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The death penalty in Saudi Arabia, notably the cases of Mustafa Hashem al-Darwish and Abdullah al-Howaiti

European Parliament resolution of 8 July 2021 on the death penalty in Saudi Arabia, notably the cases of Mustafa Hashem al-Darwish and Abdullah al-Howaiti (2021/2787(RSP))

(2022/C 99/20)

The European Parliament,

— having regard to its previous resolutions on Saudi Arabia, in particular those of 25 October 2018 on the killing of journalist Jamal Khashoggi in the Saudi consulate in Istanbul ([1]), of 14 February 2019 on women's rights defenders in Saudi Arabia ([2]), of 8 October 2020 on the situation of Ethiopian migrants in detention centres in Saudi Arabia ([3]), of 11 February 2021 on the humanitarian and political situation in Yemen ([4]),

— having regard to the statement made by Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) Josep Borrell on 10 December 2020 at the Foreign Affairs Council that 'human rights are in the DNA of the European Union',

— having regard to the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),

— having regard to the Universal Declaration of Human Rights of 1948,

— having regard to the International Covenant on Civil and Political Rights of 1966 (ICCPR),

— having regard to the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR),

— having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT),

— having regard to the Universal Periodic Review (UPR) of Saudi Arabia of November 2018,

— having regard to the UN Convention on the Rights of the Child (CRC),

— having regard to the UN Standard Minimum Rules for the Treatment of Prisoners ('Mandela Rules'),

— having regard to EU Guidelines on the Death Penalty,

— having regard to the EU Guidelines on Human Rights Defenders,

— having regard to the EU Global Human Rights Sanctions Regime,

— having regard to the Arab Charter on Human Rights,

— having regard to the Statement of the UN Special Rapporteurs on the commutation of death sentences of 3 March 2021,

— having regard to the report by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, of June 2021, stating that Saudi Arabia is responsible for the 'premeditated execution' of the Saudi journalist Jamal Khashoggi (the Callamard Report),

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([1]) OJ C 345, 16.10.2020, p. 67.
([2]) OJ C 449, 23.12.2020, p. 133.
([3]) Texts adopted, P9_TA(2020)0260.
([4]) Texts adopted, P9_TA(2021)0053.

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— having regard to the report of the UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor, analysing the killing of human rights defenders in Saudi Arabia presented during the UN Human Rights Council 46th session in March 2021,

— having regard to the Report of the Office of the Director of National Intelligence assessing the Saudi government's role in the killing of Jamal Khashoggi published in February 2021,

— having regard to the fact that Loujain al-Hathloul was awarded the Vaclav Havel Human Rights Award 2020 by the Parliamentary Assembly of the Council of Europe,

— having regard to Rule 144(5) and 132(4) of its Rules of Procedure,

A. whereas the Kingdom of Saudi Arabia committed to abolishing the death penalty for all child offenders without exception by 2016 through new legislation, and has confirmed this commitment in diplomatic statements; whereas these statements were made by the Saudi Ministry of Foreign Affairs in September 2016 at the UN Committee on the Rights of the Child, as well as in August 2018, when it declared that 'if the crime committed by the juvenile is punishable by death, the sentence shall be reduced to a term of not more than 10 years detention in the institution';

B. whereas Saudi Arabia's 2018 Juvenile Law, promulgated by Royal Decree on 31 July 2018, states in Article 15 that 'if the crime committed by the juvenile is punishable by death, the sentence shall be reduced to a term of not more than 10 years detention in the institution'; whereas Saudi Arabia's 2018 Universal Periodic Review at the UN Human Rights Council subsequently noted that the country had made 'remarkable progress in promoting respect for, protection of and fidelity to the rights of the child';

C. whereas on 15 June 2021, Mustafa Hashem al-Darwish, a young Saudi man from the Shi'a minority, was executed for offences that rights groups say he may have committed as a minor, despite the kingdom's recent announcement that it had abolished the death penalty for minors; whereas he was subjected to a prolonged period of pre-trial detention, torture, and a grossly unfair trial; whereas al-Darwish's charges do not specify the exact date his alleged crimes took place, which means there is a probability that he was a minor at the time of the alleged crimes, and therefore that his sentence should be revised under new national laws on the use of the death penalty against those under 18;

