

**ABOUT REPRIEVE**

Reprieve is a charitable organization registered in the United Kingdom (No. 1114900), and in special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. Our clients belong to some of the most vulnerable populations in the world, as it is in their cases that human rights are most swiftly jettisoned and the rule of law is cast aside. In particular, we protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.

**SUMMARY**

Children are among the most vulnerable categories of persons impacted by capital punishment. Every aspect of the use of the death penalty has been shown to have extremely adverse psychological, physical, social, and economic effects on children. This is the case for individuals who were children at the time of alleged death-eligible offences, as well as children whose parent/s have been sentenced to death. The suffering of children impacted by the death penalty has been compounded to an unprecedented degree as a result of the COVID-19 pandemic.

Reprieve submits that the rights of these children must be underscored as a key issue within Goal 16 of the Sustainable Development Goals (SDG Goal 16) and during the 2021 global review of the High Level Political Forum on Sustainable Development. A sustainable and resilient recovery from the COVID-19 pandemic must place the rights of children impacted by extreme punishment, particularly the death penalty, at its forefront.

**Reprieve submits that the use of the death penalty is antithetical to SDG Goal 16 that aims toward the “*promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels.*”** International norms and standards have, on several occasions, determined that the practice of capital punishment violates the universal right to life and dignity[[1]](#footnote-1), the absolute prohibition against torture[[2]](#footnote-2), and virtually every fair trial safeguard necessary for effective access to justice.[[3]](#footnote-3) In this submission, Reprieve focuses on the suffering of children who face the death penalty or whose parents face the death penalty as further evidence that capital punishment has no place within the legal framework of a society that aims to implement SDG Goal 16.

**The situation of children facing the death penalty**

Despite the absolute prohibition on the application of the death penalty for child defendants under Article 37(a) of the Convention on the Rights of the Child (CRC) and Article 6(5) of the International Convention on Civil and Political Rights (ICCPR), there are jurisdictions where individuals who were children at the time of death-eligible offences may be sentenced to death. Two notable examples Reprieve’s casework efforts have focused on are child laws in Egypt and Saudi Arabia that contain provisions that allow the imposition of the death penalty on juveniles.

In Egypt, on at least 10 occasions that Reprieve is aware of, courts have recommended death sentences in mass trials for individuals who were under the age of 18 at the time of their alleged offences.[[4]](#footnote-4) Egypt is signatory to the CRC which prohibits death sentences for juveniles, and this practice is outlawed in Egyptian law itself. However, a loophole in Egypt’s Child Law has allowed children to be sentenced to death. This loophole arises from Article 122 of the Child Law which stipulates that a Criminal Court or the Supreme State Security Court (both adult courts): *“...shall have jurisdiction over criminal cases where the accused - at the time of committing the crime - is a child above fifteen (15) years of age while the accomplice is not a child and the case necessitated bringing the criminal action against the accomplice jointly with the child…”*[[5]](#footnote-5)

This provision has led many 16 and 17-year-old defendants to be ensnared in mass trials alongside hundreds of adult codefendants. When prosecutors charge and try hundreds of individuals jointly, as has become commonplace in Egypt, there are often children among the defendants, and in some cases those children have gone on to receive death sentences. In some cases, this is because in such large trials (some of more than three or four hundred people), the court is unable to consider each defendant individually and thus never learns of the defendant’s juvenility.[[6]](#footnote-6) In other cases, however, courts are made aware of the juvenility of specific defendants and choose to sentence them to death regardless.[[7]](#footnote-7)

In Saudi Arabia, the Juvenile Law of 2018 promised reforms forchild defendants facing death sentences. In advance of the country’s third Universal Periodic Review, the Saudi authorities claimed that under this law, “*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*.”[[8]](#footnote-8) Nevertheless, by failing to provide for its retroactive application, and by excluding certain categories of offence from its scope of application, the Juvenile Law 2018 did not protect child defendants facing the death penalty. Indeed, since passing the law, Saudi Arabia has executed at least seven child defendants.[[9]](#footnote-9)

In April 2020, the Saudi Human Rights Commission (‘the Commission’) announced the expansion of the scope of application of the Juvenile Law 2018 through a new Royal Decree which was to ‘abolish the use of the death penalty for minors’.[[10]](#footnote-10) The Commission also clarified that the Decree would provide for the retroactive application of the Juvenile Law 2018, and that those convicted of terrorism offences would be covered.[[11]](#footnote-11)

