

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# DEATH PENALTY RETENTIONIST COUNTRIES MUST RESPECT THE RIGHT TO EFFECTIVE LEGAL REPRESENTATION

All countries that still retain the death penalty in their laws must respect the right to effective legal representation pending the full abolition of the ultimate cruel, inhuman and degrading punishment, Amnesty International said today on the 18th World Day Against the Death Penalty.

The focus of this year's World Day Against the Death Penalty is the right to effective legal representation and Amnesty International joins all activists and organizations against the death penalty to commemorate the day and highlight the unfairness of the denial of effective legal representation to people facing the death penalty. Amnesty International has documented many cases in several countries of people being denied effective legal representation in death penalty cases, often resulting in death sentences being imposed and executions carried out.<sup>1</sup>

In 2019, Amnesty International found that restrictions on access to legal counsel remains a critical defect of Malaysia's judicial system.<sup>2</sup> Under the Federal Constitution of Malaysia, detainees are supposed to be able to consult and be defended by the legal practitioner of their choice as soon as possible after arrest. To support this, Malaysia has three legal aid schemes concerning death penalty cases. However, despite these programmes, it has been a common experience for those arrested for offences that could result in the death penalty, and who cannot hire a lawyer independently, not to receive legal assistance at the time of arrest or during their time under police remand, before charges are brought. Other concerns include delays in notifying legal aid centres, family members and lawyers of a person's arrest; the quality of the representation, if and when available; and insufficient access to interpreters, as Malaysian law guarantees interpretation in court to those who do not understand the language in which evidence is given, but not outside of the courtroom.

A recent Amnesty International investigation of Saudi Arabia's Specialized Criminal Court (SCC) revealed that despite Saudi Arabia's law providing that an accused person may seek the assistance of an agent or an attorney to defend him during investigation or trial, many defendants in trials before the SCC, including those facing the death penalty, have been denied access to a lawyer following arrest and throughout their interrogation in prison.<sup>3</sup> At best, these defendants were allowed to meet their lawyers only at the opening session of their trial.

Even when people facing the death penalty are given access to a legal representative by the state, it is often not effective. A study of death row prisoners in Ghana conducted by Amnesty International illustrates this fact.<sup>4</sup> Around three quarters of death row prisoners interviewed by Amnesty International had a government-appointed lawyer at trial level, provided by the Ghana Legal Aid Scheme. However, many of the death row prisoners interviewed by Amnesty International questioned the quality and effectiveness of their legal representation and the waiting period to obtain assigned legal representation. They told Amnesty International that their lawyers did not attend all the hearings, and many said that they did not have a chance to talk to their lawyer and prepare their defence during trial. A number of death row prisoners said that their government lawyers asked for payment, despite legal aid being free under Ghanaian law, and they felt that their inability to pay these fees had a negative impact on the quality of the legal representation they received.

Research into the use of the death penalty has long shown that those living in poverty or with less financial means are often unable to fully realize their right to competent and effective legal counsel, at all stages of the proceedings. Defendants from disadvantaged socio-economic backgrounds were often unable to engage or retain competent legal representation, as well as benefit from the much-needed support of forensic and medical experts to prepare their defence. For example, a comprehensive study by the National Law University in Delhi (India) on death rows in India has shown that low literacy levels among prisoners facing the death penalty, as well as their marginalized or absent social networks, can in some cases be factors influencing their understanding of, and engagement with, the judicial institutions

<sup>1</sup> Amnesty International, *Death Sentences and Executions 2019* (Index: ACT 50/1847/2020); Amnesty International, *Death Sentences and Executions 2018* (Index: ACT 50/9870/2019); Amnesty International, *Death Sentences and Executions 2017* (Index: ACT 50/7955/2018).