D. whereas Abdullah al-Howaiti was tried in a mass trial of six individuals in an armed robbery case; whereas the Criminal Court in Tabuk (northern Saudi Arabia) sentenced Abdullah al-Howaiti to death on 27 October 2019 despite the fact that his DNA sample was taken after his arrest, invalidating his identification as possible suspect; whereas al-Howaiti was arrested in May 2017, when he was 14 years old; whereas according to court documents, he was detained in solitary confinement for four months and subjected to torture during his interrogation without the presence of his parents or lawyer; whereas he was detained in the Tabuk Criminal Investigations Unit during this time, instead of in a juvenile detention centre; whereas Abdullah al-Howaiti, who was 14 at the time of his alleged crimes, still remains in detention and on death row; whereas the Supreme Court has been reviewing his case since June 2021;

E. whereas on 23 April 2019 Saudi authorities executed six child offenders, including Saeed al-Scafi, Salman al-Quraish, Abdul Aziz al-Sahawi, Abdul Karim al-Hawaj, Abdullah al-Asrih and Mujtaba al-Sweikat; whereas at least nine other child offenders are currently at risk of execution;

F. whereas there are still currently at least 40 detainees in Saudi Arabia at risk of execution; whereas this number includes several cases of alleged crimes committed as minors and peaceful critics such as Islamic scholars Salman al-Odah and Hassan al-Maliki, for whom the public prosecutor continues to demand the death sentence;

G. whereas Saudi Arabia has for many years been among the countries carrying out the highest number of executions in the world; whereas since January 2015 there have been more than 800 executions, a large number of these for non-violent drug offences, while others were for offences described by the authorities as terrorism-related but which were peaceful;

H. whereas Saudi Arabia carried out a total of 32 executions in the first half of 2021, more than the number for the whole of 2020, and has executed at least eight child offenders since first committing to abolishing the death penalty for child offenders;

I. whereas following a Saudi Royal Order of 2020, death sentences should be commuted for individuals who have committed crimes when they were minors; whereas the decree contains various loopholes leaving several ways for minors to still be executed, such as by excluding death sentences passed as *hudud* (offences with predetermined sentences) or *qisas* (offences with retribution-based sentences) and cases brought under the Counter-Terrorism Law;

J. whereas Saudi Arabia has commuted the death sentences imposed on Mr Ali al-Nimr, Mr Dawood al-Marhoon and Mr Abdullah al-Zaher for crimes which experts previously considered to be criminalisation of the exercise of fundamental rights, including freedom of assembly and expression, and which they allegedly committed as minors; whereas they have been re-sentenced to 10 years' imprisonment, inclusive of time served; whereas UN experts have called for their release;

K. whereas despite the announcement of Saudi Arabia's Human Rights Commission on the moratorium on death penalties for drug-related offences in January 2021, no change in the law has yet been published, and the death penalty remains at the discretion of judges and the authorities;

L. whereas abolition of the death penalty worldwide is one of the main objectives of the EU's human rights policy;

M. whereas over the last few months, several human rights activists have been sentenced to harsh prison terms in trials marred by lack of due process and by credible torture allegations; whereas Abdurahman al-Sadhan has been sentenced to 20 years in prison and a 20-year travel ban for activities related to tweets criticising the government; whereas his trial seriously violated international fair trial guarantees;

N. whereas in March 2021 Mohammed al-Otaibi, founder of the Union for Human Rights, who advocated for the abolition of the death penalty and strengthening women's role in society had his prison sentence increased from 14 to 17 years for his peaceful human rights activism;

O. whereas numerous women arrested during the 2018 crackdown on women's rights defenders were sentenced to long prison terms solely for their human rights activism; whereas Saudi authorities have recently released women's rights defenders from prison, among them Loujain al-Hathloul's, Nouf Abdulaziz, Samar Badawi and Nassima al-Sada; whereas their sentences were only suspended, and Saudi authorities have imposed travel bans on the human rights defenders released;

P. whereas the 2017 Law on Combating Crimes of Terrorism and its Financing defines terrorism in vague terms and does not require the use of violence in order for an action to be categorised as a terrorist act;

Q. whereas abuses are committed by Saudi authorities through the use of electronic surveillance technology, according to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions; whereas new controls on cyber-surveillance technology were introduced in the upgraded EU dual-use export control regulation of 2021 ([5]);

R. whereas the Kingdom of Saudi Arabia has one of the lowest levels of ratification of core international human rights treaties, and has not acceded to central human rights treaties at the normative core of the right to life, such as the International Covenant on Civil and Political Rights (ICCPR);

S. whereas torture and degrading treatment in prisons are widespread practices in Saudi Arabia, and are used both during interrogation to extract confessions and as a form of punishment during detention; whereas allegations of torture are rarely investigated;

([5]) OJ L 206, 11.6.2021, p. 1.