At first glance, the Juvenile Law 2018 and the Royal Decree 2020 appear to be steps toward the realization of Saudi Arabia’s obligations under International Human Rights Law. The Juvenile Law 2018 prescribes a maximum punishment of ten years in prison in cases of children under 18 who commit death eligible offences under *ta’zir*.[[12]](#footnote-12) According to public statements by the Commission, The Royal Decree 2020 mandates the retroactive application of the 2018 law to finalized death sentences.[[13]](#footnote-13) However, the finer details raise concerns that the reforms fall far short of the complete prohibition on the execution of child defendants which international human rights law guarantees. The reforms do not appear to protect child defendants facing death sentences under *hudud* or *qisas*. Under Article 16 of the Juvenile Law 2018:

*‘[T]he provisions contained in this Law shall not prejudice the legally prescribed provisions on* hudud *crimes and* qisas’.[[14]](#footnote-14)

The Royal Decree which amends the Juvenile Law 2018 is silent on this point, raising concerns that Article 16 will be read as the applicable law, and child defendants facing *hudud* or *qisas* death sentences remain at risk of the death penalty.

Of further concern is the fact that Article 16 also excludes the provisions of the law which set the age of majority at 18 for child defendants facing death sentences under *hudud* or *qisas.* This leaves potentially very young children at risk of capital conviction under *hudud* and *qisas* offences. Given that no codified legislation exists in relation to determining the minimum age of criminal responsibility and the age of majority in the cases of *hudud* and *qisas*, judges must refer to uncodified Islamic Law sources in order to make such determination. This is generally done on the basis of the emergence of signs of physical puberty in a child. This means that very young children could plausibly be determined to have reached the age of majority and thus receive a death penalty under *hudud* and *qisas* offences.

**The protection of children facing the death penalty is crucial to a resilient recovery from the COVID-19 pandemic**

As emphasized in the April 2020 Policy Brief of the UN Secretary-General, and the Technical Notes of the Interagency Working Group on Violence Against Children, WHO, and UNICEF, children deprived of their liberty have faced a disproportionately adverse impact as a result of the COVID-19 pandemic. They are exposed to heightened risk of overcrowding, unsanitary conditions, insufficient access to water, malnutrition, and have been found to have generally poorer health than the rest of the population. Their psychosocial development is further stunted through forced isolation, stigma, violence, and neglect.

The use of the death penalty against child defendants in contravention of international human rights norms and standards reaches a fever pitch of cruelty when set against the backdrop of the COVID-19 pandemic. Far from being able to enjoy basic standards of health, security, and safety, these children continue to languish on death row and are forced to endure inhumane conditions, while awaiting their executions. The use of capital punishment against children is unconscionable in any society, much less those that have made representations to work towards achieving peace, inclusivity and access to justice for all. States are under a heightened duty to protect their most vulnerable populations during one of the most grave and widespread public health crises of the modern era, and yet some continue to impose the harshest punishment on children, the most vulnerable population.

A resilient recovery from COVID-19 and a return to progress toward SDG Goal 16 can only be achieved if retentionist States prioritize the absolute and unconditional removal of the death penalty for children and the commutation of the death sentences of individuals who were children at the time of their alleged death-eligible offences.

**The situation of children with parent/s facing the death penalty**

Children of parents sentenced to death or executed experience a range of serious psychological effects, such as prolonged grief, anxiety, and post-traumatic stress disorder; social effects, such as stigma and isolation; and economic effects, such as homelessness and child labour. Psychosocial research indicates that the rupture of parent-child attachment, in and of itself, is an adverse childhood experience (ACE) that is tantamount to deliberately inflicted trauma and traumatic loss.[[15]](#footnote-15) The suffering caused by forced separation compounded by the spectre of capital punishment has been described by experts in medical and behavioural science as cruel and inhuman.[[16]](#footnote-16)

In April 2020, the Bahrain Institute for Rights and Democracy (BIRD) conducted interviews with the mothers of eight children whose fathers are currently facing execution in Bahrain. Their narratives reveal the extent of the suffering caused by forced separation and capital punishment. One of the interviewees said of her children that ‘there is no day or time in which they did not mention their father…he is present at all times, in their games and drawings, before their sleep and in their dreams…they ask endless questions about him’.[[17]](#footnote-17)