<sup>2</sup> Amnesty International, *Fatally Flawed: Why Malaysia Must Abolish the Death Penalty* (Index: ACT 50/1078/2019)

<sup>3</sup> Amnesty International, *'Muzzling Critical Voices: Politicized trials before Saudi Arabia's Specialized Criminal Court'* (MDE 23/1633/2020)

<sup>4</sup> Amnesty International, *'Locked Up and Forgotten: The Need to Abolish the Death Penalty in Ghana'* (ACT 50/6268/2017)

and their own legal representatives. This in turn has had the effect of further disempowering and marginalizing certain sections of society, along lines of class, gender, caste, religion and levels of educational attainment.<sup>5</sup>

Effective legal representation is an essential safeguard against the death penalty; it is a means of protecting the human rights of people facing the punishment, including their right to fair trial and right to life. The case of Magai Matiop Ngong from South Sudan exemplifies the importance of effective legal representation in death penalty cases. In 2017, Magai was convicted and sentenced to death by a court when he was 15 years old. This occurred despite South Sudan's 2011 Transitional Constitution and the Convention on the Rights of the Child, to which South Sudan is a party, prohibiting the use of the death penalty against people who were children at the time of the crime. Magai had no legal representation at trial. Subsequently, he gained access to a lawyer who appealed the court's decision and in July 2020 the Court of Appeal quashed his death sentence and sent his case back to the High Court to rule on an alternative sentence.

Under International human rights law and standards, the right to effective legal representation applies at all stages of criminal proceedings, including the preliminary investigation, before and during trial and appeals. It may also be required to enable effective access to constitutional remedies. Every person who is arrested or detained must be informed of their right to have the assistance of legal counsel (legal representation): either their lawyer of choice or an appointed lawyer.<sup>6</sup> Everyone detained or accused of a criminal offence has the right to counsel during detention.<sup>7</sup> The assistance of counsel can offer protection from being subjected to torture or other ill-treatment and be a safeguard during interrogations. In addition, the right to counsel extends to clemency procedures and to individuals seeking review by constitutional courts of capital cases.<sup>8</sup>

A person charged with a capital offence has the right to be represented by counsel of choice, even if this requires a hearing to be adjourned.<sup>9</sup> If a person accused of a capital charge does not have counsel of choice, the interests of justice always require them to be assisted by appointed counsel, free of charge if necessary.<sup>10</sup> The state must ensure sufficient resources to provide competent legal aid defence counsel in capital cases.<sup>11</sup> Death penalty cases should not proceed unless the accused is assisted by competent and effective counsel.<sup>12</sup> The state and the court have a particular obligation in death penalty cases to ensure that appointed counsel is competent, has the requisite skills and experience commensurate with the gravity of the offence, and is effective.<sup>13</sup> If the authorities or the court are notified that counsel is not effective, or if counsel's ineffectiveness is manifest, the court must ensure that counsel performs his or her duties or is replaced.<sup>14</sup>

All countries that still retain the death penalty in their laws must respect the right to a fair trial and trials for crimes carrying the death penalty must comply with the most rigorous internationally recognized standards for fair trial. Where that has not been the case the individual must be given re-trial in proceedings which comply with these standards, and without recourse to the death penalty.

The world continues to move away from the death penalty; 142 countries, more than two thirds of the countries in the world have now abolished the death penalty in law or practice. Countries that retain and use the death penalty are a minority in the world; they must begin to take steps towards abolishing the death penalty for all crimes, and pending abolition should establish an official moratorium on executions.

<sup>5</sup> National Law University, "Death Penalty India Report," Delhi Press, February 2016, vol. I

<sup>6</sup> Principle 5 of the Basic Principles on the Role of Lawyers, Principle 17(1) of the Body of Principles, Guidelines 3 §43(a) and 2 §42(c)-(d) of the Principles on Legal Aid, Guideline 20(c) of the Robben Island Guidelines, Section M(2)(b) of the Principles on Fair Trial in Africa, Articles 55(2)(c) of the ICC Statute; See Rule 98.1 of the European Prison Rules (applicable to people remanded in detention), Article 60 of the ICC Statute, Rule 42 of the Yugoslavia Rules; CAT General Comment 2, §13; CoE Committee of Ministers Recommendation Rec(2012)12, Appendix §21.1.