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1. Strongly condemns the Kingdom of Saudi Arabia's ongoing execution of child offenders despite its claims that it has abolished such executions, including the recent execution of Mustafa Hashem al-Darwish for crimes that may have occurred while he was a minor following his conviction in an unfair trial involving a confession obtained from him under torture, as well as the fact that there are currently at least 40 detainees in Saudi Arabia at risk of execution, including at least nine for alleged crimes committed as minors, and peaceful critics of the government;

2. Calls on Saudi Arabia to confirm that Abdullah al-Howaiti, Mohammed al-Faraj and all other child offenders currently on death row will not be executed, that 'confessions' extracted under torture will be excluded from their cases, and that all child offenders will be granted a fair trial without the imposition of the death penalty; calls for Abdullah al-Howaiti's allegations of having been subjected to torture to be investigated, and for all perpetrators to be brought to justice;

3. Urges Saudi Arabia to genuinely abolish the death penalty for child offenders, in accordance with its obligations under the Convention on the Rights of the Child, regardless of the type of offence, including *ta'zir* (offences with discretionary sentences), *hudud* and *qisas*, under which at least four child defendants are at risk of death sentences; calls on Saudi Arabia to publish its 2020 Royal Decree in order to provide full and retroactive protection to child offenders, as stated by Saudi authorities, and to bring its Juvenile Law into line with international standards;

4. Reiterates its condemnation of the use of the death penalty in any case and under any circumstances; calls on Saudi Arabia to implement a moratorium on executions pending their abolition, and to proceed to an independent review of all cases in its criminal justice system involving the death penalty for childhood crimes, or based on confessions extracted under torture, or where there was not a fair trial, and to publish the review's findings; calls for an international and national dialogue on the remaining obstacles to abolishing the death penalty for all child offenders, paving the way for the complete abolition of the death penalty in Saudi Arabia;

5. Welcomes the recent decision of the authorities to commute the death sentences handed down to Mr Ali al-Nimr, Mr Dawood al-Marhoon and Mr Abdullah al-Zaher for crimes allegedly committed when they were minors as a necessary step towards Saudi Arabia's compliance with its national and international human rights obligations, particularly under the Convention on the Rights of the Child; calls for their release in line with the demands of UN human rights experts, since these experts previously considered their crimes to be criminalisation of the exercise of fundamental rights, including the freedoms of assembly and expression;

6. Calls on the Saudi authorities to review the cases of all prisoners currently under a death sentence with the aim of commuting their sentences or offering a new and fair trial where the death penalty will not be imposed;

7. Urges the EU delegation and the diplomatic missions of EU Member States in Saudi Arabia to urgently request to visit child offenders detained on death row;

8. Urges the Council to suspend all EU exports of mass surveillance technology and other dual-use items to Saudi Arabia that can be used to facilitate internal repression and silence civil society; stresses the special responsibility of IT security companies as well as of national intelligence services working in the EU and their moral and legal obligation to avoid being in a situation where their current or former staff assist Saudi Arabia in repressing its own population by indirectly or directly working for Saudi authorities to suppress internal dissent and freedom of speech;

9. Urges the Saudi Government to abide by its commitments under the Convention Against Torture (CAT), which it has ratified, and strongly encourages the Kingdom of Saudi Arabia to ratify the Optional Protocol to the Convention Against Torture and the Second Optional Protocol to the ICCPR aiming to abolish the death penalty;

10. Strongly condemns the pattern of harsh prison sentences handed down to human rights defenders, peaceful critics and activists, and reiterates its solidarity with the important work of human rights defenders and the need to protect freedom of speech and expression;