Uncertainty about whether and when the execution will take place compounds the emotional and psychological harm associated with the imprisonment of a parent. BIRD’s interviews revealed that children with parents facing execution are subjected to an emotional rollercoaster of alternating hope and despair that resulted in a deep sense of fear and helplessness. Research has consistently shown that such children face extreme long term psychosocial consequences from this trauma.[[18]](#footnote-18)

Each interviewee also indicated that their standard of living had significantly deteriorated after the primary breadwinners of the family had been sentenced to death; for children, access to proper nutrition and care is fundamental to physical development. In addition, the children have encountered extreme discrimination and social stigma because of their father’s death sentences.[[19]](#footnote-19) When children face stigma directed at a parent who has been sentenced to death, the child’s ability to grieve the absence of their parent is greatly inhibited. This can result in what psychologists have termed ‘disenfranchised grief’.[[20]](#footnote-20) This comes particularly as a result of both the loss itself not being socially sanctioned and the children as grievers not being recognised by others;[[21]](#footnote-21) the attention is invariably focused on their fathers, leaving the children as forgotten victims.

Interviews conducted by Reprieve’s partners in Malawi and Pakistan with families of individuals facing the death penalty also reveal similar narratives of psychosocial suffering, extreme economic hardship, and social stigma that acutely affect the children of these families.[[22]](#footnote-22)

International law has recently begun to give voice to the acute and prolonged trauma faced by children of individuals who have been sentenced to death. General Comment 36 of the ICCPR obliges states to not carry out the death sentences of individuals with very young or dependent children.[[23]](#footnote-23) In its Resolution 22/11 of March 2013, the United Nations Human Rights Council stressed that it was “*deeply concerned by the negative impact of the death penalty on the rights of children of parents sentenced to the death penalty or executed.*”[[24]](#footnote-24) The Council also urged States to provide those children with the protection and assistance they may require.

The CRC protects the child’s right to health and development. Under Article 24, State parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Under Article 27(1), State parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The use of the death penalty in relation to the parent of the child deprives that child of his or her right to health. In its Resolution 68/147 on the Rights of the Child of February 2014, the General Assembly “*acknowledge[d] that a parent’s deprivation of liberty, sentencing to death or life imprisonment has a serious impact on children’s development, and urge[d] States, in the framework of their national child protection efforts, to provide the assistance and support these children may require.*”[[25]](#footnote-25)

**The protection of children whose parents are facing the death penalty is crucial to a resilient recovery from the COVID-19 pandemic**

Even in the best of times, children of individuals facing the death penalty are ‘unseen victims’[[26]](#footnote-26) whose mental, physical, and socioeconomic needs are sidelined. However, as economies screech to a standstill and healthcare facilities face unprecedented strain as a result of the COVID-19 pandemic, all potential avenues for relief become closed for these children. Every aspect of their trauma becomes amplified during the pandemic because of a new layer of fear surrounding the health and safety of their remaining caregiver/s, further uncertainty about their parent/s facing the death penalty, financial insecurity, and extreme deterioration in their quality of life.

States must prioritize in their COVID-19 recovery plans, first, the commutation of the death sentences of individuals with children under the age of 18 and, second, programs to provide psychosocial care and financial assistance to children whose parents have been sentenced to death or executed.

