

Adults Before Their Time Children in Saudi Arabia's Criminal Justice System

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I. Summary

Saudi Arabia's criminal justice system lacks any codified penal law and grants prosecutors and judges broad discretion in charging and sentencing individuals for ill-defined offenses. This promotes arbitrary outcomes that contravene international standards of due process, and whose impact is magnified because Saudi Arabia retains the death penalty and other forms of physical punishment as criminal sanctions, including flogging and amputation. For children who come into conflict with the law, Saudi Arabia has juvenile courts and detention facilities, but no comprehensive legislation or framework to address how these children should be treated. This means they suffer under a system that ultimately fails to uphold the rights of all children to protection from abuse and ill-treatment and to due process, and discriminates against girls and foreign children. Children are especially at a disadvantage in a criminal justice system that takes little account of their special needs.

Abuses of Children in Conflict with the Law

Very few Saudi laws or regulations explicitly address the rights of child offenders, or how their cases are to be handled, leaving law enforcement officials, judges, and prosecutors with broad discretion in determining when to arrest children, how long to detain them, and what punishments to impose on those deemed to have broken the law. Judicial discretion is exacerbated by the lack of law setting an age below which a child should not be tried as an adult. As a result, judges often treat as adults persons who were under age 18 at the time of an alleged crime. Judges can sentence to death, amputation, or flogging children still under 18 as well as those now over 18 but who committed the crime while under age 18. Often such sentences will be imposed following trials where they had no legal counsel and little capacity or opportunity to defend themselves. In addition, authorities often treat foreign children who are victims of trafficking primarily as offenders and they can be arrested, detained, or deported for begging or lack of legal residency. Many children deported in these circumstances are at risk of return to places where they face irreparable harm. The government has been reluctant to acknowledge and address

these enormous gaps in child protection, leaving children vulnerable in a system that lacks adequate, independent child protection mechanisms.

Human Rights Watch is aware of at least 12 cases of persons sentenced to death for offenses committed while under age 18, including three cases of juvenile offenders who were executed in 2007. The true number of such sentences is likely to be much higher: while Saudi Arabian authorities do not publish statistics on death sentences against juvenile offenders, the most recent publicly available Ministry of Social Affairs statistics (for 2003) show 126 “persons under 18” detained for homicide, a capital offense. This figure does not appear to include Saudi Arabian or foreign girls charged with homicide, and it does not include persons over age 18 who have been sentenced to death for crimes committed while under age 18.

No laws or regulations require judges to evaluate the child’s mental, emotional, and intellectual maturity when determining to try a child as an adult. Human Rights Watch has documented cases of children as young as 13 at the time of the offense whom courts have sentenced to death as a consequence of the judges’ determination, based on the child’s physical development alone, that the child is mature.

Children under age 12 may also be subject to arrest and prosecution because new standards announced in 2006 raising the age of criminal responsibility from seven to 12 for boys do not appear to be well publicized or enforced. Regulations governing girls in conflict with the law do not set any minimum age of criminal responsibility.

Police and agents from the Commission for the Promotion of Virtue and the Prevention of Vice (CPVPV) routinely stop in the street and sometimes detain children for minor offenses such as exchanging phone numbers with members of the opposite sex. Girls are at special risk of arbitrary detention and prosecution for vague offenses such as “mingling” or “seclusion,” which can include being found alone with a male who is not a family member. Since 2006 CPVPV officers are required to be accompanied by a police officer when making arrests, and as of July 2007 are not supposed to detain people at their facilities at all, but should hand them over to police. It is far from clear whether in practice this is what happens. In

any event, prosecutors can order children detained to be held for investigation for up to six months without judicial review. During this time, children rarely have access to lawyers or other appropriate assistance. Outside of the criminal justice system, the Ministry of Social Affairs can detain both boys and girls indefinitely even though the child has been neither charged with nor convicted of an offence. Ministry of Social Affairs staff need only decide that the child needs additional “guidance” or that their guardians have failed to claim them. Such detention is subject to judicial review for boys, but not for girls.

Saudi Arabian law allows officials in Ministry of Interior prisons and Ministry of Social Affairs detention centers to use corporal punishment against children, and punishments such as solitary confinement and denial of family visits. Judges also regularly order corporal punishment as a judicial penalty. Girls are also subject to mandatory medical testing, and if such tests reveal they have a sexually transmitted disease, Ministry of Social Affairs officials have the authority to place girls and young women under age 30 in isolation that is both medically-unwarranted and stigmatizing.

Authorities fail to adequately categorize and separate detained children, routinely mixing convicted children with children under investigation, and in some cases mixing children with adults. In one boys’ detention facility Human Rights Watch visited, only one supervisor was responsible for monitoring a dormitory for 17- and 18-year-old detainees with 90 beds—a situation that increases children’s risk of abuse by other detainees. At a girls’ detention facility, we found smaller dormitories, but still too few dormitories to adequately separate children by age and from adults, to separate convicted detainees from those held pending trial, and to separate detainees accused of serious offenses from those accused of minor offenses.

Children, whether being questioned in detention or facing trial, have little access to legal or other assistance, even when facing serious charges. While Saudi Arabian law allows criminal suspects the right to seek the assistance of a lawyer or representative, it does not require investigators to halt questioning of children until a guardian or lawyer arrives, and it does not provide for a lawyer free of charge for those who cannot afford one. By law, Ministry of Social Affairs staff must attend

interrogations held in its detention centers for children, but when Human Rights Watch observed one child being questioned and other children waiting to be questioned at the Riyadh Social Observation Home, the staff sat in a separate room, too far away to hear or provide meaningful assistance, and none of the children's guardians were present.

In 2006 the government proposed updating existing regulations to significantly increase the number of law enforcement agencies authorized to question children at their premises rather than in juvenile detention centers and to allow these agencies to take unspecified steps to "resolve" cases. Children questioned at police stations and other law enforcement agencies have even fewer protections against coercion than those questioned at juvenile detention centers and if a "resolution" is reached, it is not subject to judicial review.

Criminalizing Foreign Children in Need of Protection

Saudi Arabian officials have estimated that 24,000 children trafficked from 18 countries are involved in street selling and begging in Saudi Arabia. Instead of treating these children as victims and providing them with access to services such as voluntary shelters and adequate health care, the authorities arrest them for begging and illegal residency and deport them to their countries of origin. Many children are from countries where they are at risk of re-trafficking or underage recruitment into armed conflict, and as such they should not be repatriated without a thorough evaluation to determine whether repatriation is in their best interests and that appropriate measures for their protection are in place. According to staff at the Ministry of Social Affairs Residential Center for Child Beggars in Jeddah, staff there routinely assess children's needs within five days of their arrival, and the vast majority are then deported, even in cases where there is direct evidence that they are at risk of being re-trafficked. Authorities may detain older children with unrelated adults in adult deportation centers with deplorable conditions, putting them at risk of violence including sexual abuse. A March 2007 Council of Ministers decree expanding the Ministry of Social Affairs' authority to arrest beggars threatens to increase arrests and deportations of children trafficked for begging, straining the capacity of existing centers for child beggars and increasing the likelihood that

authorities may detain children in unsafe conditions and repatriate them to countries where they risk abuse.

* * *

Saudi Arabian authorities need to issue, publicize, and enforce clear rules for protecting children's rights at all stages of arrest, investigation, trial, and detention. At the top of this list should be laws outlawing the death penalty and all forms of corporal punishment for persons under 18 at the time of the alleged offense. The authorities should also give priority to ending discriminatory laws and practices that make girls vulnerable to arbitrary arrest and detention, and that put foreign children at risk of arrest, detention, and repatriation to situations where they are at risk of abuse.

II. Key Recommendations

Children in Detention

- Ensure that children are only detained as a measure of last resort, and for the shortest possible time.
- Ensure that all children in detention are protected from all forms of exploitation, abuse, and neglect.
- End the use of corporal punishment, solitary confinement, denial of family visits, and other forms of ill-treatment of children deprived of their liberty.
- Ensure that children deprived of their liberty have access to adequate legal and other appropriate assistance.
- Ensure that no foreign child is repatriated to a situation that places him or her at risk of irreparable harm.

Children and the Criminal Law

- Ensure that no one is sentenced to death or executed for offenses committed while under age 18. Immediately commute existing death sentences issued against persons under age 18 at the time of the crime to sentences in conformity with international juvenile justice standards. Inform the persons concerned, and, for foreign nationals, their embassies, in writing of the new sentences.
- Ensure that all persons under age 18 at the time of the alleged commission of an offense benefit from the international rights and standards for children in conflict with the law, in compliance with Saudi Arabia's treaty obligations.

III. Methods

This report is one of a series by Human Rights Watch on the state of human rights in Saudi Arabia. These reports incorporate research conducted during the organization's visit for three weeks in November and December 2006; this was the first fact-finding visit to Saudi Arabia by an international human rights organization.¹ During that visit a team of four Human Rights Watch researchers conducted more than 300 interviews on criminal justice, children's rights, women's rights, and migrant workers' rights. This particular report also draws on meetings with government officials and others during a one-week visit to Riyadh in March 2008, and on our ongoing research on the juvenile death penalty in Saudi Arabia.

Saudi Arabian authorities provided access to a range of high-level officials and allowed researchers to visit the Riyadh Social Observation Home (*dar al-mulahatha al-ijtima`iya*), the Riyadh Girls' and Young Women's Welfare Institution (*mu'assasat ri`ayat al-fataya*), and the Jeddah Residential Center for Child Beggars (*markaz iwa' al-atfal al-mutasawwilin*). We also met with Saudi Arabian social workers, medical personnel, members of nongovernmental organizations, journalists, lawyers, members of the Human Rights Commission, the National Society for Human Rights, staff of the United Nations Children's Fund (UNICEF), and others knowledgeable about child's rights in Saudi Arabia. In some cases the individuals we spoke with asked us not to identify them to protect their privacy and avoid possible retaliation for speaking to us; in those cases we have withheld their names and, in some instances, other identifying information.

The Human Rights Watch researchers who conducted the interviews cited in this report include three researchers fluent in Arabic with extensive experience in the areas of children's rights, women's rights, and criminal justice. A fourth Human Rights Watch researcher who is an expert in women's rights and migration conducted interviews with Saudi government officials, foreign diplomats, and migrant workers in English, Arabic, Tagalog, Sinhala, Tamil, and Bahasa Indonesia, in many cases

¹ Saudi Arabian authorities had previously permitted Human Rights Watch to visit Saudi Arabia in January 2003 to meet with government officials, but did not at that time grant permission for broader fact-finding.

with the assistance of interpreters. Human Rights Watch's executive director, Middle East and North Africa Division executive director, and three members of its advisory committees also participated in some meetings with officials cited in this report.

Human Rights Watch typically seeks to base our findings on testimonies of individuals directly affected by human rights violations, supplemented by our review of relevant laws and regulations and meetings with officials, service providers, and others with direct knowledge of human rights conditions in the country. Saudi Arabian authorities prevented Human Rights Watch researchers from speaking privately to detainees in Ministry of Social Affairs juvenile detention facilities and Ministry of Interior immigration detention facilities and prisons for women, and declined our request to meet with juvenile court judges and attend trials. In addition, the Minister of Social Affairs declined to respond in writing to Human Rights Watch's March and June 2007 requests for clarification of regulations and practices affecting children in conflict with the law or in need of protection in Ministry of Social Affairs custody. In March 2008 the Ministry of Justice provided a partial response to our November 2007 request for clarification of laws and procedures governing death penalty cases involving juvenile offenders; we have yet to receive a response to a similar letter to the president of the Supreme Council of the Judiciary. As a result, it was difficult for Human Rights Watch to confirm the full extent of some of the violations documented in this report. We note these points in the text.

International Standards

In this report we assess Saudi Arabia's treatment of children in conflict with the law and in need of protection according to international law, as set forth in five treaties to which Saudi Arabia is a party: the Convention on the Rights of the Child (CRC),² the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention Against Torture),³ the Convention on the Elimination of

² Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, acceded to by Saudi Arabia on January 26, 1996.

³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, acceded to by Saudi Arabia on September 23, 1997.

All Forms of Discrimination against Women (CEDAW),⁴ the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol),⁵ and International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention).⁶ According to Saudi Arabian officials, the treaties are automatically incorporated into domestic law. Therefore for example the Convention on the Rights of the Child has the same legal status as domestic legislation and can be directly invoked in domestic court proceedings.⁷ In addition, the United Nations (UN) Rules for the Protection of Juveniles Deprived of their Liberty⁸ and the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)⁹ provide authoritative guidance on the treatment of children in conflict with the law.

Terminology

In this report the term “child” refers to any person under the age of 18. The Convention on the Rights of the Child defines a child as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”¹⁰ Saudi Arabian juvenile justice regulations use the term *fatayat* to refer to

⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Saudi Arabia on September 7, 2000.

⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol), G.A. Res. 25, annex II, U.N. GAOR, 55th Sess. Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force December 25, 2003, acceded to by Saudi Arabia on July 20, 2007.

⁶ ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention), adopted June 17, 1999, 38 I.L.M. 1207, entered into force November 19, 2000, ratified by Saudi Arabia on October 8, 2001.

⁷ UN Committee on the Rights of the Child, “Summary Record of the 1114th Meeting (Chamber A),” U.N. Doc. CRC/C/SR.1114, January 30, 2006, [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/eeebbc1b779d9c72c12571070058bo61/\\$FILE/Go640238.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/eeebbc1b779d9c72c12571070058bo61/$FILE/Go640238.pdf) (accessed July 26, 2007), para. 13.

⁸ UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted December 14, 1990, G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

⁹ UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), adopted November 29, 1985, G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

¹⁰ Convention on the Rights of the Child, art. 1.

girls and young women under age 30. To reflect this usage, in this report the term “young woman” refers to women ages 18 to 30.

Saudi Arabia follows the *Hijri* calendar, a lunar calendar. Where such dates appear in this report we have also included the equivalent Gregorian calendar dates for the reader’s convenience.

IV. Background on the Criminal Justice System

Violations of defendants' rights in Saudi Arabia's criminal justice system are so vast, fundamental, and systemic that Human Rights Watch has concluded elsewhere that Saudi Arabia's criminal justice system does not, as a general matter, adhere to the principles of the rule of law.¹¹ Saudi Arabia has no codified penal law, and very few laws or regulations explicitly address child offenders. As a result, law enforcement officials, judges, and prosecutors have very broad discretion to determine issues such as when to arrest children, how long to detain them, and what punishments to impose on those deemed to have broken the law. These gaps in legislation and regulation leave children vulnerable to arbitrary arrest and detention, unfair trial, and criminal penalties that violate their fundamental rights.

Overly-Broad Judicial Discretion

Saudi Arabian law specifies that all criminal punishments must be in accordance with Sharia or statutory law, and that courts shall apply Sharia precepts, as derived from the Quran and the Sunna (the traditions of the Prophet Muhammad), as well as statutory laws that do not conflict with the Quran and the Sunna.¹² The Saudi government does not publish an official interpretation of Sharia, a written penal code, or an interpretative text carrying the force of law of the precise definitions of acts that constitute criminal offenses. Statutory laws, known as regulations to distinguish them from Sharia, are issued by the prime minister, who currently is also the king.

Many Sharia precepts are not readily accessible to laypeople, and jurists and legal scholars seeking to understand these precepts and their applications study the Quran, the Sunna, and the work of previous great scholars, often for years. The task of interpreting and applying Sharia in criminal cases largely falls to the judiciary, composed of courts and judges, a Supreme Judicial Council, a Council of Senior

¹¹ For a detailed discussion of Saudi Arabia's criminal justice system, see Human Rights Watch, *Saudi Arabia—Precarious Justice: Arbitrary Detention and Unfair Trials in a Deficient Criminal Justice System*, (publication pending, March 2008).

¹² Basic Law of Government, Royal Decree A/90, March 2, 1992 (27/8/1412), art. 38; Law of Criminal Procedure (LCP), Royal Decree M/39, October 16, 2001 (28/7/1422), *Umm al-Qura* No. 3867, November 3, 2001 (17/8/1422), art. 1.

Scholars, a mufti, and a Ministry of Justice. The judiciary is not bound by previous court rulings when determining which actions constitute crimes and what the attendant punishment should be, and there is little evidence that judges seek to apply consistency in sentencing for similar crimes.¹³ As a result, the definitions of crimes and nature and severity of punishments may vary from case to case.

Saudi Arabia's Law of Criminal Procedure, in force since 2002, sets forth the procedures relating to arrest, detention, and trial in criminal cases. The law specifies that “[t]he investigation and trial of juvenile offenders, including girls and young women, shall be conducted in accordance with the relevant laws and regulations,” but the government has yet to issue laws and regulations specifically addressing arrest, investigation, trial, and sentencing procedures for children in conflict with the law.¹⁴ A 1969 instruction from then-chief judge Shaikh Muhammad bin Ibrahim Al al-Shaikh provides courts with general principles for handling cases involving youth accused of criminal offenses, but it does not specify to which age groups it applies and does not explicitly address girls in conflict with the law.¹⁵

Saudi Arabia does have a system of juvenile courts, and separate juvenile detention facilities for boys, although not for girls (who are held in facilities with adults). The juvenile courts are staffed by regular judges drawn from the ranks of Sharia court judges assigned to the same district as the juvenile detention center.¹⁶ According to a Ministry of Justice official, a given judge usually serves a three- or six-month term

¹³ In March 2006, the Ministry of Justice announced that it was publishing certain rulings in an attempt at greater transparency and further development of Saudi jurisprudence, in accordance with Cabinet Decree 162 of August 26, 2002, but that these and future collected rulings would not be binding on judges. Ministry of Justice, “His Excellency the Minister of Justice Inaugurates the First Edition of the Corpus of Judicial Rulings,” March 14, 2006, <http://www.moj.gov.sa/layout/NewsDetails.asp?ArticleID=782> (accessed March 16, 2007).

¹⁴ Law of Criminal Procedure, art. 13; National Society for Human Rights, *Study of the Extent of Saudi Arabia's Compliance with the Major Human Rights Treaties* (Mada insijam al-anthima al-sa`udiyya ma` ittifaqiyat huqq al-insan al-ra'isiyya), (Riyadh: National Society for Human Rights, 2007), pp. 94-95.

¹⁵ Among the principles listed are that trials be private and speedy; that a guardian attend if the youth has not attained majority; and that youth sentenced to prison be held in appropriate settings, away from those who might corrupt them. Order 46/2/t of 29/4/1389 (July 14, 1969), cited in Ministry of Justice, “Juvenile Court.”

¹⁶ Ministry of Justice, “Juvenile Court.” The Ministry of Justice website states that the first juvenile court was established in 1974 (1394) in Riyadh, but provides no additional information on legislation or regulations specific to juvenile courts, and the government did not permit Human Rights Watch to meet with judges serving on these courts. The new Judiciary Law, issued in October 2007, lists juvenile courts as a specialized circuit of the summary courts (mahakim juza'iyya), to be staffed by three judges, “with the exception of the cases specified by the Supreme Judicial Council,” but provides no further details on the juvenile court’s functioning. Law of the Judiciary, art. 20, published in *al-Watan*, October 3, 2007.

in the juvenile court, and may not serve again for years,¹⁷ although Ministry of Social Affairs officials in Riyadh told Human Rights Watch that juvenile court judges there serve three- to four-month terms before being transferred to other duties.¹⁸ Human Rights Watch was unable to determine whether judges receive any specialized training in adjudicating children's cases. The director of the Riyadh Social Welfare Home told Human Rights Watch, "A good judge should have some social training, but some judges don't distinguish between children and adults, or don't know the recent developments in the field."¹⁹

Arbitrary procedures for determining age of majority in criminal cases

Under international law, the special procedures for juvenile justice set forth in the Convention on the Rights of the Child apply to all persons under age 18 at the time of the alleged offense, regardless of the individual's age at the time of trial or sentencing.²⁰ However, as Saudi Arabia neither provides that those under 18 at the time they committed a crime should be dealt with solely in the juvenile justice system, nor requires judges to base their determinations on children's age at the time of the offense, authorities impose sentence based on the individual child's characteristics at the time of trial, sentencing, or execution of sentence. This is part of the judges' wide discretion to interpret Sharia. So too is determining when a child can be treated as an adult for the purposes of imposing the death penalty and corporal punishments that include amputation and flogging (see below).

Judicial opinions on when a child can be tried as an adult vary widely, and frequently depend on measures of children's physical development, contrary to international standards, which call upon states to make determinations of adult competence

¹⁷ Human Rights Watch interview with Shaikh `Abd al-Hamid al-Guliga, Sharia counselor, Office of the Minister of Justice, Riyadh, March 12, 2008.

¹⁸ For example, in Riyadh the judge hearing cases at the boys' detention center changes every four months, while the judge at the detention center for girls and women under age 30 changes every three months. Human Rights Watch interview with `Ali bin Hassan al-`Ajami, director, Riyadh Social Observation Home, Riyadh, December 2, 2006; and Human Rights Watch interview with Leila al-Daghathir, director of the Riyadh Girls' and Young Women's Welfare Institution, and Salwa Abu Nayan, a supervisor for girls' and young women's welfare in the Ministry of Social Affairs' Riyadh Office for Women's Social Supervision, Riyadh, December 3, 2006.

¹⁹ Human Rights Watch interview with `Ali bin Hassan al-`Ajami, December 2, 2006.

²⁰ Convention on the Rights of the Child, art. 40; UN Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, paras. 21-22.

based on “emotional, mental and intellectual maturity,” and not the child’s physical maturity.²¹ For example, Sharia scholar Shaikh Ahmad bin Hamad al-Mazyad, who has served as a senior advisor to the Ministry of Justice for more than 20 years, told Human Rights Watch that judges decide that a person has reached majority (*baligh*) based on known physical signs of puberty (*bulugh*, which can also be translated as “majority”), saying that it was acceptable to execute a nine-year-old girl sentenced if she had reached puberty (for further on this see Chapter V, “The Juvenile Death Penalty,” below). He also stated that according to Sharia, age 15 was “the outside limit” for majority (*bulugh*), so that a child age 15 or older who lacked these signs could still be sentenced and executed if found to have committed murder.²² This reliance on physical characteristics, especially when combined with delays in bringing children to trial, may increase the likelihood that judges will decide to try as adults persons who were under 18 at the time of the offense, simply because with the passage of time it becomes more difficult to assess a child’s level of development at the time of the offense.