11. Demands the immediate and unconditional release of all human rights defenders, women's rights defenders, peaceful critics, and activists, including Abdurahman al-Sadhan, Mohammed al-Otaibi, Khaled Al-Omair, Mohammed al-Rabiah, Israa al-Ghomgham, Mousa al-Hashim, Ahmed al-Matrood, Khaled al-Ghanim, Ali al-Ouwaisher, Mujtaba al-Muzain, Waleed Abu al-Khair, Abdulaziz al-Shubaili, Issa al-Nukhaifi and Natheer al-Majed;

12. Calls for the full freedom of human rights defenders temporarily released but still facing restrictions, such as Loujain al-Hathloul, including by removing travel bans on them and their families, removing work bans, curtailing online surveillance, and restoring their full rights as citizens;

13. Recalls that Sakharov laureate Raif Badawi has now been in prison for nine years; calls on the EU, the Member States and the international community to increase pressure on the Saudi Government and work towards his immediate release;

14. Stresses that the exercise of the rights to freedom of expression and peaceful association and assembly are protected under international human rights law; urges the Saudi authorities to remove the restrictions imposed on human rights defenders, which prohibit them from speaking out on social media and to the international media;

15. Expresses concern over the practice of secret hearings; insists that in order to ensure that proper and fair trial procedures are being followed, diplomatic missions, including observers from the EU Delegation to Saudi Arabia or the EU institutions, and international NGOs should be allowed to attend hearings and to visit Saudi prisons;

16. Calls on the Government of Saudi Arabia to fully cooperate with UN bodies and to extend a standing invitation to the visit of all UN Human Rights Council Special Procedures and to cooperate in a proactive manner, notably with the UN Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment;

17. Is gravely concerned by the vague definition of terrorism in the country's Counter-Terrorism Law; condemns the use of the Specialised Criminal Court, a court designed to deal with terrorism matters, as a tool to punish human rights defenders;

18. Urges the Saudi Government to ratify the International Covenant on Civil and Political Rights;

19. Reiterates the importance of tools such as the EU-Saudi Human Rights Dialogue to propel further discussion, and urges its activation without delay; urges the European External Action Service (EEAS) and all EU Delegations attending the Dialogue to engage with civil society prior to the Dialogue so as to ensure up-to-date information and knowledge of specific cases to be raised; encourages the use of benchmarks to mark the progress of the discussions;

20. Denounces the fact that the Saudi political system remains profoundly undemocratic and continues severely repressing most dissenting voices despite the announcement of ambitious human rights-related reforms; highlights that the murder of journalist Jamal Khashoggi on the premises of the Saudi consulate in Istanbul on 2 October 2018 remains a chilling message for all critical voices in Saudi Arabia, including many currently held in detention for their peaceful activism; strongly supports the application of the Global Human Rights Sanctions Mechanism against those responsible for grave human rights violations in Saudi Arabia, including the murder of the journalist Jamal Khashoggi; calls on the international community to thoroughly follow up on the Callamard Report which implicated Saudi Crown Prince Mohammad Bin Salman;

21. Calls on the Member States and the President of the Council as well as the VP/HR and the EEAS to raise human rights concerns, particularly the death penalty, during all formal and informal meetings with their Saudi counterparts; regrets the EU's timid approach to public diplomacy on human rights vis-à-vis Saudi Arabia; asks the European diplomatic services in Riyadh and elsewhere in Saudi Arabia, therefore, to systematically use the mechanisms provided for in the EU Guidelines on Human Rights Defenders, including public statements, diplomatic démarches, monitoring of trials and prison visits;

22. Calls for the EU to support any UN Human Rights Council action to hold the authorities of the Kingdom of Saudi Arabia accountable for human rights abuses; calls for the EU to propose the appointment of a Special Rapporteur on Human Rights in Saudi Arabia at the UN Human Rights Council;

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23. Calls on the EU delegation and Member States' representations in the country to strengthen their support for civil society in their engagement with the Saudi authorities, and to use all available instruments to increase their support for human rights defenders' work, to facilitate the issuing of emergency visas where appropriate, and provide temporary shelter in the EU Member States;

24. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the European External Action Service, the UN Secretary-General, the UN High Commissioner for Human Rights, the Commission on the Status of Women, the UN Human Rights Council, H.M. King Salman bin Abdulaziz al-Saud and Crown Prince Mohammad bin Salman al-Saud, the Government of the Kingdom of Saudi Arabia, and the Secretary-General of the Centre for National Dialogue of the Kingdom of Saudi Arabia.