1. General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, Human Rights Committee, 30 October 2018 (CCPR/C/GC/36). [↑](#footnote-ref-1)
2. Juan E. Mendez, "The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment." Human Rights Brief 20, no. 1 (2012): 2-6. [↑](#footnote-ref-2)
3. See for example: Louise Arbour, In the Matter of Sentencing of Taha Yassin Ramadan, Application for Leave to Intervene as Amicus Curiae and Application in Intervention of Amicus Curiae of United Nations High Commissioner for Human Rights (Iraqi Tribunal: 8 February 2007); Reid v Jamaica Communication No. 250/1987, Views adopted on 20 July 1990 at para 11.5, U.N. Doc. CCPR/C/51/D/355/1989 (1994). [↑](#footnote-ref-3)
4. Data held on file with Reprieve. [↑](#footnote-ref-4)
5. The National Council for Childhood and Motherhood, Promulgating the Child Law, Article 122, Law No. 12 of 1996 amended by Law No.126 of 2008. [↑](#footnote-ref-5)
6. Data held on file with Reprieve. [↑](#footnote-ref-6)
7. Data held on file with Reprieve. [↑](#footnote-ref-7)
8. See Human Rights Council, 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, November 2018, paras. 112 and 61, available at <https://www.upr-info.org/sites/default/files/document/saudi_arabia/session_31_-_november_2018/a_hrc_wg.6_31_sau_1_e.pdf>. [↑](#footnote-ref-8)
9. Data held on file with Reprieve. [↑](#footnote-ref-9)
10. Saudi Human Rights Commission, Press Release, Abolition of Death Penalty for Crimes Committed as Minors, 25 April 2020, <https://hrc.gov.sa/en-us/News/Pages/news803.aspx> [↑](#footnote-ref-10)
11. Saudi Human Rights Commission, Press Release, Human Rights Commission: The Royal Order includes juveniles against whom final rulings are issued in terrorism cases, 28 April 2020, available at: <https://hrc.gov.sa/ar-sa/News/Pages/news805.aspx>. (in Arabic). [↑](#footnote-ref-11)
12. Royal Decree No. 113 2018 on the Juvenile Law. Under Article 15(2) of the Law, in cases where children between the ages of 15 and 18 commit capital offences, they will be subjected to an alternative punishment of detention in a juvenile centre for a period not exceeding ten years. [↑](#footnote-ref-12)
13. Saudi Human Rights Commission, Press Release, Human Rights Commission: The Royal Order includes juveniles against whom final rulings are issued in terrorism cases, 28 April 2020, available at: <https://hrc.gov.sa/ar-sa/News/Pages/news805.aspx>. (in Arabic). [↑](#footnote-ref-13)
14. No official copy of the 2020 Decree has been released. Reprieve U.S. has obtained an unofficial copy in Arabic, which is on file. [↑](#footnote-ref-14)
15. Asmundson, G. G. J. G., & Afifi, T. O. (2019). *Adverse Childhood Experiences: Using Evidence to Advance Research, Practice, Policy, and Prevention*. Elsevier. [↑](#footnote-ref-15)
16. See for example: "You Will Never See Your Child Again”, Physicians for Human Rights, <https://phr.org/wp-content/uploads/2020/02/PHR-Report-2020-Family-Separation-Executive-Summary.pdf>. Accessed 7 Apr. 2020; "The Torture of Forcibly Separating Children from their Parents ...." 18 Oct. 2018, <https://www.justsecurity.org/61138/torture-forcibly-separating-children-parents/>. Accessed 7 Apr. 2020. [↑](#footnote-ref-16)
17. Interview transcript held on file with BIRD. [↑](#footnote-ref-17)
18. Interview transcript held on file with BIRD. [↑](#footnote-ref-18)
19. Interview transcript held on file with BIRD. [↑](#footnote-ref-19)
20. OSCE (2017) Background Paper 2017: The Death Penalty in the OSCE Area, p16 <https://www.osce.org/odihr/343116?download=true>. [↑](#footnote-ref-20)
21. Doka, Kenneth (2002) Disenfranchised Grief: New Directions, Challenges, & Strategies for Practice. [↑](#footnote-ref-21)
22. Data held on file with Reprieve. [↑](#footnote-ref-22)
23. General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, Human Rights Committee, 30 October 2018 (CCPR/C/GC/36). [↑](#footnote-ref-23)
24. UN General Assembly, 22/11 Panel on the human rights of children of parents sentenced to the death penalty or executed, accessible here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/128/48/PDF/G1312848.pdf?OpenElement> [↑](#footnote-ref-24)
25. United Nations General Assembly, 68/147 Rights of the Child, 7 February 2014, para. 57, accessible here: <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_68_147.pdf> [↑](#footnote-ref-25)
26. Joint Declaration by the High Representative for Foreign Affairs and Security Policy on behalf of the European Union and the Secretary General of the Council of Europe on the occasion of the European and World Day against the Death Penalty, 10 October 2019, accessible here: <https://rm.coe.int/2019-joint-declaration-final-003-/16809818b6>. [↑](#footnote-ref-26)