Even people knowledgeable about the juvenile justice system often focus inappropriately on whether children have attained majority at the time of the execution of a sentence, and not at the time of the offense. For example, members of the National Commission for Childhood and of the Council of Ministers’ committee drafting Saudi Arabia’s child law told Human Rights Watch that the new law will define a child as anyone under age 18 but that this provision would not prevent judges from issuing death sentences for crimes committed while under age 18. Instead, it will only require that execution be postponed until the child turned 18.²³ ‘Abd al-‘Aziz al-Qasim, a Saudi Arabian lawyer in the Sharia courts, told *CNN Arabic* that he doubted that the government would execute 14-year-old Fawaz Masha‘al before he turned 18 because “the standards for implementing the sentences in these

²¹ UN Standard Minimum Rules for the Administration of Juvenile Justice, rule 4.

²² Human Rights Watch interview with Shaikh Dr. Ahmad bin Hamad al-Mazyad, board member, Human Rights Commission, Riyadh, March 10, 2008. Asked whether a judge was required to take into account the level of the individual’s psychological or emotional development when ruling in capital cases, al-Mazyad said that a judge could consider such mitigating factors if a lawyer or guardian provided the judge with proof that the individual was not legally responsible (*ghayr rashid*).

²³ Officials familiar with the law described it as containing 24 articles, including provisions defining the term “child,” prohibiting abuse in the home and in institutions, and prohibiting children’s use in sexual exploitation, begging, and trafficking. Human Rights Watch interview with Dr. ‘Abd al-Rahman al-Sabih, National Commission for Childhood, and Dr. Khalid bin Suliaman al-Obaid, Human Rights Commission, Riyadh, March 11, 2008. Dr. al-Sabih told Human Rights Watch that the draft would be finalized within a few weeks.

kind of cases is attaining the age of majority (*bulugh sin al-rushd*),” and that “some experts in *fiqh* [Islamic jurisprudence] consider the appearance of signs of [physical] maturity to be the equivalent of having reached the age of majority, while other experts in *fiqh* go toward 20 as the age of majority, and while there is nothing clear in the text of the law in Saudi Arabia specifying this age, it is moving toward being 18.”²⁴

In its 2007 report on human rights, Saudi Arabia’s National Society for Human Rights called on the government to set a unified age of majority for both criminal and civil matters at 18, saying that doing so would comply with Saudi Arabia’s obligations under both the CRC and Islamic law.²⁵ However, the recommendation does not address the need for measures to ensure that this standard be applied at the time of the offense, and not at the time of trial, sentencing, or execution of sentence.

Weak Protections against Arbitrary Arrest and Detention

Saudi Arabia’s Law on Criminal Procedure lists 20 types of person and entity authorized to arrest and investigate criminal suspects in matters relating to their competencies, including regional governors, prison officials, General Directorate of Passports officers, and heads of centers of the Commission for the Promotion of Virtue and Prevention of Vice (CPVPV).²⁶ In practice, deficiencies in the Law of Criminal Procedure, the absence of a written penal code, and ill-defined roles for these law enforcement authorities leave children and adults vulnerable to arbitrary arrest and detention.

The Law on Criminal Procedure allows an arresting officer to detain and question suspects for up to 24 hours before referring them to an investigator from the Ministry

²⁴ “Lawyer Considers Execution of Child Unlikely in Saudi” (Muhami yastab`id i`dam tifl fi al-sa`udiyya), CNN Arabic, December 12, 2005, http://arabic.cnn.com/2005/middle_east/12/11/saudia.beheadingchild/index.html (accessed May 23, 2006).

²⁵ National Society for Human Rights, “The First Report on the Human Rights Situation in the Kingdom of Saudi Arabia, 1427/2006,” (Al-taqrir al-awwal `an ahwal huqq al-insan fi al-mamlaka al-`arabiyya al-sa`udiyya, 1427h/2006m, al-jam`iyya al-wataniyya lihuqq al-insan), May 21, 2007, <http://www.nshrsa.org/articles.php?ID=48> (accessed July 24, 2007).

²⁶ Among the individuals authorized to conduct criminal investigations within their competencies are: members of the Bureau of Investigation and Public Prosecution; directors of police and their assistants; public security, secret police (al-*mabahith al-`ama*), passport, military intelligence, civil defense, border guard, special security, national guard, and armed forces officers; prison directors and officers; heads of regions and districts; and heads of Commission for the Promotion of Virtue and Prevention of Vice offices. Law of Criminal Procedure, art. 26.

of Interior's Bureau of Investigation and Public Prosecution, a nominally independent agency subject to extensive oversight by the minister of interior.²⁷ The Bureau does not currently have investigators specializing in juvenile cases, although it is considering establishing juvenile sections in the future.²⁸ The Law on Criminal Procedure further specifies that arrests only take place on the basis of an order from a competent authority or, if a crime is in progress, when the arresting officer has sufficient evidence to suspect an individual.²⁹ However, the absence of a written penal code specifying what acts constitute crimes allows authorities broad scope to arrest and question individuals for acts that a court may later determine are not criminal offenses. Upon referral, a Bureau investigator must begin questioning the suspect or release him or her within 24 hours.³⁰ However, the law also requires the suspect to demonstrate his or her innocence in order to be released.³¹

Once law enforcement officers refer a suspect to the Bureau of Investigation and Public Prosecution, investigators there can order a suspect detained for up to five days from the date of arrest, and the Bureau's director can extend the detention for up to six months before having to release the detainee or refer him to a judge who could order his release.³² During this period a detainee has no right to challenge the legality of the detention. Bureau of Investigation and Public Prosecution officials have broad discretion in determining when and how long to detain suspects, because the law does not specify minimum standards of what officials must prove when issuing detention orders.³³ The same rules apply to children as to adults.³⁴

²⁷ For example, the Bureau is located within the Ministry of Interior, which nominates the chief prosecutor, appoints members of its Management Committee, can order the Bureau to initiate investigations, and can issue disciplinary measures on the Bureau's members. Law of Criminal Procedure, art. 33; Human Rights Watch interview with Chief Prosecutor Shaikh Muhammad Al Abdullah, Riyadh, November 29, 2006; Law of the Bureau of Investigation and Public Prosecution, Royal Decree m/56, 24/10/1409 (May 29, 1989), *Umm al Qura* No. 3264, 20/11/1409, arts. 4(a), 4(b), 4(c)(2), 10, 26.

²⁸ Human Rights Watch interview with Nasir Shahrani, Bureau of Investigation and Public Prosecution, Riyadh, March 12, 2008. According to Shahrani, current practice is for supervisors to assign juvenile cases when possible to those prosecutors who are considered to be "more patient" in their interviewing style.

²⁹ Law of Criminal Procedure, arts. 33,35.

³⁰ Ibid., art. 34.

³¹ Ibid., art. 34.

³² Ibid., arts. 113, 114.

³³ In practice, even these rules do not appear to be followed: Human Rights Watch is aware of cases of adults who, at this writing, have been held for years before being referred to a judge. See Human Rights Watch, *Precarious Justice*.

³⁴ Human Rights Watch interview with Nasir Shahrani, March 12, 2008.

The Law of Criminal Procedure fails to meet Saudi Arabia's obligations under international law, which guarantees every detainee, including children, deprived of his or her liberty the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent, and impartial authority, and to a prompt decision on any such action.³⁵

The Commission for the Promotion of Virtue and Prevention of Vice

Saudi Arabia's Commission for the Promotion of Virtue and Prevention of Vice has both law enforcement and religious guidance functions, although the line between the two functions often is not clear.³⁶ Members of the CPVPV fill social worker and other roles at detention centers for boys and for girls and young women.³⁷ A 1980 law empowers these religious police, who answer only to the prime minister, to arrest, detain, and interrogate persons for undefined criminal offenses. In 2005 the CPVPV's 5,000 religious police officers, together with 5,000 volunteers, carried out more than 400,000 arrests.³⁸ Since 2006 these agents, who do not wear uniform, must wear identifying badges and may only make arrests when accompanied by a regular policeman.³⁹ However, on July 2, 2007, Interior Minister Prince Nayef reaffirmed a 1981 royal decree prohibiting the religious police from detaining and interrogating suspects at their centers.⁴⁰ The statement followed a May 2007 incident when CPVPV agents stormed a Riyadh home without a warrant in search of illegal

³⁵ Convention on the Rights of the Child, art. 37(d).

³⁶ For a more detailed discussion of the role of the CPVPV, see Human Rights Watch, *Precarious Justice*.

³⁷ Human Rights Watch interview with Shaikh Ibrahim al-Gheith, president of the Commission to Promote Virtue and Prevent Vice, Riyadh, December 3, 2006; Human Rights Watch interview with staff at the Riyadh Girls' and Young Women's Welfare Institution, January 28, 2003.

³⁸ The 1980 law lists the CPVPV's vaguely defined tasks as "guiding and advising people to observe the religious duties prescribed by [the] Islamic Sharia, and ... to preclude committing [acts] proscribed and prohibited [by Sharia], or adopting bad habits and traditions or taboo [sic] heresies." The law does not contain a classification of which acts of commission or omission are criminal, meriting arrest and investigation, and which behavior falls into the "guiding and advising" duties of the force. Law of the Commission for the Promotion of Virtue and the Prevention of Vice, *Umm al-Qura*, issue 2853, January 22, 1981, art. 9; Nahid Andijani, "The Commission for the Promotion of Virtue Arrests 400 Thousand and in Single Year: Six Percent Were Transferred to Specialized Agencies and the Rest Were Dealt With Inside its Branches," (Hay'at al-amr bilma'ruf tadhbut 400 alf shakhs khilal 'am wahid: Tammat ihalalt 6% lijihat al-ikhtisas wa mu'alajat al-baqi dakhil furu'iha), *al-Sharq al-Awsat* (London), December 3, 2006 (13/11/1427), <http://www.asharqlawsat.com/details.asp?section=43&issue=10232&article=394901&search=%d9%87%d9%8a%d8%a6%d8%a9%20%d8%a7%d9%84%d8%a3%d9%85%d8%b1%20%d8%a8%d8%a7%d9%84%d9%85%d8%b9%d8%b1%d9%88%d9%81&state=true> (accessed July 24, 2007).

³⁹ US-Saudi agreement, "Confirmation of Policies," unpublished document, July 2006.

⁴⁰ US Department of State, "U.S.-Saudi Discussions on Religious Practice and Tolerance," July 2006.

alcohol and beat one person to death. In 2007, CPVPV members were facing criminal charges of murder and abuse of power in this and two other, separate incidents, reportedly for the first time in their history.⁴¹

According to the 1988 Executive Regulations to the 1980 CPVPV law, the Commission is authorized to monitor mixing of the two sexes and women adorning themselves excessively; transgendered behavior; men's advances toward women; saying obscenities; disrupting prayer by playing media near mosques; practicing or displaying non-Muslim faiths or disrespecting Islam; displaying or selling media contrary to Islam, including pornography, the Christian cross, the star of David, pictures of Buddha or the like; producing, distributing, or consuming alcohol; committing or facilitating lewdness, including adultery, homosexuality, and gambling; adhering to heresies by venerating places or celebrating events inconsistent with Islamic orthodoxy and orthopraxis; practicing magic for money; and shortchanging customers. The CPVPV also monitors halal slaughter houses; exhibitions; and women's tailors.⁴² Only few of these acts could, in serious cases, conceivably amount to criminal offenses, such as sexual harassment, public disturbance, or pornography.

Minimum Age of Criminal Responsibility

Under the Convention on the Rights of the Child, states must set a minimum age of criminal responsibility (MACR), below which they cannot formally charge children with a criminal offense or hold them responsible under the penal law.⁴³ The UN Committee on the Rights of the Child, the authoritative body that monitors the convention's implementation, has concluded that "a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable."⁴⁴

⁴¹ See "Saudi Arabia: Hold Religious Police Accountable for Killing Man Beaten to Death in Custody," Human Rights Watch news release, July 25, 2007, <http://hrw.org/english/docs/2007/07/25/saudia16476.htm>.

⁴² Executive Regulations, The Law of the Commission for the Promotion of Virtue and the Prevention of Vice, *Umm al-Qura*, issue 3203, March 18, 1988, art. 14.

⁴³ Convention on the Rights of the Child, art. 40(3)(a).

⁴⁴ The committee further states that children at or above the minimum age of criminal responsibility at the time of an offense but younger than age 18 can be formally charged and subject to penal law procedures; however, "these procedures, including

In January 2006 the government of Saudi Arabia informed the Committee on the Rights of the Child that it had raised the minimum age of criminal responsibility to 12 years. According to the head of criminal prosecutions in the Bureau of Investigation and Prosecution, police do not arrest children under 12, and prosecutors do not interrogate them.⁴⁵ If true, this would represent a significant advance on previous practice, which had set the minimum age of criminal responsibility at seven years.

Human Rights Watch has sought but been unable to obtain a copy of the Council of Ministers decree reported to raise the minimum age of criminal responsibility, or confirm the categories of children covered by the decree and the steps the government has taken to implement it.⁴⁶ Statements by government officials suggest that it is not being fully implemented, and does not apply to some crimes punishable by death (see above) and to girls. Shaikh Ibrahim al-Gheith, President of the Commission for the Promotion of Virtue and Prevention of Vice, told Human Rights Watch in December 2006 that there was no minimum age below which children could not be arrested. As an example, al-Gheith said that a member of his staff who stopped a 10-year-old who had committed “a personal mistake” would only speak with the child, but “if there is a criminal element, we take the case to the police.”⁴⁷ Ministry of Social Affairs officials told Human Rights Watch in March 2008, “The Council of Ministers decree on minimum age of criminal responsibility only applies to boys. There is no minimum age of criminal responsibility for girls because our experience is that girls are older when they come into the system.”⁴⁸ The director of the government Anti-Begging Office in Mekkah told *Arab News* in April 2007 that he arrested children as young as eight, while the director of the Jeddah Anti-Begging Office told the same newspaper in May 2007 that he had arrested children as young

the final dispositions, must be in full compliance with the principles and provisions of the CRC.” UN Committee on the Rights of the Child, General Comment No. 10, *Children’s Rights in Juvenile Justice*, U.N. Doc. CRC/C/GC/10 (2007), para. 16.

⁴⁵ UN Committee on the Rights of the Child, “Summary Record of the 1114th Meeting (Chamber A),” para. 7; Human Rights Watch interview with Shaikh Muhammad Al ‘Abdullah, head of the Bureau of Investigation and Public Prosecutions, and his deputies Dr. Ibrahim al-Juhayman, Hamid al-Jarba, and ‘Abd al-Latif al-Quraysh, Riyadh, November 29, 2007.

⁴⁶ At this writing, the Ministry of Social Affairs has not responded to Human Rights Watch’s request for the text of regulations governing children’s criminal responsibility and for information on their implementation. Letter from Human Rights Watch to Minister of Social Affairs ‘Abd al-Muhsin al-‘Akkas, June 30, 2007.

⁴⁷ Human Rights Watch interview with Shaikh Ibrahim al-Gheith, December 5, 2006.

⁴⁸ Human Rights Watch interview with Adel Farahat, assistant to the director of international cooperation, and Yusif Siyali, director of the administration for combating begging, Ministry of Social Affairs, Riyadh, March 9, 2008.

as 10.⁴⁹ Regulations for juvenile detention centers for boys appear to have been amended to raise the minimum age for entry to 12, although the Ministry of Justice website's description of juvenile courts continues to describe these courts as applying to "those between age seven and 18."⁵⁰ In addition, October 2006 draft legislation updating arrest and investigation procedures for children arrested in geographical areas without juvenile detention centers sets no minimum age for girls, although it explicitly raises the minimum age for boys to 12.⁵¹

Pervasive Discrimination against Women and Girls

Although Saudi Arabia is a party to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁵² gender-based discrimination against women and girls is severe and pervasive in Saudi Arabia.⁵³ Law and practice deny women equal enjoyment with men of fundamental rights, including legal standing before the courts.

Saudi Arabia's system of legal guardianship is a further barrier to women's and girls' access to justice in the criminal legal system. Under the government's interpretation of Sharia, girls and women of all ages lack legal competency and must be under male guardianship, generally that of a father, husband, or son.⁵⁴ These guardians

⁴⁹ P.K. Abdul Ghafour, "30 Percent of Beggars Aren't Poor, Survey Finds," *Arab News*, May 21, 2007, <http://www.arabnews.com/?page=1§ion=0&article=96434&d=21&m=5&y=2007> (accessed June 20, 2007); and Badea Abu Al-Naja, "Gang Masters Force Children to Beg," *Arab News*, April 15, 2007, <http://www.arabnews.com/?page=1§ion=0&article=95008&d=15&m=4&y=2007> (accessed June 20, 2007).

⁵⁰ Shura Council Islamic Affairs and Human Rights Committee, Decision 61/76 of February 7, 2005 (27/12/1425), <http://www.shura.gov.sa//ArabicSite/Shnw/c3y3.htm> (accessed September 20, 2007). Ministry of Justice, "Juvenile Court." Shura Council decisions are non-binding, but in this case reflect approval of a government proposal.

⁵¹ The Ministries of Interior, Justice, Social Affairs, and Finance, as well as the Commission for the Promotion of Virtue and Prevention of Vice and the Bureau of Investigation and Public Prosecution approved the draft before the Council of Ministers referred it to the Shura Council for debate by the Shura Council's Social Affairs, Family, and Labor Committee and then its General Assembly in October 2006. The text of the draft as it was approved by the Social Affairs, Family, and Labor Committee is reprinted in "Prohibition on Stopping Juveniles and Girls and Young Women in Prisons and [Order for] Their Transfer to Observation Homes" (Man` iqaf al-ahdath wa al-fatayat fi al-sujun wa tahlilihim ila dur al-mulahatha), *al-Madina*, October 2, 2006 (9/9/1427). For further discussion of the regulation, see "Interrogations outside Ministry of Social Affairs facilities," below.

⁵² See footnote 4.

⁵³ For further information on gender-discrimination in Saudi Arabia, see Human Rights Watch's forthcoming report on human rights abuses stemming from male guardianship of women.

⁵⁴ The Saudi government's guardianship policies are derived from an ambiguous verse in the Quran that several scholars argue should be reinterpreted. Sura 4 verse 34 of the Quran states that: "Men are the protectors and maintainers of women,

have tremendous power in influencing the outcome of women's and girls' interactions with the criminal justice system: Police frequently require women and girls to obtain their guardian's permission to file a criminal complaint, even when the complaint is against the guardian.⁵⁵ Detained women and children can only be released to the custody of a guardian, leaving them vulnerable to indefinite detention (see below), and mothers cannot represent their children in legal proceedings because they lack guardianship.

Saudi Arabia also excludes women from key decision-making roles in the criminal justice system. Saudi Arabia has no female judges, practicing lawyers,⁵⁶ members of the Bureau of Investigation and Public Prosecution, or law enforcement officers. In a highly gender-segregated and conservative society such as Saudi Arabia's, this means women and girls must argue their cases before individuals who often question the legitimacy of their very presence outside the home. For example, Human Rights Watch interviewed women who participated in cases where the judge only allowed women to give testimony through a male representative because the judge deemed the sound of a female voice to be shameful (*`awra*).⁵⁷

Women and girls also face discriminatory treatment during detention (see below). Foreign girls under investigation, facing trial, or whom a judge has ordered detained, are held in adult detention centers, unlike foreign boys in the same situations, and detention centers for Saudi nationals routinely mix girls with adults. Saudi Arabia also has far fewer detention facilities for girls than for boys, making it more likely that girls will be detained far from their families, and judges visit these facilities less frequently than they visit boys' detention centers.

because God has given the one more [strength] than the other, and because they support them from their means." A. Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary* (Maryland: Amana Corp., 1983), p. 190.

⁵⁵ Individuals working with victims of domestic violence told Human Rights Watch that police frequently cited the lack of a guardian's permission to file the complaint when refusing to intervene in cases of domestic violence. Human Rights Watch interview with social worker, Riyadh, December 7, 2006; Human Rights Watch interview with clinical psychologist, Riyadh, December 4, 2006.

⁵⁶ King Abdul Aziz University's first class of female law students will graduate in 2008. However, the Saudi Ministry of Justice continues to prohibit women lawyers from acquiring licenses to practice. See Razan Baker, "Saudi Women Studying Law Wish to Practice It Once They Graduate," *Arab News*, August 29, 2007, <http://www.arabnews.com/?page=1§ion=o&article=100554&d=29&m=8&y=2007> (accessed September 27, 2007).

⁵⁷ Human Rights Watch interview with a Saudi woman, Riyadh, December 5, 2006; and Human Rights Watch interview with a female member of the National Society for Human Rights, Riyadh, December 15, 2006.

Detention Centers for Children

Saudi Arabian authorities detain children in detention facilities run by the Ministry of Social Affairs and in immigration detention facilities and women's prisons run by the Ministry of Interior.⁵⁸

The Ministry of Social Affairs operates 13 social observation homes (*dura al-mulahatha al-ijtima`iya*), used to hold Saudi Arabian and foreign boys ages 12 to 18 who are under investigation, are facing trial, or whom a judge has ordered be detained. There are also four girls' and young women's welfare institutions (*mu'assasat ri`ayat al-fataya*), used to hold Saudi Arabian girls and young women under age 30 who are under investigation, facing trial, or whom a judge has ordered detained.⁵⁹ Regulations for juvenile detention centers run by the Ministry of Social Affairs specify that questioning and trials for boys under 18 and girls and young women under 30 must take place in these centers, but they provide little guidance on special procedures to ensure that children's rights are protected during questioning, trial, or detention (see below). Moreover, while social observation homes accept boys who are not Saudi nationals, girls' and young women's welfare institutions do not accept foreigners, whom the government instead holds in women's prisons operated by the Ministry of Interior.⁶⁰

In addition to these detention facilities, the Ministry of Social Affairs also operates three Residential Centers for Child Beggars (*marakaz iwa` al- atfal al-mutasawwilin*) for younger foreign boys and girls who are arrested for begging, lack legal residency,

⁵⁸ Children can also be held for short periods following arrest at police stations and Commission for the Promotion of Virtue and the Prevention of Vice offices. See "Interrogations in police stations," below.