<sup>7</sup> Principle 3 of the Principles on Legal Aid, Paragraph 5 of the Death Penalty Safeguards, Article 14(3)(d) of the ICCPR, Article 7(1)(c) of the African Charter, Article 8(2)(d)-(e) of the American Convention, Article 16(3) and (4) of the Arab Charter, Article 6(3)(c) of the European Convention, Principle 1 of the Basic Principles on the Role of Lawyers, Section N(2)(c) of the Principles on Fair Trial in Africa.

<sup>8</sup> Guideline 6 §47(c) of the Principles on Legal Aid; See Section H(c) of the Principles on Fair Trial in Africa.

<sup>9</sup> See *Pinto v Trinidad and Tobago*, HRC, UN Doc. CCPR/C/39/D/232/1987 (1990) §12.5. See African Commission: *Avocats Sans Frontières (on behalf of Bwampamyé) v Burundi* (231/990) 14th Annual Report (2000) §§5, 27-30, *Amnesty International and Others v Sudan* (48/90, 50/91, 52/91 and 89/93) 13th Annual Report (1999) §§64-66, *International Pen et al on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v Nigeria* (137/94, 139/94, 154/96 and 161/97) 12th Annual Report (1998) §§97-103.

<sup>10</sup> Principle 3 of the Principles on Legal Aid, Section H(a) and (c) of the Principles on Fair Trial in Africa

<sup>11</sup> Principle 3 of the Basic Principles on the Role of Lawyers; See Principles 2 §15 and 13 §37 of the Principles on Legal Aid.

<sup>12</sup> *Robinson v Jamaica*, HRC, UN Doc. CCPR/C/35/D/223/1987 (1989) §10.2-10.3; See *Abdool Saleem Yasseen and Noel Thomas v Guyana*, HRC, UN Doc. CCPR/C/62/D/676/1996 (1998) §7.8.

<sup>13</sup> Principle 13 of the Principles on Legal Aid

<sup>14</sup> See HRC: *Pinto v Trinidad and Tobago*, UN Doc. CCPR/C/39/D/232/1987 (1990) §12.5, *Kelly v Jamaica*, UN Doc CCPR/C/41/D/253/1987 (1991) §5.10, *Chan v Guyana*, UN Doc. CCPR/C/85/D/913/2000 (2005) §§6.2-6.3, *Brown v Jamaica*, UN Doc. CCPR/C/65/D/775/1997 (1999) §6.8, *Burrell v Jamaica*, UN Doc. CCPR/C/57/D/546/1993 (1996) §9.3.

Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to execute the prisoner. The death penalty - the premeditated and cold-blooded killing of a human being by the state in the name of justice - is the most fundamental denial of human rights. It violates the right to life as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.

## AMNESTY INTERNATIONAL ACTION

On the World Day Against the Death Penalty, Amnesty International and its supporters are taking action on the following cases:

### IRAN - BARZAN NASROLLAHZADEH

**Barzan Nasrollahzadeh**, a Sunni Muslim and member of Iran's Kurdish minority, was arrested by ministry of intelligence officials at the age of 17 in Sanandaj, Kurdistan Province, on 29 May 2010. He was held for several months in a ministry of intelligence detention facility in Sanandaj without access to his family. He was interrogated without a lawyer present and forced to make incriminating statements against himself under torture and other ill-treatment. He has said that he was tortured, including by being beaten, suspended upside down, and given electric shocks. His trial was grossly unfair. During interrogations, he was forced to make "confessions" against himself in front of a video camera, which were used by the court as admissible evidence in his trial. He was denied access to a lawyer throughout his entire pre-trial detention. He met a court-appointed lawyer for the first time at his trial on 21 August 2013, over three years after his arrest, denying him the right to have adequate time and facilities to prepare his defence. Following an unfair trial, Branch 28 of the Revolutionary Court in Tehran convicted him of "enmity against God" (*moharebeh*) for "having connections with Salafist groups" and taking part in assassination plots, including one on 17 September 2009 that killed a senior Sunni cleric with ties to the government.

