not the first time Mushaima had been arrested and tortured by Bahraini security forces. In 2010, while in custody for alleged terror charges, the Bahrain Center for Human Rights reports that Mushaima was beaten, electrocuted, sexually assaulted, doused in water, and made to sleep in handcuffs.⁵⁷

Shortly after his most recent detention, the government charged Mushaima with assembling and setting off an explosive that killed three police officers only hours before his arrest, on 3 March. During this time, Mushaima's family states that he was at a neighbor's house. Also, like al-Khabbaz, he is illiterate; he does not possess the skills required to create a remote-controlled explosive.

Nonetheless, a Bahraini court sentenced Mushaima to death for premeditated murder on 27 February 2015. The court characterized Mushaima as a terrorist, and found him guilty "due to confession".⁵⁸ His family fears that, like al-Khabbaz, he was further tortured into giving a false confession.

D. Criminal Justice as Extrajudicial Killing

These cases are instructive not as exceptions but rather as evidence of a *de facto* rule. Criminal justice in the Kingdoms, at least as it is performed through the capital punishment mechanism, is subverted and reconfigured to legitimize extrajudicial killing. The experiences of Nimr al-Nimr and Sami Mushaima reveal that the death sentence is simply an ultimate contingency built into a state policy of harassment and repression of political opposition. That the key mechanism of this policy is called criminal justice, or is embedded within it, obscures its lethally authoritarian function.

As well, if the experiences of Nimr al-Nimr and Sami Mushaima demonstrate how capital punishment is employed to further target and suppress dissent in the Kingdoms, both Bahraini cases exemplify its other interrelated purpose: broad intimidation. Al-Khabbaz and Mushaima are not political leaders like al-Nimr; they are illiterate middle-aged men. Mushaima, while related to a jailed opposition leader and harassed accordingly, is not a politician. The Bahraini government did not disappear, torture, and coerce al-Khabbaz and Mushaima into false confessions because they are active political threats. They also did not manufacture the conditions for their death sentences simply to deter criminals. The government's treatment of these average men is of particular note, and is particularly troubling, because it illuminates another form of authoritarian manipulation: the transformation of capital punishment into a blunt instrument for the projection and reinforcement of state power. When the Kingdoms perceive threats to internal stability and security, and thus their illusion of domestic omnipotence, they will have an execution; be it selectively applied to a non-violent dissident like al-Nimr, or a merely unfortunate citizen like al-Khabbaz or Mushaima. The judiciary, in tandem with the security apparatus, will seek and, if necessary, create the appropriate conditions. In the Kingdoms, criminal justice itself can be made a civil servant of the monarchy.

⁵⁷ Bahrain Center for Human Rights. "Bahrain: After Bomb Blast, Detainees Reportedly Tortured." (BCHR: 2014) Retrieved from <http://www.bahrainrights.org/en/node/6805>

⁵⁸ Noor Zahra. "Death sentence for murder blast three." (Gulf Daily News: 2015). Retrieved from <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=396721>



The Bahrain Center for Human Rights notes that “the weight of the executioner’s sword falls heaviest on those who are most vulnerable in Gulf societies”.⁵⁹ Though al-Khabbaz and Mushaima are themselves citizens of Bahrain, and al-Nimr a citizen of Saudi Arabia, the Kingdoms disproportionately subject migrant workers and expatriates to the abusive machinery of the criminal justice system. Without a video of the public beheading of Lalia Bint Abdul Muttalib Basim, a Burmese woman, what little information has been revealed about her case may have remained completely hidden. Migrant workers, expatriates, and other foreigners are exploited not just for their labor, but also for the sake of the state security apparatus. Their inherent separation from even the vaguest protections offered by either criminal code render them particularly disposable, if not outright undesirable, for the state’s authoritarian vision of security. This disposition was evident even during Bahrain’s supposed moratorium on capital punishment, throughout which five migrant workers, from poor countries, are believed to have been quietly executed.⁶⁰ A similar undercurrent has persisted, and thrived, in Saudi Arabia where the public beheading of a woman like Basim can be justified by the Ministry of the Interior as necessary to “restore security”.⁶¹