⁵⁹ Human Rights Watch interview with `Ali bin Hassan al-`Ajami, director, Riyadh Social Observation Home, Riyadh, December 2, 2006; Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), art.1; Ministry of Social Affairs and Labor Decree 2083 of January 24, 1976 (22/1/1396), art. 1; Shura Council Islamic Affairs and Human Rights Committee, Decision 61/76 of February 7, 2005; and Council of Ministers Instruction 17052/r of November 20, 2000 (24/8/1421), in Ministry of Labor and Social Affairs, *Collection of Laws and Regulations of the Ministry's Agency for Social Affairs* (majmu`at nidham wa lawa`ih walakat al-wuzara li-shu'un al-ijtima`iya), (Riyadh: 1424/2003), pp. 87-94, 105-110, 117. A list of social observation homes and girls' and young women's welfare institutions appears on the Ministry of Social Affairs website, <http://www.mosa.gov.sa/portal/cdisplay.php?cid=7> and <http://www.mosa.gov.sa/portal/cdisplay.php?cid=8> (accessed May 29, 2007).

⁶⁰ Council of Ministers Instruction 17052/r of November 20, 2000 (24/8/1421). See "Mixing Children of Different Ages and Conviction Statuses," below, for a more detailed discussion of Saudi Arabia's legal obligations to appropriately categorize and separate juvenile detainees.

or otherwise are subject to deportation.⁶¹ Older children may be held in Ministry of Interior immigration detention facilities for adults. Neither type of immigration detention facility appears to be subject to judicial oversight.

According to the government, in 2004 it detained 12,963 children under age 18 in “facilities for persons below eighteen in conflict the law [sic]” and “in adult facilities,”⁶² including 9,158 Saudi males, 1,625 Saudi females, and 2,180 non-Saudi males. The actual figure may be much higher, as these figures do not appear to include children held in immigration deportation centers or Ministry of Social Affairs centers for child beggars, or foreign girls held in Ministry of Interior prisons.⁶³

⁶¹ For example, the Jeddah Residential Center for Child Beggars accepts some children who have completed criminal sentences and are awaiting deportation to their countries of origin. See “Conditions for Foreign Children in Need of Protection,” below.

⁶² The inclusion without further explanation of children “in adult facilities” in a table on “Disaggregated statistical data on juvenile delinquency” is disturbing. It is not clear whether the government is merely repeating the wording of the Committee on the Rights of the Child’s original question, or whether the cited figures include children detained in adult facilities. Government of Saudi Arabia, “Written reply concerning the list of issues relating to the second periodic report of Saudi Arabia to the Committee on the Rights of the Child,” U.N. Doc. CRC/C/SAU/Q/2/Add.1, January 16, 2006, pp. 17-19.

⁶³ The 2003 and 2002 government statistics provided in the same document (11,594 and 12,166, respectively) are at odds with data in other tables in the document that list the number of detainees in social observation homes (translated as “Social Surveillance Centers”) as 11,804 in 2003 and 12,290 in 2002, and which do not appear to include facilities for girls. The same tables, entitled “List of detention facilities for persons under eighteen who have committed punishable offences, showing the number of detainees and the type of offence committed,” also lists an additional 338 persons detained in “Social Guidance Centers” in 2003 and an additional 300 in 2002, although under Saudi Arabian law, Social Guidance Centers (*dur al-tawjih al-ijtima’i*) are places intended for children vulnerable to delinquency, and not children who have committed crimes. See “Regulations for Social Guidance Homes,” in Ministry of Labor and Social Affairs, *Collection of Laws and Regulations of the Ministry’s Agency for Social Affairs*, pp. 73-79; Government of Saudi Arabia, “Written reply concerning the list of issues relating to the second periodic report of Saudi Arabia to the Committee on the Rights of the Child,” pp. 17-19.

V. The Juvenile Death Penalty

Saudi Arabian courts can impose the death penalty for a broad variety of offenses, and the government executed at least 158 persons in 2007.⁶⁴ Saudi Arabia does not publish official statistics on death sentences and executions, and information on death sentences for juvenile offenders is difficult to obtain. Nevertheless, it is clear that Saudi courts have sentenced a significant number of children and youth to death for crimes committed while under age 18. The Convention on the Rights of the Child prohibits the imposition of capital punishment and life imprisonment without possibility of release for offenses committed by persons below 18 years of age.⁶⁵

The Death Penalty in Saudi Arabian Law

Both Sharia and Saudi Arabian statutory law allow for the death penalty. Capital offenses include adultery, apostasy, “corruption on earth,” drug trafficking, sabotage, (political) rebellion, and murder during armed robbery.⁶⁶ Under Sharia, murder and manslaughter are considered to be primarily offenses against a private right (*qisas*).⁶⁷ Thus, while courts often impose the death penalty for murder or manslaughter, in these *qisas* cases the deceased’s family retains the right to insist on execution, accept monetary compensation—known as blood money (*diya*), or issue a pardon. If the family agrees to accept blood money in exchange for dropping its private claim, it can demand any amount it sees fit, and specify any time limit for payment it chooses.⁶⁸ The court can also impose the death penalty as a discretionary

⁶⁴ A number of groups track executions based on press accounts and other unofficial sources, among them Amnesty International. That organization reported on February 8, 2008, that “at least 158 people, including three women, were executed in 2007,” and “the rate of executions has increased in 2008, with at least 25 people, including three women, executed since 8 January.” “Saudi Arabia: Further information on Death sentence: Rizana Nafeek (f),” Amnesty International Urgent Action, AI Index: MDE 23/006/2008, February 8, 2008, <http://www.amnesty.org/en/library/info/MDE23/006/2008> (accessed February 10, 2008).

⁶⁵ Convention on the Rights of the Child, art. 37(a).

⁶⁶ For a discussion of death penalty offenses, see Amnesty International, “Defying World Trends: Saudi Arabia’s extensive use of capital punishment,” AI Index: MDE 23/015/2001, November 1, 2001, <http://web.amnesty.org/library/engMDE230152001> (accessed July 5, 2007).

⁶⁷ *Qisas* is one of three broad categories of criminal punishment in Saudi law. For a detailed discussion of these categories, see Human Rights Watch, *Precarious Justice*.

⁶⁸ For example, in March 2007, last-minute donations of 2 million Saudi Arabian riyal (about US\$533,400) by Crown Prince Sultan bin `Abd al-`Aziz and 1.9 million riyal (about \$506,700) by Governor of Riyadh Prince Salman bin `Abd al-`Aziz were credited in avoiding the execution of 19-year-old `Abd al-Majid bin Mubarak al-`Anizi. According to press accounts, a court had

punishment (*ta’zir*) for actions it deems to be criminal, and Saudi Arabia is known to have executed persons convicted of witchcraft, most recently on November 2, 2007.⁶⁹ Executions generally are by public beheading, although executions for adultery may be by stoning.

According to Minister of Justice `Abd Allah bin Mohammad bin Ibrahim Al al-Shaikh, under Sharia an individual who has reached majority (*bulugh*) can be executed, provided he is of sound mind. Determinations of majority are based on factors specified by experts in Islamic jurisprudence, including a 2002 Council of Senior Scholars decree. That decree states that majority is obtained when any one of four conditions are met: for males or females, 1) attaining 15 years of age; 2) occurrence of wet dreams (*al-ihtilam*); 3) appearance of pubic hair; or, in the case of girls, 4) upon menstruation.⁷⁰ Other officials told Human Rights Watch that executions could be carried out in *qisas* cases from age 15 if the victim’s family demanded it, but not until age 18 in other capital offenses.⁷¹

Judges appear to make decisions based on physical characteristics of puberty at the time of trial or sentencing; such characteristics frequently are present long before an individual has reached the internationally recognized age of majority of 18 (see above). In practice, this means that even young children may be sentenced to death. For example, in July 2005 a judge in Dammam sentenced the then-14-year-old Ahmad

sentenced al-`Anizi to death for the accidental murder of a friend when he was 17. On May 1, 2006 (3/4/1427), the murder victim’s family agreed to spare al-`Anizi’s life in exchange for a blood money payment of 10 million riyal (about \$2.68 million), to be paid within one year of the agreement, but by early March 2007 the family had only managed to raise 6.1 million riyal (about \$1.63 million). See “1.9 Million Riyal from the Departed King Fahd Saves the Neck Sentenced to Retribution” (1.9 miliyun riyal min al-malik al-rahil Fahd tu’taq ruqbat mahkum `alaihi bil-qasas: Awidi`hu amana lada al-amir Salman lisarif fi awjah al-khair), *al-Sharq al-Awsat*, March 19, 2007,

<http://www.asharqlawsat.com/details.asp?section=1&issue=10338&article=411298> (accessed May 21, 2007); “Shaikh al-Ayda Offered Thanks to Both of Them for Their Humanitarian Efforts to Save the Neck of `Abd al-Majid al-`Anizi: Prince Salman Paid 1.9 Million Riyal from Funds King Fahd Left” (Al-Shaikh al-Ayda qaddam shukrihu lahuma limubadaratahuma al-insaniyya li’taq ruqbat `Abd al-Majid al-`Anizi; Al-Amir Salman dafa` 1.9 miliyun riyal fi amana tarakha al-malik Fahd), *al-Azirah* (Riyadh), March 23, 2007, <http://www.al-jazirah.com.sa/109074/ln65.htm> (accessed May 21, 2007).

⁶⁹ “Saudi Arabia: Halt Woman’s Execution for ‘Witchcraft’: Fawza Falih’s Case Reveals Deep Flaws in Saudi Justice System,” Human Rights Watch news release, February 14, 2008, <http://hrw.org/english/docs/2008/02/14/saudia18051.htm>; and Human Rights Watch, *Saudi Arabia—Flawed Justice: The Execution of `Abd al-Karim al-Naqshabandi*, vol. 9, no. 9, October 1, 1997, <http://www.hrw.org/reports/1997/saudi/>.

⁷⁰ Letter from Minister of Justice `Abd Allah bin Mohammad bin Ibrahim Al al-Shaikh to Human Rights Commission President Turki al-Sudairy, regarding Human Rights Watch’s request for clarification on *qisas* cases involving persons under age 18, March 12, 2008; and Council of Senior Scholars Decree 209 of January 23, 2002 (9/11/1422), regarding specifying an age of majority (*bulugh*).

⁷¹ Human Rights Watch interviews with Dr. Eisa AbdulAzize al-Shamekh, Human Rights Commission board member, Riyadh, March 9, 2008, and Dr. `Abd al-Rahman al-Sabih, National Commission for Childhood, March 11, 2008.

al-Dukkani to death for a murder it found he committed when he was 13. The court reportedly made its decision to try and sentence the boy as an adult based on a physical examination that measured the “hoarseness of [his] voice” and the appearance of body hair.⁷² According to information al-Dukkani’s father relayed to Human Rights Watch, the court also refused the family’s request that it give al-Dukkani a psychological evaluation that might have supported their claim of diminished culpability.⁷³ Muhammad al-Qahs, sentenced to death for killing his would-be rapist when he was 16, told Human Rights Watch that the court did not conduct any examination to evaluate his mental, intellectual, or physical development at the time of the crime nor make any comments on his age or physical appearance when deciding to try him as an adult.⁷⁴ Court documents do not address his age as a mitigating factor in deciding the sentence.⁷⁵

Saudi Arabia rarely makes public information on persons under 18 sentenced to death, and often children’s families are reluctant to publicize these cases unless and until they have lost hope of resolving the case through private interventions.⁷⁶ Human Rights Watch is aware of at least 12 cases where individuals have been sentenced to death for crimes committed while children. The most recent reported execution of a juvenile offender took place on August 20, 2007.

Investigations conducted by Saudi Arabian journalists suggest that a significant number of children are at risk of execution after turning 18. For example, an October 2006 investigation of the Jeddah Social Observation Home by *Arab News* that

⁷² ‘Abd al-‘Aziz al-Badr, “New Attempts to Pardon Him: Issuance of the Qisas Sentence against the Murderer of the Egyptian Child Wala” (Muhamilat jadda lil-‘afw ‘anhu: Sudur hukm al-qasas fi qatil al-tilfla al-masriyya Wala’), *al-Riyadh*, August 26, 2005 (21/7/1426), <http://www.alriyadh.com/2005/08/26/article90120.html> (accessed August 30, 2005).

⁷³ Human Rights Watch telephone communication with human rights activist Ibrahim al-Mugaiteeb, Dammam, September 7, 2005.

⁷⁴ Human Rights Watch interview with Muhammad al-Qahs, Najran, December 14, 2006.

⁷⁵ Ministry of Justice, Presidency of the Courts of ‘Asir, Judge’s Office, “Verdicts Issued by Sharia Courts,” Recorded Number 219/2, Serial Number 219, January 17, 1996. For a more detailed discussion of this case, see Human Rights Watch, *Precarious Justice*.

⁷⁶ Minister of Social Affairs ‘Abd al-Muhsin al-‘Akkas cited the stigma associated with having a detained child when he refused to allow Human Rights Watch researchers to speak to detainees held in Ministry of Social Affairs reformatories during our December 2006 visit. The minister asserted that the stigma was so great that no families would allow their children to speak with Human Rights Watch, and he refused to allow Human Rights Watch to ask guardians visiting detainees for permission to speak to their wards. Human Rights Watch interview with ‘Abd al-Muhsin al-‘Akkas, minister of social affairs, Riyadh, December 6, 2006.

included interviews with the director and detainees reported that 40 of the 220 detainees were boys under age 16 charged with murder, a charge that, if they were tried as adults and found guilty, carries the death penalty.⁷⁷ In November 2005 *alarabiya.net*, the online arm of Saudi Arabia's al-`Arabiya satellite news station, reported that Saudi Arabia's Ministry of Social Affairs was detaining 126 children in social observation homes "for committing murder," with the largest number of children held in boys' homes in Mekkah (39), Dammam (26), and Riyadh (19).⁷⁸ These last numbers appear to be Ministry of Social Affairs' statistics for 2003 that Saudi Arabia provided to the Committee on the Rights of the Child during the committee's January 2006 review of the country.⁷⁹

On December 2, 2006, Human Rights Watch visited the Riyadh Social Observation Home, one of 13 Ministry of Social Affairs reformatories for boys ages 12 to 18 who are under investigation, on trial, or convicted of crimes.⁸⁰ The director told Human Rights Watch that some children at the facility had been sentenced to death in *qisas* cases but that the victims' families had ceded their right to seek the death penalty; thus, none of the 274 children currently held there were facing the death penalty.⁸¹ The Ministry of Social Affairs did not permit Human Rights Watch to speak to detainees to confirm this information, and at this writing has not responded to our requests for up-to-date statistics on death penalty cases against detainees in its custody.⁸² Nevertheless, it seems unlikely that all of the 19 cases reported in Riyadh

⁷⁷ As noted earlier, members of a murder victim's family retain the right to demand execution, compensation, or to pardon a convicted murder. Saeed Al-Abyad, "Helping Troubled Kids Integrate," *Arab News*, October 11, 2006.

⁷⁸ Hanan al-Zayr, "Dispute over the 'Age [according to] Sharia for the Qisas Punishment: 126 'Children' in Saudi Arabia Await 'the Sword'" (Jadal hawal 'al-sinal-shara`l' lihad al-qisas: 126 'tiflan' fi al-sa`udiya yantathirun 'al-siyaf'), *al-Arabiya.com*, November 9, 2005 (7/10/1426). The same investigation noted that "generally children sentenced to qisas punishment for committing murder ... remain in the [social observation] home until age 18, which is the age specified for implementing the punishment on the murderer if [the murderer] was a male juvenile, while a female is placed in the girls' institution until age 21 and sometimes until age 25 if she had not matured by then, and then the qisas punishment is implemented."

⁷⁹ See table titled "List of detention facilities for persons under eighteen who have committed punishable offences, showing the number of detainees and the type of offence committed, in 2003," under the heading "Homicides," in Government of Saudi Arabia, "Written reply concerning the list of issues relating to the second periodic report of Saudi Arabia to the Committee on the Rights of the Child," p. 19.

⁸⁰ Ministry of Social Affairs social observation home regulations list the minimum age for detainees as seven years, but according to its director, the facility now only takes boys over 12. Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), art. 1(a); Human Rights Watch interview with `Ali bin Hassan al-`Ajami, December 2, 2006.

⁸¹ Human Rights Watch interview with `Ali bin Hassan al-`Ajami, December 2, 2006.

⁸² Letter from Human Rights Watch to Minister of Social Affairs `Abd al-Muhsin al-`Akkas, June 30, 2007. At this writing Saudi Arabian authorities provided only partial responses to Human Rights Watch's subsequent requests for clarification of procedures governing death penalty cases involving juvenile offenders and for information on the cases described in this

in 2003 were resolved within three years by victims' families ceding their right to retribution, and that no new death sentences were imposed since then in a region that is home to 22.63 percent of Saudi Arabia's population.⁸³ Alternatively, it is quite possible that some of the boys included in the 19 earlier cases had, by 2006, turned 18 and been transferred to the adult prison system, where they would also be eligible for execution.

Cases of Juvenile Offenders Sentenced to Death

Human Rights Watch is aware of at least 12 cases involving individuals sentenced to death for crimes committed while under age 18:⁸⁴

- Abdullah bin Mohammed al-Otaibi, a Saudi national executed in Mecca on August 20, 2007, for the murder of his stepmother. According to press accounts, the execution had been postponed until after al-Otaibi reached age 18.⁸⁵
- Dhahiyan bin Rakan bin Sa`d al-Thawri al-Sibai`i, a Saudi Arabian national executed on July 21, 2007, for the murder of Hussain bin Bashar bin Batil al-Thawri al-Sibai`i during a fight resulting from a quarrel outside a Play Station store in 2005.⁸⁶ According to press accounts, in May 2007 the then-18-year-old al-Sibai`i made a public plea for well-wishers to intervene to convince his

report. Letter from Human Rights Watch to Minister of Justice Dr. Abdullah bin Muhammad Al al-Shaikh, November 29, 2007; Letter from Human Rights Watch to President of the Supreme Council of the Judiciary Shaikh Salih al-Luhaidan, November 29, 2007.

⁸³ The Riyadh Social Observation Home accepts detainees from the entire Riyadh Region, an area with a total population of about 5 million. According to a study by the Higher Authority for the Development of Riyadh, the population of Riyadh city alone in February 2005 was 4.26 million, including 2.8 million Saudi nationals, of whom 56 percent were under 20, and 34 percent were under 15. Ministry of Interior, Emirate of Riyadh, Riyadh Region, http://www.riyadh.gov.sa/en_PageShow.asp?page_id=55 (accessed May 22, 2007); Royal Embassy of Saudi Arabia in Washington, DC, "Population of Riyadh City Remains at Well Over 4 Million," June 3, 2005, <http://www.saudiembassy.net/2005News/News/NewsDetail.asp?cIndex=5111> (accessed May 22, 2007).

⁸⁴ At the time of writing, Saudi Arabian authorities have not responded to Human Rights Watch's request for information on the case of Sultan Kohail. The 17-year-old Canadian national living in Jeddah is currently on trial for participating with others in a January 2007 schoolyard brawl that resulted in the death of a classmate. Sultan Kohail's older brother, Mohammad, was sentenced to death on March 3, 2008, for the same crime. See Alan Freeman, "Canadians face beheading in Saudi Arabia," *Globe and Mail Newspaper* (Toronto), May 15, 2007; Letter from Human Rights Watch to Minister of Justice Dr. Abdullah bin Muhammad Al al-Shaikh, November 29, 2007.

⁸⁵ "Saudi Arabia beheads man convicted of murdering stepmother while minor," Associated Press, August 20, 2007.

⁸⁶ "The Qisas Killing of al-Thowy's Killer" (al-Qatl Qisasan li Qatil al-Thowry), *Okaz* (Jeddah), July 22, 2007 (7/8/1428), <http://www.okaz.com.sa/okaz/osf/20070722/Con20070722126825.htm> (accessed September 24, 2007).

victim's family to spare his life, stating that he was only days away from execution.⁸⁷

- Mu`id bin Husayn bin Abu al-Qasim bin `Ali Hakami, a Saudi Arabian national from a village near Jizan, executed on July 10, 2007, for a murder he allegedly committed three years earlier, when he was 13 years old.⁸⁸ According to Hakami's father, Saudi authorities prevented him from attending his son's interrogation, which was held at a police station and not a juvenile detention center, did not inform him of the execution until days later, and have not returned his son's body.⁸⁹ On February 3, 2008, the Board of Grievances postponed a hearing in a complaint brought by the family when the plaintiff, the Ministry of Interior's Department of Public Security, failed to send a representative.⁹⁰ At this writing the next hearing was scheduled for April 6, 2008.
- Rizana Nafeek, a Sri Lankan national sentenced to death on June 16, 2007, for the murder of her employer's four-month-old baby in 2005, when she was 17 years old.⁹¹ Nasik did not have access to a lawyer until July 2007, and may have been tried as an adult based on her passport, which lists her date of birth as 1982, although her birth certificate lists her year of birth as 1988. In March 2008 the case went before the Supreme Judicial Council, the last stage of judicial review.⁹²

⁸⁷ Adnan al-Shabarawi, "Hours Away from Qisas: The Child's Killer: Release Me for God's Sake" (Qabl sa`at min al-qasas:Qatil al-hadath: A`taquni athabikum Allah), *Okaz*, May 16, 2007 (29/4/1428), <http://www.okaz.com.sa/okaz/osf/20070516/Con20070516111179.htm> (accessed May 22, 2007).

⁸⁸ See "The Qisas Execution of a Perpetrator for Killing a Boy after Trying to Rape Him" (al-Qatl Qisasan li Janin Hawal Fi'l al-Fahisha fi Sabi wa Qatalahu) *al-Bilad newspaper* (Jiddah), July 11, 2007, http://www.albilad-daily.com/files/the_newspaper/11-7-2007/local/main.html (accessed February 7, 2008). Under the shorter lunar calendar used in Saudi Arabia, Hakami would have just turned 14 years old at the time of the killing, and 16 at the time of his execution.

⁸⁹ Samir Al-Saadi, "Father Seeks Justice for Son's 'Wrongful' Execution in Jizan," *Arab News*, January 30, 2008, <http://www.arabnews.com/?page=1§ion=0&article=106240&d=30&m=1&y=2008> (accessed February 7, 2008).

⁹⁰ Samir Al-Saadi, "Government Rep. Fails to Show Up for Hakami Case," *Arab News*, February 4, 2008, <http://www.arabnews.com/?page=1§ion=0&article=106448&d=4&m=2&y=2008> accessed February 7, 2008.