The Supreme Court upheld the death sentence in August 2015. Amnesty International understands that the Supreme Court made no reference to Barzan Nasrollahzadeh being below 18 years of age at the time of the crime. His subsequent requests for a judicial review of his case have all been rejected by the Supreme Court.

At the time of writing, he was held in Raja'i Shahr prison in Karaj, Alborz province. In mid-September 2020, Amnesty International received information that the centre for the implementation of sentences was processing Barzan Nasrollahzadeh's casefile, raising concerns that his execution may be scheduled very soon.

As a state party to the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR), Iran has the legal obligation not to use the death penalty against people below 18 years of age at the time of the crime. Nevertheless, Iran has not been fulfilling this obligation and continues to use the death penalty against people who were below 18 years of age at the time of the crime.

Amnesty International calls on Iran to:

- Immediately halt any plans to execute Barzan Nasrollahzadeh, ensure that his conviction and sentence are quashed, and that he is granted a fair retrial in accordance with the principles of juvenile justice, without resort to the death penalty and excluding statements obtained through torture or other ill-treatment or without the presence of a lawyer;
- Conduct an independent, impartial and transparent investigation into his allegations of torture and other ill-treatment and bring those responsible to justice;
- Immediately establish an official moratorium on executions with a view to abolishing the death penalty for all crimes;
- Immediately stop the use of the death penalty against people below 18 years of age at the time of the crime;
- Take steps to ensure a legislative effort is initiated to amend Article 91 of the 2013 Islamic Penal Code to completely abolish, without any discretion by the courts or other exceptions, the use of the death penalty for crimes committed by people below the age of 18, in line with Iran's obligations under international law;
- Ensure all people facing the death penalty in Iran have access to an independent lawyer of their own choosing from the time of arrest.

## SAUDI ARABIA – SULIAMON OLUFEMI

**Suliamon Olufemi**, a Nigerian national, was convicted and sentenced to death in May 2005 over the death of a police officer following an unfair trial. He has been languishing in prison in Saudi Arabia since 2002.

Suliamon Olufemi had travelled to Saudi Arabia in September 2002. On 28 September 2002, some days after he arrived in Saudi Arabia, he followed some Nigerians he was staying with to a car wash in the Bab Sharif area of Jeddah, where many African nationals worked as car cleaners. On the day, a group of local men with guns, among them a police officer, raided the location and a dispute broke out between the local men and the foreign nationals which resulted in the police officer getting injured, he later died. The following day, 29 September 2002, mass arrests were carried out of foreign nationals by the Saudi authorities. Suliamon Olufemi and 12 Nigerian nationals were among those arrested in their accommodation. Many of the foreign nationals arrested over the incident were put on trial, sentenced to short prison terms and lashes, and then deported. However, Suliamon Olufemi and the 12 other Nigerian nationals were put on trial together for the incident and the death of the police officer. Suliamon said he was tortured during interrogation in order to force him to sign statements written in Arabic, a language that he could neither read nor understand. Under duress he was said to have put his fingerprints, which can be taken as a substitute for a signature, to a statement written in Arabic. He later learnt in court that he had “signed” a statement that said that he had hit the police officer over the head with a gun.

At his trial, Suliamon had no legal representation, no consular assistance, no adequate translation facilities and the ‘confession’ in Arabic (a language he does not understand) which had been obtained under torture was used. While Suliamon was sentenced to death, other members of the group received 15 years imprisonment with 1,000 lashes. One of the men died in prison while 11 others were released and deported to Nigeria in 2017 after completing their sentences. Suliamon has always maintained his innocence and his co-defendants have stated that he was not involved in the incident that led to the death of the police officer.

In April 2007, the Saudi Arabian Human Rights Commission, the country’s official human rights institution, wrote to Amnesty International and confirmed that the death sentence against Suliamon Olufemi had been upheld by the Court of Cassation and the Supreme Judicial Council, meaning he has no further recourse to appeal.