As Saudi Arabia continues to execute both citizens and expatriates in unprecedented proportions,⁶² often in public and for increasingly non-violent offenses,⁶³ it is clear that arbitrary capital punishment is meant to intimidate any challenge to state control, regardless of origin. More broadly, the Kingdoms ultimately employ their capital punishment mechanisms to maintain the security and autonomy of the monarchies, at the expense of the public. The weight of the sword falls heaviest, and most deliberately, on the development of civil space, rule of law, and sustainable human security in the Gulf; a sacrifice to authoritarian stability. As Saudi Arabia and Bahrain deepen state dependence on the death penalty, criminal justice will become increasingly synonymous with legitimized extrajudicial killing, and public safety with pervasive intimidation. In the process, the mechanisms of capital punishment in Saudi Arabia and Bahrain will come to further rely on or engage in the systematic human rights abuses including arbitrary detention, torture or other inhuman or degrading treatment or punishments, corruption of the independence of lawyers and judges, and extrajudicial, summary, or arbitrary executions.

⁵⁹ Ibid.

⁶⁰ Bahrain Center for Human Rights. “Migrant Workers and the Death Penalty in Bahrain & Saudi Arabia.” (BCHR: 2010) Retrieved from: <http://www.bahrainrights.org/en/node/3054>

⁶¹ Ben Tufft. “Saudi Arabia publicly beheads woman in holy Mecca as blogger lashings are postponed.” (Independent: 2015). Retrieved from <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-publicly-beheads-woman-in-holy-mecca-as-blogger-set-to-receive-second-lashing-9982134.html>

⁶² Amnesty International. “Saudi Arabia: Three more executions add to unprecedented spike in death penalty”. (Amnesty International: 2015) Retrieved from: <https://www.amnesty.org/en/articles/news/2015/03/saudi-arabia-unprecedented-spike-in-executions/>

⁶³ Amnesty International reports that half of the Saudi Arabia’s executions in 2014 were carried out for “non-lethal offenses”, like drug trafficking, see:

Amnesty International. “Death Sentences and Executions 2014.” (Amnesty International: 2015). Retrieved from: <https://www.amnesty.org/en/documents/act50/0001/2015/en/>



E. Recommendations

Given the scale and severity of the human rights violations perpetrated within the Saudi and Bahraini criminal justice systems, not least of which by the manipulation of capital and corporal punishment mechanisms, Americans for Democracy and Human Rights in Bahrain call on the governments of Saudi Arabia and Bahrain to immediately and drastically reform their relevant legal procedures.

To the Government of Saudi Arabia:

- Issue a moratorium on the death penalty, and put an immediate stay of execution on all prisoners currently awaiting the imposition of a sentence;
- Open investigations into the arrests, detentions, and convictions of all prisoners sentenced to capital or corporal punishment;
- Reform the judiciary so that there are greater legal restrictions on its discretionary sentencing power, and so that it is institutionally separate from the greater civil service
- Restructure the criminal procedure so that the rights of suspects, especially to due process, are better assured by law
- Release wrongfully convicted prisoners and/or prisoners of conscience, such as Nimr al-Nimr.

To the Government of Bahrain:

- Issue a moratorium on the death penalty, and put an immediate stay of execution on all prisoners currently awaiting the imposition of a sentence;
- Open investigations into the arrests, detentions, and convictions of all prisoners sentenced to capital or corporal punishment;
- Prohibit the use of torture;
- Prohibit unwarranted search and arrest;
- Reform the judiciary so that there are greater legal restrictions on its discretionary sentencing power, and so that it is institutionally separate from the greater civil service;
- Restructure the criminal procedure so that the rights of suspects, especially those to due process, are better assured by law.
- Release wrongfully convicted prisoners and/or prisoners of conscience, such as Maher al-Khabbaz and Sami Mushaima

To the UN:

- Request the Saudi and Bahraini governments to consider formal moratoria on their use of capital punishment;
- Urge the Saudi and Bahraini governments to stay the executions of all prisoners currently awaiting the imposition of death sentences until their legal situation can be assessed by the UN and/or other international bodies;
- Insist that the Saudi and Bahraini governments permit UN Special Procedures to visit and conduct comprehensive evaluations of the respective criminal justice systems;
- Encourage the full range of relevant Special Procedures to conduct country assessments of Saudi Arabia and Bahrain, paying particular attention to the use capital punishment, torture, and legal manipulation;



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- Assist the Saudi and Bahraini governments in the necessary legal and structural reforms recommended here, and in any relevant recommendations made by Special Procedures.