⁹¹ "Saudi Arabia: Fair Appeal for Domestic Worker on Death Row: Sri Lankan Under 18 at Time of Alleged Killing," Human Rights Watch new release, July 30, 2007, <http://hrw.org/english/docs/2007/07/30/saudia16531.htm>; Mohammed Rasooldeen, "Sri Lankan Maid Sentenced to Death for Murdering Infant," *Arab News*, June 20, 2007, <http://www.arabnews.com/?page=1§ion=0&article=97710&d=20&m=6&y=2007&pix=kingdom.jpg&category=Kingdom> (accessed June 20, 2007).

⁹² Mohammed Rasooldeen, "Rizana Case Moves to Supreme Judicial Council," *Arab News*, March 9, 2008, <http://www.arabnews.com/?page=1§ion=0&article=107656&d=9&m=3&y=2008> (accessed March 11, 2008).

- `Abd al-Majid bin Mubarak al-`Anizi, sentenced to death for the murder of a friend when he was 17 years old. The murder victim's family reportedly agreed to spare al-`Anizi's life in exchange for a blood money payment of 10 million riyal (about US\$2.68 million), to be paid within one year of the May 1, 2006 (3/4/1427) agreement. According to press accounts, Crown Prince Sultan bin `Abd al-`Aziz donated 2 million riyal (about \$533,400) toward that amount, while the governor of the Riyadh Region, Prince Salman bin `Abd al-`Aziz, donated 1.9 million riyal (about \$506,700).⁹³
- Fawaz bin Mohamed Mash`al, sentenced to death on April 24, 2005 (15/3/1426), for the murder of a classmate in a school fight when he was 14. The murder victim's family reportedly agreed to spare Mash`al's life in exchange for a blood money payment of 3.5 million riyal (about \$933,300), on condition that the money be paid by March 30, 2006 (30/2/1427), and that the boy leave the area.⁹⁴
- Ahmad `Abd al-Murdi Mahmud al-Dukkani, an Egyptian boy living in Damman, sentenced to death in July 2005 for the April 2004 murder of three-year-old Wala' `Adil `Abd al-Badi`, also an Egyptian resident in Damman. According to information provided by his father, al-Dukkani was 13 at the time of the crime, and the court refused the family's request for a psychological evaluation.⁹⁵ Al-Dukkani had no access to a lawyer during questioning or trial and was kept in solitary confinement for several months after his arrest (see below).⁹⁶ At this

⁹³ See "1.9 Million Riyal from the Departed King Fahd Saves the Neck Sentenced to Retribution" (1.9 miliyun riyal min al-malik al-rahil Fahd tu`taq ruqbat mahkum `alaihi bil-qasas: Awidi`hu amana lada al-amir Salman lisarifh fi awjah al-khair), *al-Sharq al-Awsat*, "Shaikh al-Ayda Offers Thanks Both of Them for Their Humanitarian Efforts to Save the Neck of `Abd al-Majid al-`Anizi: Prince Salman Paid 1.9 Million Riyal from Funds King Fahd Left" (Al-Shaikh al-Ayda qaddam shukrihu lahuma limubadaratahuma al-insaniyya li`taq ruqbat `Abd al-Majid al-`Anzi; Al-Amir Salman dafa` 1.9 milyun riyal fi amana tarakha al-malik Fahd), *al-Jazirah*.

⁹⁴ "Three Qisas and Diya Cases Await Dogooders' Contributions: 3.5 Million Diya to be Paid before the Coming [month of] Safar; A Verbal Disagreement Develops into a Fight and Ends with a Murder Case" (Thalath qadhaya qasas widdiyya musahamat fa`iliyy al-khair: Al-diyya 3.5 malalin `ala an tadfa` qabl Safar al-qadim; Mushahada kalamiyya tatatawar ila mashajara wa tantahi biqadhiyyat qatl), *al-Riyadh*, December 15, 2005 (13/11/1426), <http://www.alriyadh.com/2005/12/15/article115552.html> (accessed May 21, 2007).

⁹⁵ Human Rights Watch telephone interview with human rights activist Ibrahim al-Mugaiteeb, September 7, 2005.

⁹⁶ For more information on this case, see Human Rights Watch letter to King Abdullah Ibn Abdul Aziz Al Saud, "Commute the death sentence of Egyptian boy," September 22, 2005, <http://hrw.org/english/docs/2005/10/27/saudia11927.htm>.

writing he remains in detention while his family attempts to negotiate a settlement with the victim's family.⁹⁷

- Mansur Farih al-`Anizi, a Saudi Arabian national sentenced to death for the murder of Mohamed `Ayad al-`Anizi. According to press accounts al-`Anizi spent three years in the Juf Social Observation Home before the victim's family pardoned him in February 2007, at age 19. If so, he would have been approximately 16 at the time of the murder.⁹⁸
- Sadiq `Ali `Abdullah al-Jama`, a Saudi Arabian national from al-Qatif, sentenced to death for the 1993 murder of Khaled al-Mahashir. According to press accounts and his family's published statements, al-Jama` was 17 years old at the time of the crime. Members of the royal family, including the crown prince, reportedly intervened on al-Jama`'s behalf to convince the victim's family to accept blood money, first set at 12 million riyal (about \$3.2 million) but later reduced, but al-Jama` remained in prison while the funds were being raised and until the victim's heirs were old enough to accept the settlement.⁹⁹ On October 30, 2005, the news and discussion forum Jefoon reported that the al-Mahashir family had agreed to accept the 5 million riyal (about \$1.34 million) al-Jama`'s family had already raised and that he was expected to be released soon.¹⁰⁰ Human Rights Watch has no information about his subsequent fate.
- "Marwa," a Palestinian woman accused of killing her 35-year-old husband when she was 13. In July 2005 the *Saudi Gazette* reported that after five years in the Women's Prison in Mekkah, the then-18-year-old Marwa was expected to be released after the husband's family agreed to accept 3 million riyal (about \$800,000) in blood money and the building of a mosque in the

⁹⁷ Human Rights Watch interview with Sherif Bedeir, Embassy of the Arab Republic of Egypt to Saudi Arabia, Riyadh, March 11, 2008.

⁹⁸ Taysir al-`Aid and Matairan al-Nims, "al-`Anizi Pardon's His Son's Killer Imprisoned in al-Juf [Social] Observation [Home]" (Al-`Anzi ya`fu `an qatil ibnuh al-masjun bimulahathat al-Juf), *al-Watan* (Abha), February 26, 2007 (8/2/1428), <http://alwatan.com.sa/daily/2007-02-26/local/local07.htm> (accessed May 22, 2007).

⁹⁹ "Waiting to Be Granted a New Life" (Yantuthir Manah Ruh Jadida), *Rasid New Network*, <http://rasid.com/artc.php?id=6833> (accessed October 4, 2007); and "Al Qatif: 6 Million Demanded to Save 'Sadiq' from Qisas" (Al-Qatif: Matlub 6 milyun li'inqath "Sadiq" min al-qasas), June 22, 2005 (15/5/1426), *Rasid News Network*, <http://www.rasid.com/artc.php?id=6470> (accessed November 17, 2005).

¹⁰⁰ "Sadiq al-Jama' Soon to be Released from Prison" (Sadiq al-Jama' Kharij al-Sijn Qareeban), *Jefoon* (Jeddah), October 30, 2005, <http://www.jefoon.com/vb/showthread.php?t=4176> (accessed September 24, 2007).

husband's memory, and according to Okaz newspaper she was finally released in July 2006.¹⁰¹

- Muhammad al-Qahs, a Saudi Arabian national from Najran sentenced to death on January 17, 1996, for killing a man attempting to rape him on October 27, 1994, when he was 16. On August 18, 1996, the Court of Appeals reversed this ruling, finding that al-Qahs, who is disabled, had acted in self-defense against three men intent on raping him, and returned the case to the original court, which ruled on January 28, 1997, that the deceased person's family was entitled to monetary compensation but not the death penalty. After King Fahd intervened and ordered a review of the case on behalf of the dead man's family, the Supreme Judicial Council on February 25, 1998, overturned the Appeal Court's decision on the grounds that al-Qahs had gone into a room willingly with his attacker, that he had a knife in his possession, and that he did not call for help. On August 31, 1999, the lower court accepted the Supreme Judicial Council's finding and reinstated the death sentence. The surviving men were not prosecuted for attempted rape. Al-Qahs remains in prison in Najran while his family continues to attempt to convince the family of the murder victim to pardon him or accept compensation.¹⁰²
- Sadeq Abdel-Karim Mal-Allah, a Saudi Shia, executed in the eastern town of al-Qatif on September 3, 1992. The government had arrested Mal-Allah in 1988, at age 17, and accused him of "slandering God, His Prophet and the Holy Quran." According to a statement issued by the Ministry of Interior, a royal order was issued ratifying the decision of Sharia courts ordering Mal-Allah's execution based on his alleged statements.¹⁰³

¹⁰¹ Susan Zawawi, "Teen girl, accused of killing husband, will be released," *Saudi Gazette*, July 7, 2005; "The Freeing of 'Marwa' With 3 Million Riyals" ('Itq Raqabit 'Marwa' bi Thalathat Malayeen Riyal), *Okaz newspaper* (Jeddah), July 30, 2006 (5/7/1427), <http://www.okaz.com.sa/okaz/osf/20060730/Con2006073035715.htm> (accessed October 10, 2007).

¹⁰² According to al-Qahs, the Amir of Asir has also urged the murder victim's family to pardon him or accept compensation for the death. Human Rights Watch telephone interviews with Muhammad al-Qahs, Najran, December 14, 2006, and July 13, 2007; Ministry of Justice, Presidency of the Courts of 'Asir, Judge's Office, "Verdicts Issued by Shari'a Courts," Recorded Number 219/2, Serial Number 219, January 17, 1996. For a more detailed discussion of this case, see Human Rights Watch, *Precarious Justice*.

¹⁰³ See Human Rights Watch, "Saudi Arabia" in *World Report 1993: Events of 1992* (New York: Human Rights Watch, 1992), http://www.hrw.org/reports/1993/WR93/Mew-08.htm#P442_209980.

VI. Children in Ministry of Social Affairs Detention Centers

Saudi Arabia routinely detains children under investigation, awaiting trial, or convicted of minor offenses. According to government statistics, the majority of children serving sentences or detained pending investigation or trial are held in Ministry of Social Affairs social observation homes or girls' or young women's welfare institutions (see above). Although government officials resist referring to the Ministry of Social Affairs facilities as detention centers,¹⁰⁴ they are closed facilities where exit and entry is controlled by Ministry of Interior guards.¹⁰⁵

Under the Convention on the Rights of the Child, Saudi Arabia is obliged to ensure that “[t]he arrest, detention or imprisonment of a child ... be used only as a measure of last resort and for the shortest appropriate period of time.”¹⁰⁶ The convention also calls on states to make available alternatives to institutional care for children who are accused of or recognized as have committed criminal offenses “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense,” and specifies that in all actions concerning children the best interests of the child shall be a primary consideration.¹⁰⁷

Detention during Investigation, Pending Trial, and for Minor Offenses

Saudi Arabian officials acknowledge that a significant number of children and young women detained in Ministry of Social Affairs facilities have not been convicted but are held for investigation or pending trial. Many of these are accused of committing only minor offenses. Even more disturbing, the authorities have detained many of these children and young women for what they deem to be improper contact

¹⁰⁴ For example, during the Committee on the Rights of the Child's January 2006 review of Saudi Arabia, members of the government delegation stated, “Reform homes were not places of detention; rather they offered rehabilitative care with a view to ensuring children's social reintegration,” and “When children were arrested, they were not placed in detention centres but were sent to rehabilitation centres, where their cases were examined by special investigators.” Committee on the Rights of the Child, “Summary Record of the 1114th Meeting (Chamber A),” paras. 9, 63.

¹⁰⁵ For example, the Riyadh Social Observation Home is guarded by 45 Ministry of Interior staff. Human Rights Watch interview with `Ali bin Hassan al-`Ajami, December 2, 2006.

¹⁰⁶ Convention on the Rights of the Child, art. 37(b).

¹⁰⁷ Ibid., arts. 40(4) and 3(1).

between the sexes. This offense, referred to as "seclusion" (*khalwa*) or "mingling" (*ikhtilat*), does not appear to be clearly defined in any written law.

Human Rights Watch visited the Riyadh Social Observation Home and the Riyadh Girls' and Young Women's Welfare Institution in December 2006. Ministry of Social Affairs officials prevented Human Rights Watch from speaking with detainees, but directors of both facilities told us that detention pending investigation or trial and for minor offenses is common at both facilities. The director of the Riyadh Social Observation Home told Human Rights Watch that the majority of the 274 detainees at the home on the day of our visit had not been convicted of any offense.¹⁰⁸ According to the director of the Riyadh Girls' and Young Women's Welfare Institution, very few of the girls and women at that facility have been accused of serious criminal offenses.¹⁰⁹ Ministry of Social Affairs statistics for the Riyadh Social Observation Home in 2003 show hundreds of children detained for "Family break-up," "Morals," "Traffic offenses," and "Drug addiction and trafficking."¹¹⁰ During questioning by the Committee on the Rights of the Child in January 2006, members of the Saudi Arabian delegation insisted that "[t]he prosecution could not ask the court to place a child in a centre unless the offence was serious," but later stated that children "with drug problems" could be detained, "not as a punishment but to rehabilitate them."¹¹¹ The practice of detaining children in need of protection in closed facilities with criminal detainees is a particularly egregious violation of the principle that children deprived of their liberty should be classified and separated according to their particular needs and protected from harmful influences (see below).

Detention for "seclusion" or "mingling"

Human Rights Watch has not been able to identify in Saudi Arabian law evidentiary standards for proving seclusion (*khalwa*) or mingling (*ikhtilat*), or recommended

¹⁰⁸ Human Rights Watch interview with 'Ali bin Hassan al-'Ajami, December 2, 2006.

¹⁰⁹ This assessment was echoed by Salwa Abu Nayan, supervisor for girls' and young women's welfare in the Ministry of Social Affairs' Riyadh Office for Women's Social Supervision. Human Rights Watch interview with Leila al-Daghathir, director of the Riyadh Girls' and Young Women's Welfare Institution, and Salwa Abu Nayan, Riyadh, December 3, 2006.

¹¹⁰ See "List of detention facilities for persons under eighteen who have committed punishable offences, showing the number of detainees and the type of offence committed, in 2003," Government of Saudi Arabia, "Written reply concerning the list of issues relating to the second periodic report of Saudi Arabia to the Committee on the Rights of the Child," p. 19.

¹¹¹ UN Committee on the Rights of the Child, "Summary Record of the 1114th Meeting (Chamber A)," paras. 66, 67.

sentences for persons convicted of these offenses. Knowledgeable individuals told Human Rights Watch that in practice evidentiary standards “vary from place to place, depending on [local] culture.”¹¹² A senior counselor to the Ministry of Justice defined seclusion as “being out of sight in a closed place with only a member of the opposite sex who is not *mahram* [forbidden from marrying under Sharia] to you.” However, he declined to clarify whether being in a car or a cafe with a member of the opposite sex—the circumstances of two recent arrests—met this test.¹¹³ The president of the Commission for the Promotion of Virtue and the Prevention of Vice, which participates in many arrests on these charges, declined to provide us detailed definitions of the offenses, saying simply, “Mingling of the sexes is prohibited in public, and permitted in private unless it is for the purpose of corruption.”¹¹⁴ In addition to imprisonment, judges also issue sentences of flogging for seclusion or mingling, as in the case of a rape victim in Qatif, who was sentenced to 90 lashes for mingling in October 2006.¹¹⁵ (This case acquired international notoriety in November 2007 when a court increased the woman’s sentence to 200 lashes and six months’ imprisonment. The case is discussed in more detail in Human Rights Watch’s March 2008 report, “Saudi Arabia: Precarious Justice: Arbitrary Detention and Unfair Trials in a Deficient Criminal Justice System.”)

While Saudi Arabian authorities arrest both males and females for seclusion, anecdotal evidence suggests that these ill-defined offenses make women and girls vulnerable to detention and flogging for behavior that in many instances would not be punished by detention if committed by a male.¹¹⁶ For example, a Ministry of Social

¹¹² Human Rights Watch interview with Dr. Zuhair Fahed al-Harthi, former prosecutor and current Human Rights Commission board member, and Dr. Eisa AbdulAzize al-Shamekh, Human Rights Commission board member, Riyadh, March 9, 2008.

¹¹³ Human Rights Watch interview with Shaikh `Abd al-Hamid al-Guliga, March 12, 2008.

¹¹⁴ Human Rights Watch interview with Shaikh Ibrahim al-Gheith, December 5, 2006. According to a Ministry of Social Affairs supervisor, many of the women and girls held for seclusion at the Riyadh Girl’s and Young Women’s Welfare Institution had been transferred from the Commission for the Promotion of Virtue and the Prevention of Vice. Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

¹¹⁵ In October 2006 a judge sentenced a young woman from Qatif to 90 lashes for illegally mingling with the opposite sex. The young woman told Human Rights Watch that she had met a man she vaguely knew in his car in a car park to retrieve a photograph of herself. She had recently married and did not want another man to have her picture. A gang of men then attacked them both and brought her to another location where they raped her. Up to the point of the judge’s verdict, she was unaware of facing any charges herself, although the judges had questioned why she had left the house at all in the first place. Human Rights Watch interview with the young woman from Qatif, Khobar, December 8, 2006.

¹¹⁶ Human Rights Watch was unable to obtain data that would show whether one gender is more likely to be arrested on seclusion or mingling charges. Boys and men have greater freedom of movement in Saudi Arabia’s gender-segregated society, which could result in greater exposure to law enforcement agencies, including the Commission for the Promotion of Virtue and

Affairs supervisor described seclusion and mingling as a girl or woman being “in an apartment by herself, or with a group of others, or sitting in a place where it is not natural for her to be,” and said the majority of detainees at the Riyadh Girls’ and Young Women’s Welfare Institution were under investigation or had been sentenced for seclusion.¹¹⁷ In other cities girls and young women have been charged with seclusion or mingling for running away from home. A November 2006 *Arab News* article quoted an unnamed Mekkah Girls’ and Young Women’s Welfare Institution official saying that existing welfare institutions were insufficient to hold a rising number of runaways. The official noted that “Most of the cases [at the Mekkah Girls’ and Young Women’s Welfare Institution] are of runaway or ‘absent’ girls arrested by the virtue commission or the police.”¹¹⁸

The prominent role of the Commission for the Promotion of Virtue and the Prevention of Vice in investigating and participating in arrests for such an ill-defined offense is particularly disturbing given that body’s record of human rights abuses, including its well-known harassment of women and girls. Saudi Arabia’s National Society for Human Rights recently criticized the CPVPV for abusing its authority, noting that the Society had received complaints of beating and other physical violence during arrest and interrogation, verbal abuse, coerced confessions, and violations of privacy during searches by commission members.¹¹⁹

The offenses of seclusion and mingling, as described by government officials, and the lack of procedural clarity associated with them, place girls and young women at particular risk of the arbitrary deprivation of their liberty, corporal punishment, as

the Prevention of Vice. Women and girls face greater restrictions on movement and dress, which in turn make them more visible when they do leave the confines of their homes. In addition, based on our interviews with directors of the Riyadh Social Observation Home and the Riyadh Girls’ and Young Women’s Welfare Institution, girls and young women detained in Riyadh are more likely than boys to be held on this charge. Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006; Human Rights Watch interview with ‘Ali bin Hassan al-‘Ajami, December 2, 2006.

¹¹⁷ Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

¹¹⁸ Maha Akeel, “Runaway Girls on the Rise, Insufficient Facilities to Hold Them,” *Arab News*, November 16, 2006, <http://arabnews.com/?page=1§ion=o&article=88900&d=16&m=11&y=2006> (accessed November 21, 2006).

¹¹⁹ For a discussion of the Commission’s powers and complaints about abuses, see National Society for Human Rights, “The First Report on the Human Rights Situation in the Kingdom of Saudi Arabia, 1427/2006” (Al-taqrir al-awwal ‘an ahwal huqq al-insan fi al-mamlaka al-‘arabiyya al-sa‘udiyya, 1427h/2006m, al-jam‘iyya al-wataniyya lihuqq al-insan), p. 14.

well as violations of their rights to freedom of movement,¹²⁰ association,¹²¹ and privacy.¹²² They also contravene Saudi Arabia's obligation under CEDAW to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."¹²³

Human Rights Watch is also concerned that the offenses of seclusion and mingling may be obstacles to girls and young women reporting sexual violence or leaving situations of domestic violence because they can be arrested for living alone or with others without their guardian's permission, or for being in the company of unrelated men or boys.¹²⁴ In both cases, the arrest may place women and girls at increased risk of violence if authorities return them to guardians who see the charge as further proof of immorality, to be addressed through beatings, confinement, or forced marriage. A Ministry of Social Affairs supervisor told Human Rights Watch that the Riyadh Girls' and Young Women's Welfare Institution did have detainees who were victims of domestic violence, but argued that it was "rarely the main problem," saying that in most cases it involved "violence from the father because [the detainee] had been away from home for a period of time."¹²⁵ The Convention on the Rights of the Child requires states to protect children from all forms of physical and mental

¹²⁰ The Convention on the Elimination of All Forms of Discrimination against Women obliges states to "accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile." Convention on the Elimination of All Forms of Discrimination against Women, art. 15(4).

¹²¹ Convention on the Rights of the Child, art. 15(1).

¹²² Ibid., art. 16(1).

¹²³ Convention on the Elimination of All Forms of Discrimination against Women, art. 5(a).

¹²⁴ Domestic violence is just beginning to be recognized as a serious problem in Saudi Arabia. Experts working with victims of domestic violence told Human Rights Watch that few cases come to light unless the abuse is so severe that it results in hospitalization or death, and that even in severe cases it is difficult to convince judges to remove the victim from an abusive guardian's custody. The Makkah Branch of the National Society for Human Rights reports that 40 percent of the 2000 "family" cases it has investigated were domestic violence complaints. Human Rights Watch interviews with social work staff at the National Society for Human Rights, Jeddah, December 12, 2006; and with medical personnel working with victims of violence in Riyadh, December 2006 (names and exact date withheld); National Society for Human Rights, "General Statistics of the Cases Arrived at the Human Rights Society Branch of Makkah from November 20, 2004 to June 25, 2006," copy on file with Human Rights Watch.