According to Shari’a law in Saudi Arabia, if a crime is punished under the rule of *qisas* (retribution), as in Suliamon Olufemi’s case, relatives of the murder victim have the right to decide if the offender should be executed or pardoned, in which case the death penalty is dropped, sometimes in return for *diyya* (compensation or “blood money”). Pardons by victims’ relatives must be certified by courts of law. However, this does not automatically mean that a convicted person is spared from execution since judges have the power to invoke *hadd* (divinely prescribed fixed offences and punishments) and consider the murder as harmful to public order in addition to it being a crime against the victim and his family.

Suliamon Olufemi is currently at a heightened risk of execution.

Amnesty International calls on Saudi Arabia:

- Not to execute Suliamon Olufemi;
- To grant Suliamon Olufemi clemency.

## SAUDI ARABIA – SHEIKH SALMAN AL-AWDA

**Sheikh Salman al-Awda**, a religious cleric, was brought to trial before the Specialized Criminal Court (SCC) in a secret session in August 2018 on 37 charges; some under the counter-terror law, for financially supporting a pan-Gulf youth forum; his alleged affiliation with the Muslim Brotherhood; his participation in a petition calling for, amongst other things: an elected Shura Council, separation of the executive and legislative branches of government, reform of the judicial system, the establishment of civil society organizations and freedom of expression. He was also accused of supporting calls for government reforms and regime change in the Arab region. Salman al-Awda was held incommunicado and in solitary confinement for the first five months of his detention, with no access to his family or a lawyer except for one brief phone call a month after his arrest. During his first trial session in August 2018, the public prosecution demanded his execution based on the above charges.

Salman al-Awda had been arrested on 7 September 2017 from his home without a warrant, a few hours after he posted a tweet reacting to a news story about the possibility of Saudi Arabia and Qatar reconciling amid an ongoing diplomatic crisis. He wrote, “May God harmonize between their hearts for what is good for their people”. According to his family, the authorities had previously asked Salman al-Awda and other prominent figures to tweet in support of the Saudi Arabian government during the dispute with Qatar, but he had refused to do so. In November 2017, men in civilian clothing and

men in balaclavas believed to be from the Presidency of State Security searched Salman al-Awda's house without a warrant, confiscating electronic devices and books.

Salman al-Awda had been calling for political and democratic reforms in Saudi Arabia and other Arab states since the early 1990s. He was an advocate of a consultative Shura council, which was later institutionalized and expanded in Saudi Arabia. He was detained in 1994 without charge or trial for five years, and released in 1999, when he continued his calls for reform. In 2011, Salman al-Awda published a book calling on Arab states to address the root causes of the popular uprisings. Prior to his arrest in 2017, Salman al-Awda had repeatedly been banned from travelling, speaking and writing in the media. Amnesty International believes that the accusations against him are politically motivated and meant to silence independent voices in Saudi Arabia.

Sheikh Salman al-Awda has been through a terrible ordeal since his arrest including prolonged pre-trial detention, months of solitary confinement, incommunicado detention, and other ill-treatment. He remains on trial facing the death penalty. Amnesty International considers Salman al-Awda to be a prisoner of conscience.

Amnesty International calls on Saudi Arabia to:

- Drop the charges against Salman al-Awda and ensure he is not sentenced to death;
- Immediately and unconditionally release Salman al-Awda.

## **BACKGROUND**

Since 2003, every year on 10 October, the World Coalition Against the Death Penalty calls upon abolitionist NGOs, networks, activists and institutions to mobilize against the use of the death penalty around the world. The aim of the World Day Against the Death Penalty is to raise awareness on the use of the death penalty, strengthen anti-death penalty activism and take action towards the ultimate goal of its global abolition. Over the years, the World Day Against the Death Penalty has increased its reach and has become a focal point for global campaigning against the death penalty.

Amnesty International is a founding member of the World Coalition Against the Death Penalty and is committed to commemorating the World Day Against the Death Penalty by mobilizing its members around the world to take action every year on and around 10 October. Since 1977 Amnesty International has been campaigning for the worldwide abolition of the death penalty.