¹²⁵ Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

violence, and to provide special protection and assistance to children when it is not in their best interests to remain in a family environment.¹²⁶

Indefinite detention for “guidance”

Saudi Arabian law gives the Ministry of Social Affairs broad powers to continue to detain children and young women even after they are found innocent or have served their sentences. Ministry of Social Affairs regulations further discriminate against girls and young women by authorizing the minister of social affairs to order a girl or young woman to be detained indefinitely based solely on the assessment of her guardian and institution staff that she “remains in need of additional guidance and care.”¹²⁷

Ministry of Social Affairs regulations also allow authorities to continue to detain boys beyond the period specified in a sentence “if it is apparent to the home that the juvenile’s circumstances ... do not permit his release because, in the view of the specialists, of his need for greater care.”¹²⁸ But while the regulation governing boys requires a judge to agree to continued detention, no judicial approval is required to extend the detention of girls and young women under age 30. Neither regulation requires periodic review of the detention decision, nor sets an explicit limit on how long detainees can be held. Boys held for “guidance” should be eligible for release when they turn 18 and no longer require a guardian, but under Saudi law women are treated like legal minors and can only be released into the care of their guardians (see below).

Such regulations give arbitrary and discriminatory powers to guardians and officials to intervene in the lives of children and young women who do not comply with the wishes of their guardians or Ministry of Social Affairs staff. Their impact is heightened by Saudi Arabia’s failure to guarantee free legal assistance to detained children and young women who need it, making it virtually impossible for them to

¹²⁶ Convention on the Rights of the Child, arts. 19, 20.

¹²⁷ See Council of Ministers Decree 868 of July 29, 1975 (19/7/1395), in Ministry of Labor and Social Affairs, *Collection of Laws and Regulations of the Ministry’s Agency for Social Affairs*, p. 99; Girls’ and Young Women’s Welfare Institution Regulations, art. 18; and Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), art. 8.

¹²⁸ Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), art. 6.

challenge their detention (see below). Regulations for girls and young women that deny them opportunities for judicial review of detention granted to boys also contravene Saudi Arabia's obligation to prohibit gender-based discrimination and ensure women and girls equality with men and boys before the law.¹²⁹

Delays in Release due to Guardians' Refusal to Receive Detainees

Saudi Arabian law requires that social observation homes and girls' and young women's welfare institutions only release detainees into the custody of their legal guardians. At the same time, discriminatory regulations and practices prevent adult women from having guardianship over themselves or their children except in the most exceptional circumstances.¹³⁰ As a result, children and young women can be detained even after a judge or prosecutor orders their release, simply because their male legal guardian is unavailable or refuses to claim them. Unlike Ministry of Social Affairs regulations for boys' detention centers, regulations for girls' and young women's detention centers allow for indefinite detention in these circumstances. In a conservative society where the stigma of a girl's or woman's arrest on a morality-related offense affects the entire family, girls and young women accused of seclusion or mingling face a disproportionate risk of prolonged and indefinite detention.

Ministry of Social Affairs regulations governing girls' and young women's welfare institutions state that "in all cases the institution shall observe the obligation to summon the guardians of girls and young women to receive them at the times specified for their release from the institution. In cases where the guardian is late in doing so, the institution must quickly take the necessary steps for procuring the guardian to receive the girl or young woman."¹³¹ Ministry of Social Affairs officials gave Human Rights Watch conflicting information on what these steps should be. According to one official, the ministry frequently receives offers of marriage to girls in its custody, and when a girl's or young woman's family refuses to accept her the ministry asks a judge to marry her to one of these men; if she refuses the marriage

¹²⁹ Convention on the Rights of the Child, art. 3; and Convention on the Elimination of All Forms of Discrimination Against Women, arts. 1, 2, 3, and 15(1).

¹³⁰ See above for information on Saudi Arabia's guardianship system.

¹³¹ Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), art. 16.

offer, the ministry transfers her to the care of a nongovernmental organization.¹³² Another official, who supervises the Riyadh Girls' and Young Women's Welfare Institution, said staff there seek to address the problem of absent or refusing guardians by trying to convince other family members to intervene or, should that fail, by petitioning the regional governor to transfer guardianship to another relative.¹³³ However, Saudi Arabian experts on domestic violence, who also sometimes appeal to the governor to intervene in individual guardianship cases, say that the process is difficult and outcomes vary greatly even among similar cases.¹³⁴ The Ministry of Social Affairs does not appear to offer any alternative, age-appropriate options such as non-punitive and voluntary shelters or independent living arrangements for children and young women without guardians available or willing to receive them.¹³⁵

Ministry of Social Affairs and Labor regulations for social observation homes for boys echo the language of the ministry's regulations for girls' and young women's welfare institutions on steps the staff must take to ensure that detainees are received by their guardians, with the exception that they also allow staff at a social observation home to deliver a boy to his guardian even if the guardian does not come to claim him.¹³⁶ The regulations do not specify what, if any, measures the social observation home must take to ensure that boys detained in social observation homes are not held indefinitely or returned to guardians who reject them or who otherwise put them

¹³² Human Rights Watch interview with Adel Farahat, March 9, 2008.

¹³³ Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006. During a brief visit to the same facility in 2003 Human Rights Watch spoke to a male psychologist who described himself as a member of the Commission to Promote Virtue and Prevent Vice and who said that he worked with families who had rejected their daughters to try to convince the father and male extended family members to take the girl or young woman back. The director added that if the family continued to refuse, the girl or young woman remained detained, in some cases for as long as a year while the staff "make sure the girl has been changed." Human Rights Watch interview with the director and staff of the Riyadh Girls' and Young Women's Welfare Institution, Riyadh, January 28, 2003.

¹³⁴ For example, staff at the National Society for Human Rights estimate that only 1 to 2 percent of their petitions to withdraw guardianship from an abusive guardian are successful. In one case the Society took up, it took the courts five years to remove the guardianship from a father who was sexually abusing his children. Human Rights Watch interviews with staff at two nongovernmental organizations working with victims of violence, Riyadh, December 2006 (names and exact dates withheld), and with legal and social work staff at the National Society for Human Rights, Makkah Branch, Jeddah, December 12, 2006.

¹³⁵ More generally, children and women have difficulty gaining access to Ministry of Social Affairs shelters for victims of domestic violence. Human Rights Watch interviews with doctors and hospital social workers who treat victims of violence, names withheld, Riyadh, December 4-7, 2006; and with staff at two nongovernmental organizations working with victims of violence (names and exact dates withheld), Riyadh, December 2006.

¹³⁶ Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), art. 20.

at risk of abuse or neglect. The Ministry of Social Affairs did not respond to Human Rights Watch's request for clarification on this matter.¹³⁷

Other Obstacles to Challenging Deprivation of Liberty

Saudi Arabia's Law on Criminal Procedure allows Ministry of Interior Bureau of Investigation and Public Prosecutions officials to detain suspects under investigation for up to six months without judicial review (see above). Delays can continue even after the decision is made to refer the case to a judge. Saudi Arabian law specifies that interrogations and trials of children and of women under age 30 should take place inside social observation homes and girls' and young women's welfare institutions.

Under the Convention on the Rights of the Child, all children deprived of their liberty have the right to challenge the legality of their detention and to obtain a prompt decision on that challenge, and children accused of criminal offenses have the right to a fair hearing without delay.¹³⁸ The UN Committee on the Rights of the Child has stated that enjoyment of the right to challenge the legality of deprivation of liberty requires that children "be brought before a competent authority ... within 24 hours" of arrest, and "a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made."¹³⁹

Shaikh Muhammad Al `Abdullah, head of the Bureau of Investigation and Public Prosecutions, told Human Rights Watch that when his investigators interrogate suspects who refuse to answer their questions, "we tell them that silence will make the investigation take longer."¹⁴⁰ At a minimum, such an implied threat of prolonged detention—like false promises of early release if the detainee confesses—are inappropriate for adults, and may in some circumstances constitute coercion. When used against children, these tactics may constitute a violation of children's right not

¹³⁷ Letter from Human Rights Watch to Minister of Social Affairs `Abd al-Muhsin al-`Akkas, March 18, 2007.

¹³⁸ Convention on the Rights of the Child, arts. 37(d) and 40(b)(iii).

¹³⁹ UN Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, para. 28(b).

¹⁴⁰ Human Rights Watch interview with Shaikh Muhammad Al `Abdullah, Dr. Ibrahim al-Juhayman, Hamid al-Jarba, and `Abd al-Latif al-Quraysh, Riyadh, November 29, 2007.

to be compelled to give testimony or confess guilt.¹⁴¹ In interpreting this right, the Committee on the Rights of the Child has noted,

The term “compelled” should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment, may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: “You can go home as soon as you have given us the true story,” or lighter sanctions or release are promised.¹⁴²

If a prosecutor does decide to refer a child or young woman to a judge for trial, he or she may have to wait several more days to see the judge (trial proceedings inside social observation homes and girls’ and young women’s welfare institutions are explained in Chapter VIII, below). Girls and young women are at an additional disadvantage because, with fewer institutions for them, they are likely to be detained at greater distance from their families than boys and men, making it more difficult for them to obtain legal and other assistance when seeking to challenge deprivation of liberty and to prepare and present a legal defense during interrogation and trial. Also, judges visit girl’s and young women’s institutions less frequently than boys’ institutions. Thus, girls and young women held at the Riyadh Girls’ and Young Women’s Welfare Institution may be detained for up to a week before seeing a judge because a judge only visits that facility one day a week.¹⁴³ At that point the judge may then decide to postpone hearing the case “if he decides that he wants to see the family.”¹⁴⁴ Boys may have to wait for up to five days before seeing the judge who visits the Riyadh Social Observation Home on two consecutive days per week.¹⁴⁵

¹⁴¹ Convention on the Rights of the Child, art. 40(2)(b)(iv).

¹⁴² UN Committee on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice, para. 23(h).

¹⁴³ Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

¹⁴⁴ Ibid.

¹⁴⁵ Human Rights Watch interview with `Ali bin Hassan al-`Ajami, December 2, 2006.

Mixing Children of Different Ages and Conviction Statuses

Ministry of Social Affairs detention centers fail to adequately classify and separate children in their custody. Ministry of Social Affairs authorities state that they separate detainees of different ages to protect them from harming each other. While age is an important consideration in categorizing and separating detained children, age alone is an inadequate criterion for insuring that children are safe from harm and their individual needs are met.¹⁴⁶ The UN Rules for the Protection of Juveniles Deprived of their Liberty provide authoritative guidance on the minimum factors to be taken into account when determining detained children's needs. In particular, the Rules specify, "Juveniles who are detained under arrest or awaiting trial ... should be separated from convicted juveniles," and

The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offense, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.¹⁴⁷

Both the Riyadh Social Observation Home and the Riyadh Girls' and Young Women's Welfare Institution make some effort to categorize and separate detainees. However, the measures described by Ministry of Social Affairs staff are insufficient to protect children from risk of abuse by other detainees and exposure to harmful influences, and may leave children vulnerable to sexual abuse.¹⁴⁸

¹⁴⁶ Under the Convention on the Rights of the Child, "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age." CRC, art. 37(c).

¹⁴⁷ UN Rules for the Protection of Juveniles Deprived of their Liberty, paras. 17, 28.

¹⁴⁸ Human Rights Watch is aware of reports of sexual abuse in at least two other types of Ministry of Social Affairs facilities for children. A recent UNICEF report cites instances of sexual abuse of younger children by older children at the Ministry of Social Affairs facility for child beggars in Jeddah, and notes that staff at that facility reported using corporal punishment to discipline (*ta'dib*) older boys implicated in such abuse. UNICEF Gulf Area Office, "Trafficking in children and child involvement in beggary in Saudi Arabia," undated, http://www.unicef.org/gao/resources_publications_childtrafficking_dr_ushari.pdf (accessed

According to the director of the Riyadh Social Observation Home, staff separates the boys and young men held there into four groups based on their ages, although the facility appears to have unused dormitories that it could use to further categorize children.¹⁴⁹ In addition to mixing convicted boys and young men with boys on remand, and boys held for serious offenses with those held for minor offenses, children of all ages appear to sometimes mix during recreational periods.¹⁵⁰ The director told Human Rights Watch that the largest dormitory at the Riyadh Social Observation Home, with approximately 90 single beds lined up in rows 15 beds long, housed 17- and 18-year-old detainees.¹⁵¹ A room for 15- and 16-year-olds held approximately 78 beds, a room for 13- and 14-year-olds held approximately 31 beds, and a room for “younger boys” held 11 beds. According to the director, only one supervisor monitors each of the four open dormitories where the detainees sleep, and that supervisor is positioned outside the room, watching from behind a window. Effective monitoring would appear to be particularly difficult in the largest dormitory, where the bathrooms and the farthest beds were at least 15 meters from the supervisor’s station. Such arrangements are contrary to the UN Rules for the Protection of Juveniles Deprived of their Liberty, which state, “Sleeping accommodation should normally consist of small group dormitories or individual bedrooms During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile.”¹⁵²

September 22, 2007). Two individuals familiar with the Ministry of Social Affairs Social Guidance Home (*dar al-tawjih al-ijtima’i*) in Riyadh separately told Human Rights Watch that sexual abuse was common there, including older boys raping newly arriving very young boys, and boys of various ages engaging in prostitution outside the center. Human Rights Watch interviews with individuals familiar with the Riyadh Social Guidance Home, Riyadh, December 2006 (names and exact dates withheld).

¹⁴⁹ The total number of beds authorities showed Human Rights Watch (approximately 210) was significantly fewer than the 274 children reported to be held at the facility on the day of our visit. When Human Rights Watch researchers questioned the director about closed rooms with papered-over windows that we were not allowed to enter, he said the closed rooms were dormitories that were used only for “overflow” when the facility had higher numbers of detainees. Viewed from the outside, these closed rooms appeared to be at least as large as the room with 31 beds. Human Rights Watch interview with ‘Ali bin Hassan al-‘Ajami, December 2, 2006.

¹⁵⁰ For example, on the day of Human Rights Watch’s visit the detainees were outside in a large courtyard, and later we were told that they had all entered a prayer area.

¹⁵¹ According to the director there, the 18-year-olds should have been transferred to an adult prison, but the staff judged them to be “small for their age” and at risk of abuse if transferred to an adult prison. Human Rights Watch interview with ‘Ali bin Hassan al-‘Ajami, December 2, 2006.

¹⁵² UN Rules for the Protection of Juveniles Deprived of their Liberty, para. 33.

Saudi Arabian law requires girls and young women's welfare institutions to accept all Saudi Arabian girls or young women under age 30 ordered held or imprisoned, and to separate those held under investigation or pending trial from convicted prisoners.¹⁵³ In apparent contradiction, a more recent Ministry of Social Affairs publication states that girls' and young women's welfare institutions separate detainees into "1) a section for young girls under age 15; 2) a section for young women between 18 and 28; 3) a section for young women over 18 with prior arrests; [and] 4) a solitary confinement section where girls and young women are placed during investigation."¹⁵⁴ These arrangements do not appear to provide the necessary flexibility for the adequate separation of girls and young women according to their conviction status, and they do not provide guidance at all for the care of girls age 15 through 17.¹⁵⁵

During Human Rights Watch's December 2006 visit to the Riyadh Girls' and Young Women's Welfare Institution, staff there showed us four wards that served as dormitories and also recreational spaces for when detainees were not involved in activities in other parts of the facility. Each ward consisted of a toilet and shower area and eight small bedrooms holding two to four beds, all opening off a central corridor. According to a Ministry of Social Affairs supervisor, the staff assigns detainees to wards according to "their age, ideas, type of case, and their disposition, taking all factors into account."¹⁵⁶ When questioned about how this works in practice, the director acknowledged that with only four wards it was impossible to adequately segregate the girls and young women by age, conviction status, and charge. She also told Human Rights Watch that while building renovations taking place at the time of our visit would not address these concerns, she had asked the Ministry of Social Affairs to ensure that any new detention facilities be designed to allow appropriate separation of detainees.¹⁵⁷

¹⁵³ Council of Ministers Decree 868 of July 29, 1975 (19/7/1395), arts, 2, 5.

¹⁵⁴ Ministry of Social Affairs pamphlet no. 15, 2006 (1427), p. 8.

¹⁵⁵ During a brief visit by Human Rights Watch to the Riyadh Girls' and Young Women's Welfare Institution in 2003, several of the detainees appeared to be in their early teens. A staff member said that some of the detainees were ages 13 or 14, and that the facility sometimes received 12-year-old girls. Human Rights Watch interview with the director and staff of the Riyadh Girls' and Young Women's Welfare Institution, Riyadh, January 28, 2003.

¹⁵⁶ Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

¹⁵⁷ Ibid.

VII. Cruel, Inhuman, or Degrading Treatment or Punishment

Saudi Arabian law still permits the use of corporal punishment both as a judicial penalty and as an administrative penalty in detention facilities, although Saudi Arabia has begun to take steps toward addressing corporal punishment in home and school settings.¹⁵⁸ The law also permits authorities to use solitary confinement and denial of visits and correspondence to discipline detainees. In addition, Ministry of Social Affairs regulations and practices appear to endorse a routine practice of placing children in isolation. Examples of when children are placed in isolation include those new in detention, and girls and young women with treatable medical conditions.

The UN Committee on the Rights of the Child has concluded that corporal punishment, which it defines as encompassing “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light,” is “invariably degrading.”¹⁵⁹ As such it violates the prohibition on cruel, inhuman, or degrading punishment or treatment in both the Convention on the Rights of the Child and the Convention against Torture.¹⁶⁰

Additional guidance on measures constituting cruel, inhuman, or degrading treatment in custodial settings is provided by UN Rules for the Protection of Juveniles Deprived of their Liberty. These state,

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other

¹⁵⁸ For example, at this writing, the Shura Council is discussing draft legislation to address domestic violence. While there is no criminal legislation outlawing corporal punishment in schools, the Ministry of Education reportedly “issues regular circulars prohibiting the beating or ill-treatment of school children during all stages of general education and prescribing penalties designed to deter teachers from committing such acts.” Government of Saudi Arabia, Second Periodic Report to the Committee on the Rights of the Child, U.N. Doc. CRC/C/136/Add.1, April 21, 2005 (Arabic original November 12, 2004), para. 122.

¹⁵⁹ UN Committee on the Rights of the Child, General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*), U.N. Doc. CRC/C/GC/8 (2006), para. 11.

¹⁶⁰ Convention on the Rights of the Child, art. 37(a); Convention against Torture, art. 16.

punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose.¹⁶¹

Prolonged isolation may have serious negative effects on children's mental, emotional, and physical well-being.

Use of Corporal Punishment and Solitary Confinement as Punishment

Corporal punishment imposed as a criminal sanction in Saudi Arabian law includes amputation and flogging. There is very widespread recourse to the latter—based on Human Rights Watch's review of sentences, criminal sentences that do not include flogging appear to be rare.¹⁶² Human Rights Watch knows of no cases of persons subject to punitive amputation for crimes committed while children, but given the obscurity surrounding the administration of criminal justice in Saudi Arabia, such cases cannot be ruled out.

The 1978 Imprisonment and Detention Law also provides disciplinary sanctions that include solitary confinement and flogging for violations of internal regulations.

Solitary confinement can be imposed for periods of up to 15 days, which officials can double in cases of recidivism, and an offender is liable to flogging of up to 10 lashes.¹⁶³ Ministry of Labor and Social Affairs Decree 1354 of 1975 (1395) on internal regulations for social observation homes and Ministry of Labor and Social Affairs Decree 2083 of 1976 (1396) on implementing regulations for girls' and young women's welfare homes both set forth detailed procedures for carrying out corporal punishment.¹⁶⁴

¹⁶¹ UN Rules for the Protection of Juveniles Deprived of their Liberty, para. 67.

¹⁶² The king or his representative must ratify sentences of death, amputation, and flogging. Law of Criminal Procedure, art. 220.

¹⁶³ Article 1 states that the law applies to prisons and detention houses without prejudice to rules applicable to juveniles. Human Rights Watch was unable to identify any regulations that would make this provision inapplicable to detained children. Imprisonment and Detention Law 1978, *Umm al-Qura*, no. 2729 of June 17, 1978 (11/7/1398), arts. 1, 20.

¹⁶⁴ Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), art. 7; Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), art. 9.

None of these laws and regulations specifies a minimum age for imposing corporal punishment, and press accounts periodically list cases of courts sentencing children to hundreds of lashes.¹⁶⁵ The director of the Riyadh Social Observation Home told Human Rights Watch that officials at his facility only flog boys ages 15 and older, and that they carry out the floggings in front of other detainees. He also noted that the facility has a staff member designated to “ensure that floggings take place in a timely manner, and every Tuesday [the staff member] prepares 15 or 16 files for flogging.”¹⁶⁶

A Ministry of Social Affairs supervisor acknowledged that staff at the Riyadh Girls’ and Young Women’s Welfare Institution use solitary confinement to punish disciplinary infractions such as hitting another inmate, but added that “we don’t put psychiatric cases in solitary.”¹⁶⁷

Denial of Family Visits as Punishment

Further disciplinary sanctions provided for in the 1978 Imprisonment and Detention Law include the denial of visits and correspondence.¹⁶⁸ The directors of both the Riyadh Social Observation Home and the Riyadh Girls’ and Young Women’s Welfare Institution declined to provide Human Rights Watch with details about rules and disciplinary practices at those facilities. However, the director of the social observation home did volunteer that he disciplines detainees who commit infractions by preventing them from receiving family visits or participating in activities, and noted that the judge can order additional punishments.¹⁶⁹

¹⁶⁵ For example, the section on juvenile courts on the Ministry of Justice’s website states that juveniles are those between ages seven and 18, and that “if a discretionary sentence (*ta’zīr*) of beating was issued it shall be noted that it is not to be carried out publicly unless the [public] interest requires that and the judge has stipulated so in his verdict.” Ministry of Justice, “Juvenile Court.” For an account of two recent court rulings in Ha’il where 16 secondary and middle school pupils were sentenced to a total of 5,800 lashes and prison terms of six to eight months, see “Saudi Arabia: Fear of Flogging,” Amnesty International Urgent Action, AI Index: MDE 23/016/2007, April 27, 2007, <http://web.amnesty.org/library/Index/ENGMDE230162007?open&of=ENG-SAU> (accessed July 8, 2007).

¹⁶⁶ Human Rights Watch interview with `Ali bin Hassan al-`Ajami, December 2, 2006.

¹⁶⁷ Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

¹⁶⁸ Imprisonment and Detention Law 1978, art. 20.

¹⁶⁹ Human Rights Watch interview with `Ali bin Hassan al-`Ajami, December 2, 2006.

Isolation for Reasons Other Than Punishment

“Therapeutic” isolation that is not a medical necessity

Ministry of Social Affairs regulations for social observation homes and girls’ and young women’s welfare institutions provide that girls and young women may be placed in isolation if their “condition calls for it.”¹⁷⁰ While limited periods of isolation or specific precautionary measures are medically appropriate in certain circumstances,¹⁷¹ Ministry of Social Affairs staff subject detainees to isolation when it is not medically necessary.

According to a Ministry of Social Affairs supervisor, staff at the Riyadh Girls’ and Young Women’s Welfare Institution routinely test all new detainees for infectious diseases, including HIV and other sexually transmitted diseases.¹⁷² They then isolate indefinitely in a separate room those found to have “hepatitis B, herpes, or other sexual diseases.” Staff require that all detainees in such isolation use a separate toilet, separate eating utensils, and a separate washing machine. Isolated detainees must also sit at a distance from other students during compulsory classes.¹⁷³

Routine isolation of children and young women found to have sexually transmitted diseases is medically inappropriate and unnecessarily stigmatizing. Sexually transmitted diseases do not routinely require isolation because they are not spread through casual contact and respond well to medication. Even hepatitis B, which can be highly infectious among non-immune individuals,¹⁷⁴ can be contained through

¹⁷⁰ Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), art. 8(g)(3); Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), art. 10(e)(3).

¹⁷¹ There are three common approaches to address the different ways infections are typically transmitted—airborne, droplet, and contact precautions—which require varying degrees of patient isolation and may be combined for diseases that have multiple routes of transmission. For example, patients known or suspected to have such illnesses as measles, varicella (including disseminated zoster), and active pulmonary tuberculosis, which are transmitted by airborne droplet nuclei, are routinely subject to airborne precautions; illnesses such as invasive *Haemophilus influenzae* type b disease, invasive *Neisseria meningitidis* disease, Diphtheria (pharyngeal), Pertussis, and Rubella may require droplet precautions; illnesses such as gastrointestinal, respiratory, skin, or wound infections or colonization with multidrug-resistant bacteria, or viral/hemorrhagic conjunctivitis and viral hemorrhagic infections (Ebola, Lassa, or Marburg) may require special contact precautions.

¹⁷² Human Rights Watch did not obtain information on testing and isolation of detainees in social welfare homes.

¹⁷³ Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

¹⁷⁴ Hepatitis B transmission occurs mainly through exposure of mucous membranes or nonintact skin to Hepatitis B virus from the blood of individuals who are surface antigen (HBsAg)-positive individuals.

routine vaccination of susceptible individuals and through universal precautions¹⁷⁵ by detention center staff and individuals who are hepatitis B surface antigen positive, including covering of cuts and skin lesions, and preventing the sharing of items that could become contaminated with blood, such as toothbrushes or razors.

Additionally, mandatory medical testing for sexually transmitted diseases may violate children's rights to privacy and to informed consent to medical procedures.¹⁷⁶ Violations of the right to privacy are particularly likely when children are subjected to stigmatizing isolation practices that target those with sexually transmitted diseases. With regard to HIV, the Committee on the Rights of the Child has stated,

States parties must refrain from imposing mandatory HIV/AIDS testing of children in all circumstances and ensure protection against it. While the evolving capacities of the child will determine whether consent is required from him or her directly or from his or her parent or guardian, in all cases, consistent with the child's right to receive information under articles 13 and 17 of the Convention, States parties must ensure that, prior to any HIV testing, whether by health-care providers in relation to children who are accessing health services for another medical condition or otherwise, the risks and benefits of such testing are sufficiently conveyed so that an informed decision can be made. States parties must protect the confidentiality of HIV test results, consistent with the obligation to protect the right to privacy of children (art. 16), including within health and social welfare settings, and information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent.¹⁷⁷

Human Rights Watch was unable to determine whether Saudi Arabian authorities test boys held in social observation homes for HIV and other sexually transmitted disease, and what treatment those who test positive might receive. However, our

¹⁷⁵ The terms universal, or standard, precautions refer to international standards for exposure to and handling of blood and bodily fluids.

¹⁷⁶ Convention on the Rights of the Child, arts. 13, 16.

¹⁷⁷ UN Committee on the Rights of the Child, General Comment No. 3, HIV/AIDS and the rights of the child, U.N. Doc. CRC/GC/2003/3 (2003), paras. 23-24.

interviews with detainees and medical staff at an adult prison revealed serious violations of detainees' rights to privacy, informed consent, and health, and raise questions about practices in other places of detention. Medical staff at the al-Ha'ir prison south of Riyadh told Human Rights Watch that they test all incoming detainees for HIV, hepatitis B, and other diseases. On the day of our visit, a list with the names, nationalities, and wing of 33 HIV-positive detainees was posted on a wall in the prison clinic, easily visible to clinic staff. According to the staff, authorities isolate detainees found to be HIV-positive from other detainees by placing them in a special section of the prison where they do not receive medical treatment for their illness. When Human Rights Watch researchers visited the isolation wing we saw visibly ill detainees held in unhygienic conditions in individual cells; some detainees had soiled themselves and appeared not to have bathed for several weeks.¹⁷⁸

Isolation during investigation

According to the Ministry of Social Affairs, all girls' and young women's welfare institutions contain "a solitary confinement section where girls and young women are placed during investigation."¹⁷⁹ Staff at the Riyadh Girls' and Young Women's Welfare Institution did not show Human Rights Watch researchers this area during our December 2006 visit, and the Minister of Social Affairs did not permit us to interview detainees there or at the Riyadh Social Welfare Home about their experiences. However, anecdotal evidence suggests that this practice may also take place in boys' detention centers. For example, authorities at the Dammam Social Observation Home reportedly kept Ahmad al-Dukkani, the Egyptian boy sentenced to death in 2005 for a murder committed when he was 13 (see above), in solitary confinement for months following his arrest. Al-Dukkani stated in a press interview that he spent the period "crying from fear and loneliness," and was only released after "it became clear to all that I am a gentle person and life goes on."¹⁸⁰

¹⁷⁸ Human Rights Watch interviews with clinic staff (names withheld), al-Hair prison, November 30, 2006.

¹⁷⁹ Ministry of Social Affairs pamphlet no. 15, 2006 (1427), p. 8.

¹⁸⁰ Ibrahim Radwan and Khaled al-Jabali, "Wala's Killer: Regretful, He Wants Amnesty" (Qatil "Wala": Nadim yarju al-'afw), *Al-Yom al-lectroni*(Dammam), August 27, 2005 (22/7/1426), <http://www.alyaum.com/issue/article.php?IN=11761&I=305198> (accessed August 30, 2005).

VIII. Denial of Legal and Other Appropriate Assistance

Saudi Arabian law does not guarantee children accused of crimes free legal assistance, and children can be questioned and tried in the absence of a lawyer or guardian. While Ministry of Social Affairs staff are required to attend interrogations held in juvenile detention centers, when Human Rights Watch visited the Riyadh Social Observation Home these staff members did not appear to provide meaningful assistance in presenting a defense or resisting coercion to give testimony to one boy we observed undergoing questioning or to other boys awaiting questioning in the same room. Government regulations also allow police located far from juvenile detention centers to bring children accused of minor offenses to their offices for questioning. In these cases children have even fewer opportunities for legal assistance and protections against coerced testimony, and no recourse to judicial review of decisions taken by the head of the local law enforcement agency to “resolve” cases (see below).

The Convention on the Rights of the Child guarantees every child deprived of his or her liberty “the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”¹⁸¹ Every child charged with a criminal offense also has the right to “legal or other appropriate assistance in the preparation and presentation of his or her defence,” and any trials should take place “in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child ... his or her parents or legal guardians.”¹⁸²

In its General Comment on children’s rights in juvenile justice, the UN Committee on the Rights of the Child has stressed the importance of the right to legal and other appropriate assistance, noting that “it should be free of charge,” and should “as much as possible” include “adequate trained legal assistance, such as expert

¹⁸¹ Convention on the Rights of the Child, art. 37(d).

¹⁸² Ibid., arts. 40(2)(b)(ii), 40(2)(b)(iii).

lawyers or paralegal professionals.”¹⁸³ Among other things, the Committee drew attention to the centrality of the child’s right not to be compelled to give testimony or to confess guilt, requiring states to provide “independent scrutiny of the methods of interrogation to assure that the evidence is voluntary and not coerced, given the totality of the circumstances,” and requiring judicial bodies to consider “the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives for the child” when considering the voluntariness and reliability of an admission or confession by a child.¹⁸⁴

Interrogations and Trial in Ministry of Social Affairs Facilities

As noted above, Saudi Arabian law specifies that interrogations and trials of children and of women under age 30 should take place inside social observation homes and girls’ and young women’s welfare institutions.¹⁸⁵ According to the Ministry of Justice, a single judge presides over juvenile trials, except in cases in which the potential sentence is death, stoning, or amputation, in which case rulings are made by a panel of three judges. Trials are closed to the public, and a member of the Bureau of Investigation and Public Prosecution does not normally attend.¹⁸⁶

In its November 2004 report to the Committee on the Rights of the Child, Saudi Arabia stated, “The law allows the child to have his or her own defence lawyer.”¹⁸⁷ In fact, a careful reading of Saudi Arabian law makes clear that the right to legal counsel is extremely limited and difficult to invoke. The Law of Criminal Procedure states that persons under investigation or on trial have “the right to seek the assistance of a lawyer or a representative,” but it does not require authorities to inform suspects or persons charged with a criminal offense of their rights, and it

¹⁸³ UN Committee on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice, para. 23(f).

¹⁸⁴ Convention on the Rights of the Child, art. 40(2)(b)(iv); UN Committee on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice, para. 23(h).

¹⁸⁵ For exceptions to this requirement, see the section on “Interrogations in police stations,” below. Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), arts. 3-5; Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), arts. 5-7.

¹⁸⁶ Ministry of Justice, “Juvenile Court.”

¹⁸⁷ Government of Saudi Arabia, Second Periodic Report to the Committee on the Rights of the Child, para 82.

does not provide for free legal assistance for persons who cannot afford it.¹⁸⁸ When Human Rights Watch asked Head of the Supreme Judicial Council Shaikh Salih al-Luhaidan why Saudi Arabia does not provide poor defendants with free legal assistance, he told us, “If the case involves an injury, a murder, a theft, then it does not require an attorney—it requires witnesses, evidence, and the individual to defend himself.”¹⁸⁹

The law requires the criminal investigation officer to take the suspect’s statement immediately after arrest, and, if the suspect does not prove his innocence, to refer him to the prosecution officer who must begin interrogation within 24 hours of arrest.¹⁹⁰ The head of the Bureau for Investigation and Public Prosecution, Shaikh Muhammad Al Abdullah, explained to Human Rights Watch, “The law does not say that we have to wait for a lawyer to show up before we start an interrogation. We will not hold somebody forever.”¹⁹¹

When investigators question children in social observation homes and girls’ and young women’s welfare institutions, regulations require the director or his delegate to attend “so that the interrogation takes place in an atmosphere that makes the [child or young woman] feel reassured and psychologically relaxed.”¹⁹² The regulations do not, however, require the director to provide legal assistance or otherwise advocate on the child’s behalf. Nor do the regulations require the presence of a guardian during the child’s questioning or at trial. According to the director of the Riyadh Social Observation Home, his staff notify guardians as soon as a boy arrives, but many boys are from towns 80 to 200 kilometers away from the home and guardians cannot attend.¹⁹³ A staff member assumes the role of the child’s guardian if the actual guardian does not attend the questioning or trial, he said.

¹⁸⁸ Law of Criminal Procedure, arts. 4, 64, 70. For a more detailed discussion of the Law on Criminal Procedure, see Human Rights Watch, *Precarious Justice*.

¹⁸⁹ Human Rights Watch interview with Salih al-Luhaidan, head of the Supreme Judicial Council, Riyadh, December 19, 2006.

¹⁹⁰ Law of Criminal Procedure, art. 34.

¹⁹¹ Human Rights Watch interview with Chief Prosecutor Shaikh Muhammad Al Abdullah, Riyadh, November 29, 2006.

¹⁹² Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), art. 4; Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), art. 6.

¹⁹³ Human Rights Watch interview with `Ali bin Hassan al-`Ajami, December 2, 2006.

In practice, investigators' conduct of interviews with children inside at least the one social observation home that Human Rights Watch visited did not appear to conform to domestic regulations or to international standards. Ministry of Social Affairs officials did not allow Human Rights Watch to attend trials or speak to detainees in social observation homes or girls' and young women's welfare institutions. However, while visiting the Riyadh Social Observation home we were able to observe from a distance a young boy being questioned and other young boys awaiting questioning in circumstances that the director told us were typical. No lawyers or guardians were present and we saw no one else offering the boys meaningful assistance. The staff member assigned to participate in interrogations sat in a separate room with the door closed, did not interact with the boys, and at best could watch but not hear the interrogations through a window at a distance of several feet.

No interrogations were in progress at the Riyadh Girls' and Young Women's Welfare Institution at the time of Human Rights Watch's visit. However, according to a Ministry of Social Affairs supervisor, lawyers do not routinely attend interrogations or the sessions where judges visit the facility to adjudicate cases.¹⁹⁴ Distance is even more likely to be a barrier to families attending interrogation and trials at social observation homes for girls and young women, because there are only four girls' and young women's welfare institutions for the entire country. In contrast, the Ministry of Social Affairs operates 13 juvenile detention facilities—one in each administrative region—designed exclusively for children, which accept both foreign and Saudi Arabian boys ages 12 to 18, and the Ministry of Interior operates an additional 35 prisons for men and, in some cases, women over 30, spread across all administrative districts.¹⁹⁵

Saudi Arabia's failure to provide children with free, trained legal assistance in preparing and presenting a defense may be especially damaging at the trial stage, where judges routinely act as both adjudicator and prosecutor and can alter the charges at any time.¹⁹⁶ Without such assistance, detained children cannot

¹⁹⁴ Human Rights Watch interview with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

¹⁹⁵ Human Rights Watch interview with 'Ali al-Harithi, General Director of Prisons, Ministry of Interior, Riyadh, December 2, 2006.

¹⁹⁶ The prosecutor's presence is only mandatory in "major crimes." Law of Criminal Procedure, arts. 157, 159, 160. For a detailed discussion of trials, see Human Rights Watch, *Precarious Justice*.

reasonably be expected to bring and cross-examine witnesses, or avoid making self-incriminating statements, for example. A child who is unable to introduce exculpatory evidence at trial faces the additional obstacle when pursuing an appeal because the Law of Criminal Procedure specifies that Appeals Court rulings are based on the evidence included in the file of the case, and defendants only appear before the Appeals Court at its request.¹⁹⁷

Ministry of Social Affairs regulations require that ministry staff provide the juvenile court judge with a detailed social report on each child who comes before him, and that the report include a treatment plan and recommended measures to be taken.¹⁹⁸ Saudi Arabian authorities declined Human Rights Watch's request to attend juvenile court hearings and interview judges, making it difficult to evaluate the quality of these reports and their impact on judicial rulings. The director of the Riyadh Social Observation Home told Human Rights Watch that his staff usually prepares such reports in one day, although they sometimes spend more time on a file if they know that the judge will not come for several days. Social workers at the Riyadh Girls' and Young Women's Welfare Institution have fewer cases and, thus, may spend more time on evaluations.¹⁹⁹

The procedures described above do not adequately ensure every child's right to prompt access to legal and other appropriate assistance during interrogation, trial, and for the preparation and presentation of his or her defense. Ensuring adequate assistance is particularly crucial in death penalty cases and in cases involving younger children and children with lower levels of development, who are at greater risk of being compelled to give testimony or confess guilt. In capital cases lawyers charge particularly high fees. For example, the lawyer in the death penalty case against Muhammad al-Qahs, described in Chapter V, above, requested 500,000 riyal (about \$133,300) in fees to take the appeal, while Sri Lankan officials expect legal

¹⁹⁷ Law of Criminal Procedure, art. 199.

¹⁹⁸ Ministry of Labor and Social Affairs Decree 1354 of August 11, 1975 (3/8/1395), art. 5; Ministry of Labor and Social Affairs Decree 2083 of January 24, 1976 (22/1/1396), art. 7.

¹⁹⁹ According to the director of the Riyadh Girls' and Young Women's Welfare Institution, social workers there handle on average 12 to 15 cases at a time. In contrast, the director of the Riyadh Social Observation Home told Human Rights Watch that he has only eight social workers, which would make each social worker responsible for more than 30 cases. Human Rights Watch interviews with 'Ali bin Hassan al-'Ajami, December 2, 2006; and with Leila al-Daghathir and Salwa Abu Nayan, December 3, 2006.

fees to appeal the death sentence against Rizana Nafeek to reach 3 million riyal (about \$800,000).²⁰⁰ Human Rights Watch fears that this places trained legal assistance out of reach for most defendants, and may force families to forgo a lawyer in order to conserve money for a possible *diya* settlement.

Equally important, few lawyers in Saudi Arabia specialize in criminal law, and even fewer have experience with capital cases involving children. Saudi Arabia has only recently begun to give serious consideration to the role of criminal defense lawyers, including issuing a Code of Law Practice that sets forth rights and duties of the legal profession.²⁰¹ Despite a rising number of legal (including Sharia) consultants, Human Rights Watch does not know of a single professional full-time criminal defense lawyer in Saudi Arabia, nor a single lawyer specializing in cases involving juveniles.

In the case of Ahmad al-Dukkani (also described in Chapter V) the lack of legal assistance during the initial stages of the investigation appears to have contributed to the then-13-year-old's confession to murder and to the court's decision to try him as an adult. In a 2005 interview, al-Dukkani said he confessed to the murder after his third interview with the police, when "my strength dwindled and I lacked the capacity to refuse."²⁰²

Muhammad al-Qahs told Human Rights Watch that he did not know the provisions of Saudi law relevant to claiming self-defense. Al-Qahs told Human Right Watch that police held him for a week in a police station before transferring him to the Abha Social Observation Home. He did not even know that the deceased's family was asking for the death penalty until his initial hearing, several months later, and he did not secure a lawyer until after the Supreme Judicial Council had overturned an Appeals' Court ruling in his favor, more than three years after the killing. That lawyer, based in the distant city of Riyadh, does not appear to have conducted his own

²⁰⁰ Human Rights Watch telephone interview with Muhammad al-Qahs, July 13, 2007; and "SL delegation holds talks with Saudi authorities on Rizana's appeal," Permanent Mission of Sri Lanka to the United Nations in Geneva news release, July 23, 2007, <http://www.lankamission.org/other%20pages/News/2007/July/2007-07-23Nafeek.htm> (accessed July 24, 2007).

²⁰¹ Code of Law Practice, Royal Decree no. M/38 of October 15, 2001 (28/7/1422), *Umm al-Qura*, No. 3867, November 2, 2001 (17/8/1422).

²⁰² Radwan and al-Jabali, "Wala's Killer: Regretful, He Wants Amnesty," *al-Yom al-Illectroni*.

investigation, and according to al-Qahs “did not do anything” despite having requested 500,000 riyal payment for his services.”²⁰³

Even when children do have a lawyer’s or guardian’s assistance, it is not clear what advice, if any, that person can provide during an ongoing interrogation. According to the Law on Criminal Procedure, “The representative or attorney shall not intervene in the investigation except with the permission of the investigator. In all cases, the representative or attorney may deliver to the investigator a written memorandum of his comments, and the investigator shall attach that memorandum to the file of the case.”²⁰⁴ Nor is it clear what weight judges give to a lawyer’s memorandum: as noted earlier, the head of Saudi Arabia’s highest judicial body, which also reviews all death sentences, has stated that he does not believe that a lawyer is necessary in murder cases.

Interrogations outside of Ministry of Social Affairs Facilities

Saudi Arabian regulations allow police to question children in police stations if there is no social observation home or girls’ or young women’s institution in the vicinity.²⁰⁵ These regulations appear to be intended to facilitate the quick resolution of children’s cases, without the need to transport the children to a distant institution or to hold them in a facility with adults. Nevertheless, they also open the possibility to other forms of abuse by giving law enforcement officials discretion to “resolve” cases without specifying what such resolutions may entail and without any apparent mechanism for appeal, and by failing to guarantee the child the assistance of someone whose primary concern is the child’s best interests. Human Rights Watch is particularly concerned about the prominent role draft legislation updating these regulations gives to the Commission for the Promotion of Virtue and Prevention of

²⁰³ Human Rights Watch telephone interviews with Muhammad al-Qahs, December 14, 2006 and July 13, 2007.

²⁰⁴ Law of Criminal Procedure, art. 70.

²⁰⁵ Council of Ministers regulations issued in May 2000 authorized police to interrogate children and young women in police stations if the arrest took place more than 150 kilometers from the nearest social observation home or girls’ and young women’s welfare institution, but specified that the order would expire five years after it was issued. The Shura Council debated draft regulations on the same subject in October 2006 (9/1427), which applied to law enforcement agencies in areas where there is not a social observation home or girls’ and young women’s welfare institution within 70 kilometers. See footnote 24 above, for a list of entities authorized to conduct arrests and investigations. Council of Ministers Decree 25 of 1/26/1421 (May 1, 2000); President of the Diwan of the Presidency of the Council of Ministers to the Minister of Interior, No. 3025/r, 2/18/1421 (May 23, 2000); “Prohibition on Stopping Juveniles and Girls and Young Women in Prisons and [Order for] Their Transfer to Observation Homes,” *al-Madina*.

Vice in determining children’s criminal responsibility, given the many documented complaints against Commission members for abuses (see above).

A Council of Ministers Decree issued in 2000 authorizes chiefs of local police stations located more than 150 kilometers from the nearest juvenile detention center to personally “resolve” “minor cases” and certain cases not requiring investigation if they are committed by girls and women under 30 years old and boys ages seven to 18.²⁰⁶ The decree does not specify what constitutes a minor case or what constitutes an acceptable resolution to such cases. If the police chief cannot resolve the case, the decree authorizes him to conduct an investigation and order the suspect’s release on bail if there is not sufficient evidence to bring charges, or to transfer the suspect to a judge if there is.²⁰⁷ The investigation must take place in the presence of a representative of the local Ministry of Social Affairs branch, or if there is no local branch, in the presence of a member of the Commission to Promote Virtue and Prevent Vice.²⁰⁸ The decree requires the suspect’s guardian be present if the case is being resolved without a formal interrogation, but does not require this if an interrogation does take place.

In October 2006 the Shura Council’s Social Affairs Committee recommended a new decree making a number of changes in the provisions of the earlier decree. The new decree would apply to girls and young women under 30 and boys ages 12 to 18 and to areas 70 kilometers or more from the nearest social observation home or girls’ or young women’s welfare institution. Unlike the earlier decree, which only applied to police chiefs, the new decree would apply to all law enforcement agencies, and would require the presence of the suspect’s guardian during interrogation, unless the head of the law enforcement agency decided otherwise.²⁰⁹

²⁰⁶ “Major cases,” including murder; rape; kidnapping; drugs and alcohol; thefts involving breaking and entering, weapons, or forming a gang; fights and gunfire that result in serious injuries; and cases of impersonating a law enforcement officer all require the suspect’s immediate transfer to a Social Observation Home or Girls’ and Young Women’s Welfare Institution. Council of Ministers Decree 25 of 1/26/1421 (May 1, 2000), art. 1(5).

²⁰⁷ Council of Ministers Decree 25 of 1/26/1421 (May 1, 2000), art. 1(2), 1(3).

²⁰⁸ *Ibid.*, art. 1(2).

²⁰⁹ For the proposed text of the new decree, see “Prohibition on Stopping Juveniles and Girls and Young Women in Prisons and [Order for] Their Transfer to Observation Homes,” *al-Madina*. For a list of the 20 types of entities authorized to conduct arrests and investigations, see footnote 24, above.

If passed, the requirement that a guardian attend interrogations could provide some greater protections for children and young women living far from Ministry of Social Affairs detention centers. However the amendments do not address the underlying problem that children suspected of criminal offenses do not have a right of access to adequate legal assistance in preparing and presenting a defense. In addition, girls are more likely to find themselves questioned in police stations or other law enforcement agencies rather than welfare institutions because they are more likely to live far away from a welfare institution (as there are only four in the entire country) and, if the pattern in Riyadh holds in other areas, are also more likely to be charged with minor offenses, including mixing and seclusion. Human Rights Watch was unable to interview police who had participated in questioning of children in their police stations. However, indications from similar research elsewhere give cause for concern. One factor for concern is that local law enforcement authorities in general and Commission for the Promotion of Virtue and Prevention of Vice in particular are more likely to lack specialized training in children's rights and child development that would help them overcome societal prejudices that limit children and women's autonomy and emphasize the interests of the family and the community over the best interests of the child.²¹⁰

²¹⁰ For example, Human Rights Watch has documented a pattern of abuses stemming from "mediation" by Palestinian local police, governors, and clan leaders, whose interventions in cases of rape or incest frequently aim to avoid public scandal rather than to protect victims and prosecute abusers. See "Failings in Institutional Responses to Violence against Women and Girls" in Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, vol. 18, no. 7(e), November 2006, http://hrw.org/reports/2006/opt1106/6.htm#_Toc148851346.

IX. Conditions for Foreign Children in Need of Protection

Saudi Arabia routinely arrests and deports hundreds of thousands of foreigners found begging or otherwise violating the terms of their visas.²¹¹ Among these are children trafficked for begging, children engaged in forced labor, and children who are dependents of adults facing deportation. According to UNICEF, in 2006 Saudi Arabian officials estimated that 24,000 children trafficked from 18 countries are involved in street selling and begging in Saudi Arabia;²¹² a 2004 study on child trafficking in Yemen estimated that Saudi Arabia deported 10,000 children to Yemen in the first quarter of that year.²¹³ More recently, the Ministry of Social Affairs recorded 7,450 arrests of children for begging in the Hijri year 1427 (roughly coinciding with 2006), and 5,179 in 1428 (roughly coinciding with 2007).²¹⁴

Several factors contribute to the large number of foreign children trafficked for begging and other exploitation. Saudi Arabia is home to important religious sites that make it a destination for millions of foreign Muslims during the annual *hajj* and

²¹¹ In 2002 a Ministry of Interior official reported that the country deported 700,000 foreigners annually. Since then the government has increased restrictions on *hajj* and *umrah* visas but it continues to deport large numbers of persons for overstaying their visas. Human Rights Watch, *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, vol. 16, no. 5(e), July 2004, <http://hrw.org/reports/2004/saudio704/index.htm>; Siraj Wahab, "Indian Overstayers Clog Deportation System," *Arab News*, June 6, 2006, <http://arabnews.com/?page=1§ion=o&article=97133&d=6&m=6&y=2007> (accessed July 9, 2007). Some violations of immigration regulations are also punished by fines and/or imprisonment. For a list of penalties for visa and residency regulations, see Ministry of Interior, "Iqama System Violations and Penalties," http://www.moi.gov.sa/wps/portal/!ut/p/kcxml/o4_Sj9SPykssyoxPLMnMzovMoY_QjzKLN4g3MjACsUGYhvqRaGLGphhCjgiRcPoohClRCFOi4JqjYHqC9L31fT3yc1P1A_QLckNDIwwyPXUdHRUBnoOp_w!/_delta/base64xml/L0lDUoIKQ1RPN29na21B1SEvboVvUUFBSVFnakZJQUFRaENFSVFqRoVBLzRKRmlDbzBlaDFpY29uUVZHaGQtcoIRIS83XzBfTDVKLzlo?WCM_PORTLET=PC_7_o_L5j_WCM_M&WCM_GLOBAL_CONTEXT=/wps/wcm/connect/MOI+Home+Content/Home/MOI+Info/Iqama+System+Violations+%26+Penalties/ (accessed July 9, 2007).

²¹² "Saudi Arabia and Yemen Meet to Tackle Trafficking of Thousands of Yemeni Children," UNICEF press release, June 7, 2006.

²¹³ Yemeni Center for Social Studies and Labor, "Rapid Assessment of Child Trafficking in Yemen: Case Study of Hajja and Al-Mahweet Governorates" Sana'a, 2004, cited in World Bank, "Republic of Yemen Country Social Analysis," Report no. 34008-YE, January 11, 2006, <http://siteresources.worldbank.org/EXTSOCIALDEV/Resources/3177394-1168615404141/YemenCountrySocialAnalysis.pdf>, (accessed July 9, 2007), p. 19. According to the secretary general of Yemen's Higher Council of Motherhood and Childhood, the number of individual children returned to Yemen was significantly lower than the number of repatriations, as some deported children returned to Saudi Arabia and were deported again "seven or eight times." Human Rights Watch interview with Nafisa Al-Jaifi, secretary general, Yemen's Higher Council of Motherhood and Childhood, Cairo, March 3, 2008.

²¹⁴ Human Rights Watch interview with Adel Farahat and Yusif Siyali, March 9, 2008. The total number of arrests of beggars of all ages in 1426 (roughly, February 2005 through January 2006) is reported to be 30,088, including 24,771 foreigners, and represents a 70 percent increase from the previous year. "30,000 Arrested, 82 Percent of Them Non-Saudi: The Number of Beggars Arrested in Various Areas Doubles" ("Dhabt 30 alfān 82% minhum ghayr sa`udiyyin:Tada`uf `adad al-mutasawwilin al-maqbul `alayhim fi mukhtalaf al-manatiq") *al-Watan*, July 3, 2007 (24/6/1428), <http://www.alwatan.com.sa/news/newsdetail.asp?issueno=2474&id=12362> (accessed July 9, 2007).

`umrah seasons.²¹⁵ Traffickers take advantage of easier visa requirements and a heightened ethos of charitable giving during *hajj* and `umrah seasons to bring foreign children to Saudi Arabia during these periods, when UNICEF estimates a child beggar can earn the equivalent of US\$250 or more per day.²¹⁶ Some migrant workers also use *hajj* or `umrah visas to bring to Saudi Arabia wives and children who would not otherwise qualify for visas.²¹⁷ These dependents lose their legal status when their visas expire, and children born to a parent lacking legal residency are not eligible for birth registration.²¹⁸ Children who lack legal residency cannot be registered in public or private schools or access public health services, encouraging some families to employ them as beggars or “rent” them to others to use in begging.²¹⁹ As a consequence, these children in their turn are at risk of recruitment by organized trafficking networks for use in begging, commercial sexual exploitation, or other labor exploitation.

Saudi Arabia has not issued comprehensive criminal anti-trafficking legislation, nor created formal screening mechanisms to identify victims of forced labor and trafficking and refer them to appropriate protective services.²²⁰ The Labor Law does ban employment of persons under age 15 in hazardous labor, and calls on employers

²¹⁵ The *hajj*, or greater pilgrimage to holy sites in Mekkah, takes place once a year, and Muslims who are physically and financially able are expected to perform the *hajj* at least once in their lifetime. The `umrah, or lesser pilgrimage to holy sites in Mekkah, can be performed any time during the year, but is often combined with the *hajj*. More than 2.3 million people performed the *hajj* rituals in December 2006, the vast majority of them non-Saudis. “More Than 2.3 Million People Perform the Hajj,” Ministry of Hajj news release, December 30, 2006, <http://www.hajinformation.com/main/y1245.htm> (accessed September 26, 2007).

²¹⁶ While entry of foreign children is tightly controlled during other times of the year, children can enter on free *hajj* and `umrah visas when accompanied by a male relative. Pilgrims do not pay for visas, but are required to pay fees for certain services. Children under age 15 pay a reduced amount, and children under age seven are exempt from these fees. For information on visa requirements, see Ministry of Hajj, “Umrah Visas and Hajj Visas,” <http://www.hajinformation.com/main/t15.htm> (accessed September 26, 2007); UNICEF Gulf Area Office, “Trafficking in children and child involvement in beggary in Saudi Arabia,” undated, http://www.unicef.org/gao/resources_publications_childtrafficking_dr_ushari.pdf (accessed September 22, 2007).

²¹⁷ For a discussion of Saudi Arabia’s migrant labor visa system, see Human Rights Watch, *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*.

²¹⁸ UNICEF Gulf Area Office, “Trafficking in children and child involvement in beggary in Saudi Arabia.”

²¹⁹ Ibid.

²²⁰ For example, a July 2004 Ministry of Labor decree prohibits “forms of trafficking in persons such as selling work permits; receiving compensation for employing the worker; receiving payments from a worker for an entry permit, exit and reentry permit, and residency permit; failure to fulfill contractual obligations; inhumane use and treatment, and immoral treatment; employment and exploitation of children and bringing them [to Saudi Arabia] for the purposes of begging,” but only punishes employers who violate these provisions by limiting their future ability to apply for work permits for employees. Ministry of Labor Decree 1/783 of 16/5/1425 (July 4, 2004), arts. 1-3.

to “refrain from using the worker without pay,” but it imposes only relatively light penalties on employers who violate these provisions.²²¹ Prosecutions of traffickers or other individuals exploiting foreign children remain rare.²²² Despite the government’s recent creation of a few centers for foreign children who are victims of trafficking and exploitation, it still detains these children in closed facilities that offer few support services, and in many cases repatriates these children to situations where they are at risk of abuse. Equally disturbing, a March 2007 Council of Ministers decree orders authorities to take legal action against non-Saudi beggars and authorizes undefined “status determinations” of child beggars within 24 hours of arrest (see below). Such actions appear to be speeding up deportations, thereby increasing the risk that the government will repatriate children without ensuring that repatriation is in the individual child’s best interests.

The Convention on the Rights of the Child guarantees all children in Saudi Arabia the rights under the convention without discrimination on the basis of national origin or status.²²³ Among these are the right to birth registration and education, and the right to protection from sexual exploitation, economic exploitation, and trafficking.²²⁴ States must take “all appropriate measures” to promote the physical and psychological recovery and social reintegration of a child victim of neglect, exploitation, abuse, torture, or any other form of cruel, inhuman, or degrading treatment or punishment, or armed conflicts, and must provide special protection and assistance to any child “temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment.”²²⁵

The most widely accepted definition of child trafficking is that of the Trafficking Protocol of the Convention against Transnational Organized Crime, which defines

²²¹ Labor Law, Royal Decree no. m/51, September 26, 2005, arts. 61, 161, 229-242.

²²² For example, according to the 2007 US Department of State Report on Trafficking in Persons, in 2006 the Saudi Arabian government “reported no criminal investigations, prosecutions, convictions or sentences for trafficking offenses, despite reports of widespread abuse of foreign workers and anecdotal evidence of trafficking for commercial sexual exploitation.” US Department of State, “Trafficking in Persons Report 2007,” <http://www.state.gov/g/tip/rls/tiprpt/2007/82807.htm> (accessed July 24, 2007).

²²³ Convention on the Rights of the Child, art. 2.

²²⁴ Ibid., arts. 7, 28, 32, 34, 35.

²²⁵ Ibid., arts. 39, 20(1).

child trafficking as the recruitment, transportation, transfer, harboring, or receipt of a child for the purposes of sexual or labor exploitation, forced labor, or slavery.²²⁶ Saudi Arabia is a state party to the Trafficking Protocol and has acceded also to the Convention on the Worst Forms of Child Labour, which requires states to take urgent action to prohibit and eliminate child trafficking and forced labor, including forced or compulsory recruitment of children for use in armed conflict.²²⁷

The Role of Ministry of Social Affairs Offices for Combating Begging

The Ministry of Social Affairs operates eight Offices for Combating Begging (*makatib mukafahat al-tasawwu*) that work in coordination with law enforcement and other government agencies to combat begging.²²⁸ In most instances the ministry refers Saudi Arabian nationals found begging to social services, while non-nationals who lack legal residence are referred to immigration authorities for deportation, a process that usually takes a few days to a few weeks.²²⁹ Migrant children with legal residency who are arrested alone for begging pay a fine and are released to their families after the first two arrests but are deported if arrested a third time; children without residency are detained pending deportation (see below).²³⁰

A March 2007 Council of Ministers decree authorizes “field committees” made up of Offices for Combating Begging, the police, the General Directorate of Passports, and the Commission to Promote Virtue and Prevent Vice to conduct arrests of beggars at the request of the Ministry of Social Affairs, and at least one such committee was functioning by May 2007.²³¹ The decree also orders the Ministry of Social Affairs to

²²⁶ Exploitation includes “at a minimum, the exploitation of or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” Where children, as opposed to adults, are concerned, trafficking can exist in the absence of coercion, abduction, fraud, or deception. Trafficking Protocol, art. 3.

²²⁷ Worst Forms of Child Labour Convention, art. 3.

²²⁸ The offices are in Riyadh, Mekkah, Medina, Jeddah, Buraydah, Dammam, Abha, and Taif. Ministry of Social Affairs, “Combating Begging,” <http://www.mosa.gov.sa/portal/cdisplay.php?cid=14> (accessed September 26, 2007); Ministry of Social Affairs, “Offices for Combating Begging,” <http://www.mosa.gov.sa/portal/cdisplay.php?cid=40> (accessed September 26, 2007).

²²⁹ UNICEF Gulf Area Office, “Trafficking in children and child involvement in beggary in Saudi Arabia.”

²³⁰ Ibid; and Human Rights Watch interview with Adel Farahat and Yusif Siyali, March 9, 2008.

²³¹ Ahmad al-Salmi, “New Regulaton for Combating Begging in Jeddah” (Tanthim Jadid li-mukafahat al-tasawwul bi-Jeddah), *Okaz*, May 27, 2007, <http://www.okaz.com.sa/okaz/osf/20070527/Con20070527113706.htm?kw=> (accessed September 27, 2007).

conduct undefined “status determinations” of child beggars within 24 hours of arrest and to “transfer all non-Saudi beggars to the General Directorate of Passports for legal proceedings against them.”²³² In March 2008 Ministry of Social Affairs officials told Human Rights Watch that the government was still finalizing its new strategy for combating begging, and that a coordinating committee working on finalizing a repatriation agreement between Saudi Arabia and Yemen had not met since the previous Ramadan (roughly September 2007).²³³

Inadequate Procedures for Determining Children’s Best Interests during Deportation Proceedings

In 2003 Saudi Arabia began working with nongovernmental organizations (NGOs) to create residential centers for children pending deportation to their countries of origin.²³⁴ Three such centers now exist: one in Jeddah, one in Mekkah, and one in Riyadh.²³⁵ According to UNICEF, “The role of the center is understood as ‘tasallum wa tasliim’ – that is, receiving the children from immigration [authorities] and, after providing interim care, delivering them to immigration officials for deportation to their countries of origin.”²³⁶ The director of the Ministry of Social Affairs’ Administration for Combating Begging reiterated this view, saying “We don’t have any responsibility to trace children’s families. That is the responsibility of the country of origin. Our responsibility is to return children.”²³⁷ While the centers appear to offer a higher standard of care than that previously offered to child migrants, Human Rights Watch is concerned that these programs discriminate against older children

²³² The Council of Ministers decree creates an inter-governmental committee housed within the Ministry of Social Affairs to formulate a national plan to combat begging, and authorizes the Ministry of Social Affairs to request the arrest of beggars. Once arrested, all beggars who are Saudi Arabian nationals, disabled, or children are to be transferred to the Ministry of Social Affairs for status determination, which must be carried out within 24 hours, and non-Saudi Arabian nationals are to be transferred to the General Directorate of Passports for legal action. “Chaired By the Custodian of the Two Holy Mosques, the Cabinet of Ministers Approves Laying Down National Anti Begging Plan” (Majlis al-wuzara’ biri’asat khadim al-haramain al-sharafain yaqur i`dad khutta wataniyya limuraja`at al-tasawul), *al-Yaum al-liktroni*, March 27, 2007 (8/3/1428), <http://www.alyaum.com/issue/article.php?IN=12338&I=476104&G=1> (accessed March 30, 2007).

²³³ Human Rights Watch interview with Adel Farahat and Yusif Siyali, March 9, 2008.

²³⁴ For example, the Birr Association opened its Jeddah Residential Center for Child Beggars in October 2003 with assistance from Prince ‘Abd al-Majid ‘Abd al-‘Aziz. The Birr Association, “Annual Report 1426,” p. 20.

²³⁵ Human Rights Watch interview with Yusif Siyali, March 9, 2008.

²³⁶ UNICEF Gulf Area Office, “Trafficking in children and child involvement in beggary in Saudi Arabia.”

²³⁷ Human Rights Watch interview with Yusif Siyali, March 9, 2008.

and married or widowed girls by excluding them from services, and that procedures currently in place are inadequate to evaluate individual children's needs or ensure that repatriation is in the child's best interests.

Human Rights Watch visited one of these centers, the Ministry of Social Affairs' Jeddah Residential Center for Child Beggars, in December 2006. The Birr Association, an NGO, administers the facility. According to the association's supervisor for boys' residences, the center receives 1,500 to 2,000 foreign children each year and at peak periods houses as many as 150 children. Authorities detain the children until they are deported or returned to relatives, a process that normally takes "10 to 15 days." During this period children receive a medical examination, a change of clothes, and some basic health care.²³⁸ Approximately 30 percent of the children are girls.²³⁹

Most of the children at the Jeddah Residential Center have been arrested for begging by the General Directorate of Passports or other law enforcement officers. However, among the children present on the day of our visit was an Indonesian infant who appeared to be less than one year old and whose father was detained in the adult deportation center, and a young Yemeni girl whose mother was detained in the women's prison on criminal charges.²⁴⁰ Most of the 31 children at the Jeddah center on the day of our visit appeared to be under age 12, and several appeared to be under six. According to staff at the center, many of the children are victims of trafficking by criminal gangs or their own families, sometimes multiple times.²⁴¹

²³⁸ The center has a small clinic staffed part time that provides treatment for cuts and skin diseases, allergic asthma, dehydration, and conditions caused by malnutrition. The center does not provide major medical care or rehabilitative care, although a number of the children it receives suffer from serious congenital defects, severe burns, polio, and other conditions that would benefit from specialized care. Human Rights Watch interview with Majdi `Abd al-Hamid, general supervisor for boys' residences, the Birr Association, Jeddah, December 10, 2006; Human Rights Watch interview with clinic doctor (name withheld), December 10, 2006.

²³⁹ Human Rights Watch interview with Majdi `Abd al-Hamid, December 10, 2006.

²⁴⁰ Adult prisons and detention centers are gender segregated, but Saudi Arabian law allows female prisoners to keep their children with them until the child turns two. Imprisonment and Detention Law 1978, art. 15.

²⁴¹ Human Rights Watch interview with Majdi `Abd al-Hamid, December 10, 2006.

Staff at the Jeddah Residential Center told Human Rights Watch that recently the center had put in place new procedures with assistance from UNICEF to individually evaluate each child's situation and facilitate repatriation.²⁴²

The Committee on the Rights of the Child considers that any assessment process must include a “best interests” determination “in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life.” Such a determination requires “a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs,” and should be carried out “in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.” In addition, states should only refer children to asylum or other procedures after first appointing a competent guardian, and should provide children with a legal representative in addition to a guardian if they refer children to asylum procedures or other administrative or judicial proceedings.²⁴³

According to a social worker at the Jeddah Center for Child Beggars, Saudi Arabian authorities process and deport most children quite quickly, usually within five days. Although the social worker told Human Rights Watch that she is able to gain the child’s trust sufficiently to evaluate his or her individual situation, determine the country and city of origin, identify the child’s guardian or contact consular officials from the country of origin if she is unable to determine the guardian, and arrange for repatriation to the guardian in the country of origin,²⁴⁴ five days seems a relatively short period in which to be able to effectively accomplish these tasks.²⁴⁵ Social

²⁴² According to UNICEF, a consultant trained social workers to provide children with proper food, “psycho sessions,” and to prepare a file for each child documenting routine health checks and other identification records, in consultation with the embassies of the children’s countries of origin, and children were repatriated with a copy of this file. Human Rights Watch interview with Esmaeil El-Azhari Ibrahim, program officer, UNICEF Gulf Area Office, Riyadh, December 13, 2006, and email communication from Esmaeil El-Azhari Ibrahim to Human Rights Watch, August 5, 2007.

²⁴³ See UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside of their country of origin, UN Doc. CRC/GC/2005/6 (2005), paras. 19-21, 31-38.

²⁴⁴ Human Rights Watch interview with a psychiatric social expert (name withheld), Jeddah Residential Center for Child Beggars, Jeddah, December 6, 2006.

²⁴⁵ For example, the UN High Commissioner for Refugees (UNHCR) “Guidelines for Formal Determination of the Best Interests of the Child” recommends a multistage process in which an individual welfare specialist conducts multiple interviews with the child and persons with knowledge of the child’s circumstances, verifies information on the child, and reviews background information about the location in question. The specialist then presents this information to a best interest determination

workers must handle multiple cases simultaneously, and their caseloads rise dramatically during the *hajj* and *‘umrah* seasons, when arrests of beggars peak. It is often difficult to obtain detailed information from young children, who tend to have short attention spans and may lack basic information regarding their parents’ names, addresses, phone numbers, or even nationalities. Children who are victims of trafficking or other forms of exploitation and abuse may not wish to reveal this information if doing so would put them or their loved ones in danger. Decisions to return a child to his or her country of origin are further complicated when the child’s family is implicated in his or her trafficking. These difficulties can be compounded when the country of origin has weak social services and poor communications infrastructure. Such conditions would appear to apply in many of the children’s countries of origin, which according to center staff typically include Afghanistan, Burkina Faso, Chad, Somalia, Sudan, Mali, Niger, Nigeria, and Yemen.²⁴⁶

Ministry of Social Affairs officials cited even shorter average periods between arrest and deportation, saying that most deportations took place “within three to four days.”²⁴⁷

According to UNICEF, the Birr Association allows foreign consular staff “continual unhindered access to the children in the Center.”²⁴⁸ Foreign nationals should have timely access to their consular officials if they wish, and some consulates provide their nationals with important services such as legal representation, translation, and shelter.²⁴⁹ However, embassies and consulates should not be children’s primary

panel, which should also record the reasoning for the determination and any relevant issues raised during the discussion. UNHCR, “Guidelines for Formal Determination of the Best Interests of the Child (Provisional Release May 2006),” <http://www.crin.org/docs/UNHCR%20best%20interests%20determination.pdf> (accessed June 19, 2007).

²⁴⁶ Human Rights Watch interviews with Majdi ‘Abd al-Hamid, and a psychiatric social expert, Jeddah Residential Center for Child Beggars, December 6, 2006.

²⁴⁷ Human Rights Watch interview with Yusif Siyali, March 9, 2008.

²⁴⁸ According to UNICEF, this contact is desirable because “when [the consuls] visit the Center, the children talk to them in the language that the Center staff do not understand” and so it “constitutes yet another deterrent force against the existence of patterns or systems of abuse” in the center because center staff know that children can report abuse to consular officials. UNICEF Gulf Area Office, “Trafficking in children and child involvement in beggary in Saudi Arabia.”

²⁴⁹ For example, migrant women from the Philippines, Indonesia, Sri Lanka, and India in Saudi Arabia awaiting repatriation consistently told Human Rights Watch that access to consular officials was crucially important, and that even when inadequate and delayed, the services provided by their consulates were typically much better than those supplied by Saudi authorities. For more information on conditions for migrant women working in Saudi Arabia, see Human Rights Watch’s forthcoming report on migrant domestic workers.

avenue for making complaints about abuses, nor their only source for translation services. Consular officials may have multiple reasons for prioritizing maintaining good relations with the host country over ensuring that repatriation decisions reflect an individual child’s best interests, particularly in a country like Saudi Arabia that is a major source of remittances for many countries of origin.²⁵⁰ In addition, unsupervised contact with consular officials may harm children who have asylum claims by allowing those officials to collect information that could endanger the children or their families in the country of origin. Ministry of Social Affairs officials should supervise or limit consular officials’ access to asylum-seeking children and to those who do not wish to speak to consular officials from their own countries for any other reason.

Return to Real Risk of Irreparable Harm

The Committee on the Rights of the Child has repeatedly emphasized that “States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child ... either in the country to which removal is to be effected or in any country to which the child may subsequently be removed.”²⁵¹ Some of the factors the Committee identifies as presenting a real risk of irreparable harm are underage recruitment and participation in hostilities, cruel, inhuman and degrading treatment or punishment, and violations of the right to life, survival, and development.²⁵² In particular, it concludes that “States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties.”²⁵³

²⁵⁰ Saudi Arabia is the second largest source of remittances globally. International Monetary Fund, “Sending Money Home: Trends in Migrant Remittances,” *Finance and Development*, vol. 42, no. 4, December 2005, <http://www.imf.org/external/pubs/ft/fandd/2005/12/picture.htm> (accessed October 4, 2007).

²⁵¹ UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside of their country of origin, para. 27.

²⁵² Ibid.

²⁵³ Ibid., para. 28.

According to staff at the Jeddah Residential Center for Child Beggars, Saudi Arabian authorities deport children to countries where they are at risk of recruitment as child soldiers and trafficking. Staff told Human Rights Watch that authorities had repatriated a number of children who were nationals of Afghanistan, Chad, Nigeria, Somalia, Sudan, and Yemen. In Afghanistan, Chad, Somalia, and Sudan, government armies, paramilitaries, or opposition groups recruit and use child soldiers, exposing children returned to those countries to a real risk of underage recruitment.²⁵⁴ In addition, girls may be at special risk of harm when repatriated to Afghanistan, where insecurity and targeted attacks on schools disproportionately affect girls' right to education;²⁵⁵ Somalia, where high levels of violence and insecurity and a lack of access to basic services has led UNHCR to call on states to refrain from forced returns to southern and central Somalia and to limit returns to northern Somalia;²⁵⁶ Sudan, where UNCHR reports that rapes and assaults occur daily against women and girls collecting firewood and grass in Darfur;²⁵⁷ and Nigeria and Yemen, where girls are at special risk of trafficking internally and abroad for sexual exploitation.²⁵⁸

²⁵⁴ For further information on the use of child soldiers in Afghanistan, Chad, Somalia, and Sudan, see the Coalition to Stop the Use of Child Soldiers, <http://www.child-soldiers.org/> (accessed June 19, 2007); Human Rights Watch, *Chad – Early to War: Child Soldiers in the Chad Conflict*, vol. 19, no. 9(a), July 2007, <http://hrw.org/reports/2007/chado707/>; and Human Rights Watch, *Sudan – “If We Return, We Will Be Killed”: Consolidation of Ethnic Cleansing in Darfur, Sudan*, November 2004, <http://hrw.org/backgrounder/africa/darfur1104/index.htm>. In addition, in May 2006 UNHCR included unaccompanied children among the extremely vulnerable groups that should not be repatriated to Afghanistan, saying that it “strongly advises that, at least temporarily, solutions be identified in countries of asylum and that exemptions to obligations to return are made on humanitarian grounds.” UNHCR, “Humanitarian Consideration With Regard to Return to Afghanistan, May 2006,” <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4561c4094> (accessed July 31, 2007). In November 2005, citing high levels of violence and insecurity and a lack of access to basic services, UNHCR called upon states “to refrain from any forced returns to southern and central Somalia until further notice,” and to avoid “large-scale involuntary returns” to northern Somalia, adding that “[p]ersons not originating from northern Somalia should not be forcibly returned there.” UNHCR, “UNHCR Advisory on the Return of Somali Nationals to Somalia, 2 November 2005,” <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=437082c04> (accessed July 31, 2007).

²⁵⁵ See Human Rights Watch, *Afghanistan—Lessons in Terror: Attacks on Education in Afghanistan*, vol. 18, no. 6(C), July 2006, <http://www.hrw.org/reports/2006/afghanistan0706/index.htm>. UNHCR includes unaccompanied children among the extremely vulnerable groups that should not be returned to Afghanistan, and “strongly advises that, at least temporarily, solutions be identified in countries of asylum and that exemptions to obligations to return are made on humanitarian grounds.” UNHCR, “Humanitarian Consideration With Regard to Return to Afghanistan, May 2006,” <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4561c4094> (accessed July 31, 2007).

²⁵⁶ UNHCR, “UNHCR Advisory on the Return of Somali Nationals to Somalia, 2 November 2005,” <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=437082c04> (accessed July 31, 2007).

²⁵⁷ Citing the high levels of insecurity, UNHCR calls on states to refrain from forcible returns of non-Arab Sudanese to Darfur until there is a significant improvement in the security situation. See UNHCR, “UNHCR’s Position on Sudanese Asylum-Seekers From Darfur, 10 February 2006,” <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=43f5dea84> (accessed November 8, 2007); UNHCR, “Statement by Erika Feller, Assistant High Commissioner for Protection, UNHCR, at the 4th Special Session of the Human Rights Council on the Human Rights Situation in Darfur, 12 December 2006,” (<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45a78da02> (accessed 8 November 2007).

²⁵⁸ See US Department of State, “Trafficking in Persons Report 2007.”

Saudi Arabian authorities also deported trafficked children even when they had clear evidence that the children were at risk of being re-trafficked. The UN Committee on the Rights of the Child has stated,

Children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken. States should consider complementary forms of protection for trafficked children when return is not in their best interests.²⁵⁹

A social worker at the Jeddah Residential Center described two cases involving young children repeatedly deported and retrafficked. The first involved a group of Yemeni brothers “who have come back and been deported five times [in less than a year].”

In the second case, she told us,

We had a nine-year-old Yemeni girl of divorced parents. The mother beats her, brings her [to Saudi Arabia] to beg, she doesn’t want her. I told the girl to ask them to put her in the shelter in Yemen but her family knows when she is deported—her 17-year-old brother watches her from Saudi Arabia and they wait for her at the airport. Once her grandmother even went to take her out of the residential center [in Yemen]! I’ve seen her four times at our center: once with her little brother, once with her little sister. She doesn’t try to flee the police because she prefers to be here.²⁶⁰

A Ministry of Social Affairs official acknowledged that retrafficking of Yemeni children was common, citing cases of “children who are deported and return [to Saudi Arabia]

²⁵⁹ UN Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside of their country of origin, para. 53.

²⁶⁰ Human Rights Watch interview with a psychiatric social expert, Jeddah Residential Center for Child Beggars, Jeddah, December 6, 2006.

within three days,” but attributed the problem to Yemen’s low levels of birth registration, and cultural attitudes.²⁶¹

Detention in Adult Deportation Facilities

Saudi Arabian authorities also detain children in adult deportation facilities, where conditions are reported to be extremely poor.²⁶² Detention with unrelated adults also puts children at increased risk of violence and exploitation from adult detainees. The Convention on the Rights of the Child requires that “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.”²⁶³

Saudi Arabian officials have not responded to Human Rights Watch’s request for clarification of its policies governing when they detain foreign children in adult deportation facilities. Ministry of Social Affairs officials in March 2008 instead variously described a process where all children arrested for begging would be placed in special sections in social observation homes, or all placed in one of three nongovernmental centers for child beggars under age 12, or placed in one of the nongovernmental centers if under age 12 and in a social observation home if 12 or over.²⁶⁴ The apparent lack of facilities for girls over age 12 was explained by saying that “very few girls are detained for begging because they all have a guardian in Saudi Arabia and so are released the first two times they are arrested if they have legal residence or are deported immediately if they don’t.”²⁶⁵ Human Rights Watch’s research on conditions in social observation homes, discussed above, suggests that it is highly unlikely that these facilities have the space to accommodate large numbers of boys arrested for begging and to separate them from criminal suspects and convicted children.

²⁶¹ Human Rights Watch interview with Adel Farahat, March 9, 2008.

²⁶² Human Rights Watch interview with National Society for Human Rights staff, Mekkah Branch, Jeddah, December 9, 2006.

²⁶³ Convention on the Rights of the Child, art. 37(c).

²⁶⁴ Human Rights Watch interview with Adel Farahat and Yusif Siyali, March 9, 2008.

²⁶⁵ Human Rights Watch interview with Yusif Siyali, March 9, 2008.

None of the 31 children detained at the Jeddah Center for Child Beggars at the time of Human Rights Watch's December 2006 visit appeared to be older than 12. Birr Association staff have given differing accounts of the ages and categories of foreign children accepted there. For example, Salih al-Turki, the chairman of the Birr Association's administrative council, told *al-Watan* newspaper in March 2007 that the Jeddah Residential Center "accepts children under 16."²⁶⁶ The Birr Association supervisor for the facility told Human Rights Watch the center accepts some but not all older children:

I don't take over 18s, and I don't take married or widowed [girls under 18] because they cause problems. They bring me some boys who have committed crimes, finished their sentences, and are waiting for deportation. I try not to accept them but I can't say no. The social observation home should be monitoring when they will be released and make preparations for their deportation. I've spoken to them about this, and now it is better than it was, but we still get cases.²⁶⁷

A Saudi-born Chadian resident of Jeddah told Human Rights Watch that Saudi authorities detained his disabled 12-year-old brother for three weeks in the adult deportation center in 2006.²⁶⁸

A social worker at the Jeddah Residential Center for Child Beggars said that Saudi authorities commonly detained small children with their mothers at Jeddah's women's deportation center, adding, "We get small children when they come with the father because there is no place for the child at the men's deportation center."²⁶⁹ A recent UNICEF study describes a similar process, but said that boys or girls of any

²⁶⁶ Najla' al-Harbi, "4,500 children of Various Nationalities Were Placed in the Residential Center in Jeddah" (4500 tifl min mukhtalaf al-jinsiyyat tam iyda'uhum bimarkaz al-iywa' bi-Jeddah), *al-Watan*, March 16, 2007 (26/2/1428), <http://www.alwatan.com.sa/daily/2007-03-16/local/local03.htm> (accessed March 17, 2007).

²⁶⁷ Human Rights Watch interview with Majdi 'Abd al-Hamid, December 10, 2006.

²⁶⁸ Human Rights Watch interview with a Saudi-born Chadian resident in Jeddah, December 2006 (name and exact date withheld). The family, like many other Saudi-born Chadians, no longer has ties to Chad and members lost their legal residency in Saudi Arabia when the government stopped renewing Chadians' residency permits in 2004. See "Saudi-Born Chadians Face Increasing Discrimination Under New Policies," Human Rights Watch news release, September 6, 2006, <http://hrw.org/english/docs/2006/09/06/saudia14128.htm>.

²⁶⁹ Human Rights Watch interview with a psychiatric social expert, Jeddah Residential Center for Child Beggars, Jeddah, December 6, 2006.

age who are arrested with a male adult family member are sent to the Jeddah Residential Center pending deportation with the adult. The UNICEF study did not resolve the apparent contradiction between this assertion and the assertion in the same report that the Jeddah center only accepts children under age 15.²⁷⁰

Human Rights Watch requested but did not receive permission to visit the Jeddah Deportation Center to evaluate conditions there. The facility is reputed to be extremely overcrowded, with insufficient toilets, and provides no beds or bedding.²⁷¹ According to a government official, in June 2007 the facility held “nearly 8,000 [visa] overstayers,” well above its 5,500 capacity.²⁷²

²⁷⁰ UNICEF Gulf Area Office, “Trafficking in children and child involvement in beggary in Saudi Arabia.” Human Rights Watch sought but did not obtain additional information from the report author and UNICEF Gulf Area Office staff. Email communication from Human Rights Watch to Dr. Khalil Ushari, September 24, 2007; email communication from Human Rights Watch to Esmaeil El-Azhari Ibrahim, program officer, and Ghassan Khalil, chief of child protection, UNICEF Gulf Area Office, September 30, 2007.

²⁷¹ Detainees at the Jeddah Deportation Center told Human Rights Watch that a detainee’s infant had died because of the severe cold and lack of milk. “Saudi Arabia: New Video Confirms Torture in Prison: Government Should Extend Investigation to Prisons Across the Kingdom,” Human Rights Watch news release, April 27, 2007, <http://hrw.org/english/docs/2007/04/27/saudia15774.htm>. For a discussion of deportation conditions, see Human Rights Watch, *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*.

²⁷² The increased overcrowding was due to visa overstayers taking advantage of a two-month amnesty on prosecutions for overstayers who left the country ahead of new regulations that would increase punishments for overstaying visas. Siraj Wahab, “Indian Overstayers Clog Deportation System,” *Arab News*, June 6, 2006, <http://arabnews.com/?page=1§ion=o&article=97133&d=6&m=6&y=2007> (accessed July 9, 2007).

X. Recommendations

To the Government of Saudi Arabia

Ensure that no one is sentenced to death or executed for offenses committed under age 18. In particular,

- Enact legislation banning the imposition of capital punishment on persons who were under 18 at the time of the crime.
- In the case of existing death sentences passed on persons who were under 18 at the time of the crime, immediately commute those sentences to custodial or other sentences in conformity with international juvenile justice standards. Inform the persons concerned, and, for foreign nationals, their embassies, in writing of the new sentences.

Ensure that all persons under age 18 at the time of the alleged commission of an offense benefit from the international rights and standards for children in conflict with the law, in compliance with Saudi Arabia's treaty obligations. In particular,

- Enact, publicize, and enforce legislation clearly specifying a minimum age of criminal responsibility no lower than 12 years for both girls and boys.

Ensure that authorities only detain children as a measure of last resort, and for the shortest possible time. In particular,

- Issue and enforce clear regulations prohibiting the routine detention of children and young women during investigation or pending trial. End the practice of detaining children and young women accused of seclusion (*khalwa*), mingling (*ikhtilat*), and any other offenses not clearly defined in written law, or offenses that are incompatible with Saudi Arabia's international human rights obligations.
- Repeal provisions of the 1976 (1396) Girls' and Young Women's Welfare Institutions Regulations and the 1975 (1395) Social Observation Homes Regulations that permit authorities to detain children and young women

indefinitely even after they have served a sentence. Ensure that no one is detained in these facilities without judicial authorization.

- Ensure that authorities do not detain children and young women longer than 24 hours without bringing them before a judicial body authorized to review their detention and order their release.
- Ensure that authorities do not detain children and young women simply because no guardian has come to claim them. This should include developing clear guidelines for early identification of cases where guardians may be unwilling or unable to claim their charges. It should also include developing procedures for releasing such detainees into the care of other suitable family members, non-punitive and voluntary shelters, or independent living arrangements, as appropriate.
- Develop a wide variety of alternatives to institutionalization for children found to have committed criminal offenses and educate judicial authorities on their use. Make such alternatives accessible to children in all parts of the country, and include care, guidance and supervision orders, counseling, probation, foster care, and education and vocational training programs.

End the use of corporal punishment, solitary confinement, denial of family visits, and other forms of ill-treatment of children deprived of their liberty. In particular,

- End the use of corporal punishment as a judicial measure of punishment, in keeping with the international prohibition on torture or other cruel, inhuman or degrading treatment or punishment. Ban the use of non-judicial corporal punishment in institutions for children in conflict with the law.
- Immediately end the use solitary confinement, denial of family visits, and other forms of punishment prohibited by international standards in institutions under Ministry of Social Affairs supervision, and ban their future use by amending the regulations governing social observation homes and girls' or young women's welfare institutions.
- Immediately end the routine use of solitary confinement for children under investigation or awaiting trial.

- Provide all detainees with access to medical care that respects international standards related to informed consent and bodily autonomy, and immediately stop mandatory medical testing of children and young women held in Ministry of Social Affairs facilities. Provide guidance and training to staff and detainees on basic precautions to reduce the risk of STD transmission and provide voluntary testing and counseling for HIV, hepatitis B, herpes, and other sexually transmitted diseases. End the medically unwarranted and stigmatizing isolation of girls and young women who test positive for sexually transmitted diseases.

Protect children in social observation homes and girls' or young women's welfare institutions from physical, mental, and other forms of abuse. In particular,

- Ensure that all social observation homes or girls' and young women's welfare institutions have adequate rooms and staffing to allow detainees to be classified and separated according to their individual needs, and that staff adequately supervises detainees to prevent physical and sexual violence among them. In particular, end the use of large open dormitories.
- End the practice of mixing children with adults and mixing convicted detainees with detainees awaiting investigation or trial.

Ensure that children accused of committing criminal offenses or otherwise deprived of their liberty receive adequate legal and other appropriate assistance. In particular,

- Ensure each child prompt access to legal and other appropriate assistance during interrogation, trial, and for the preparation and presentation of his or her defense. In particular, provide children who cannot afford legal assistance such assistance without charge, and ensure that all interrogations and trials take place in the presence of an independent expert mandated to advocate for the child's interests.
- Ensure that social observation home and girls' or young women's welfare institution staff members assigned to provide such assistance have adequate knowledge and understanding of the various legal aspects of the process of juvenile justice and be trained to work with children in conflict with the law.

- Facilitate the attendance of children's parents or legal guardians at trials, unless it is not in the child's best interests, including by providing families with timely notice of upcoming trial sessions, and arranging transportation where necessary.
- Ensure that children investigated in police stations have legal counsel during questioning and investigation, and that any mediated resolutions ordered by police are subject to review and appeal by an independent judicial body.

Ensure that foreign children are protected from all forms of exploitation, abuse, and neglect. In particular,

- Immediately end the practice of routinely detaining foreign children pending deportation, and of detaining in adult institutions foreign girls under investigation, facing trial, or whom a judge has ordered detained.
- Ensure that foreign children are protected from all forms of exploitation, and that children who are victims of abuse, neglect, or exploitation receive appropriate assistance to promote their physical and psychological recovery and social reintegration.
- End the practice of repatriating children to places where they are at risk of irreparable harm. Children should only be repatriated if it has been determined that it is in their best interests to do so, and then only to family members or guardians willing and able to care for them or to an appropriate state welfare agency.
- Screen children arrested for street selling and begging to identify cases of forced labor, trafficking, and other forms of abuse. Provide services to victims, such as voluntary shelters, health care, and legal aid. Prosecute recruiters, employers, and traffickers involved in exploiting children for street vending or begging.
- Introduce new legislation criminalizing forced labor and trafficking, including significant penalties for recruiters, employers, and traffickers.
- Implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

To the UN Children's Fund (UNICEF) and the UN Office on Drugs and Crime (UNODC)

- Work with the Ministry of Social Affairs, the Ministry of Justice, and the Ministry of Interior to develop clear, written regulations protecting children's rights at all stages of arrest, investigation, trial, and detention.
- Work with the Ministry of Social Affairs and the National Commission for Childhood to develop a strategy for building domestic support to ban all forms of corporal punishment, including the death penalty, for persons under age 18 at the time of the alleged offense.
- Work with the Ministry of Social Affairs, the Ministry of Interior, and the National Commission for Childhood to develop and implement a plan to prevent children from being trafficked into forced begging and selling, identify and provide services to victims of forced labor and trafficking, and prosecute perpetrators.

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