

The Saudi Executions: Un-Islamic and Extra-judicial Killing

By Abdul Wahid Sheikh Osman

Introduction

It may seem quite disingenuous to some that so many Somalis have expressed sadness, outcry and anger regarding the recent Saudi executions. No foreign friend or foe has ever inflicted upon us as much misery and destruction as we, Somalis, brought upon ourselves. Therefore, if we, Somalis, are, indeed, serious about restoring our dignity and protecting our citizens and natural resources from the injustices and toxics of the foreigners, let us put our house in order and build a nation state that would safeguard our rights at home and abroad.

This short comment is not intended to discuss the position or view of the western legal systems towards the punishment imposed on these six young men. Suffice to say that the methods by which these executions are carried out amount physical torture and are contrary to the Bill of Rights, Charter of Freedoms and other safeguards enumerated in the constitutions, statutes and laws of the Western countries. Instead, I will attempt to examine whether or not these punishments are reflective of the Islamic legal doctrines and injunctions.

The Islamic Law and the Saudi Executions

Since the majority of the provisions in the Saudi Penal Code are based on Islamic law, at least in theory, I would like to examine the Saudi actions under both the strict interpretations of the classic Islamic Law and in light of the expositions by the early Islamic Jurists.

According to the statement by the Saudi Interior Ministry, the six Somali gangsters were convicted of “abducting and robbing taxi drivers”. Thus, there were no allegations of murder in the statement.

Now, based on the above facts, the only possible crime, under Islamic law, which these men can be charged with and which they might be found guilty of is the crime of Hirabah, a crime similar to the Highway Robbery.

Linguistically (Arabic), the term Hirabah comes from the root Hariba, a verb that means to become angry and enraged. By derivation the noun harb (pl. hurub) means variously “war” and “enemy.”

In Islamic legal terminology, the term Hirabah is broadly defined as “spreading mischief in the land,” but its precise meaning is “killing by stealth and targeting a defenseless victim in a way intended to cause terror in society.”

This crime, being one of the Hudud crimes, and its punishment is described in the holy Quran as Surah al-Maidah 5 verse 33-34 states “The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off the hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter. Except for those who repent before they fall into the power: In that case, know that Allah is Oft-Forgiving and Most Merciful”

The Jurists from the four major schools of jurisprudence in the Sunni Islam have interpreted the punishment contained in the above verse as following:

(A) A Jail time or discretionary punishment (Ta'zir) not leading to death penalty but might include exile will be imposed where Hirabah was committed without seizure of property or causing death.

(B) First strike: With amputation of the right hand from the wrist and the left foot from the ankle where property was seized, but death was not caused.

(C) In the event of a Second strike, that is where the Hirabah is committed for the second time, the offender will face the imputation of the left hand from the wrist and the right foot from ankle.

(D) Where murder occurs in the course of committing Hirabah but no property was seized, the offender will face the death penalty.

(E) The most severe punishment will be imposed where the offender commits murder and seizes property, in which case he will face death penalty and or including crucifixion.

In the absence of any credible and fair sentencing guidelines, appeal process and competent legal defense in the Saudi justice system, the Saudi executions are, therefore, from Islamic law perspective, unusual, appallingly inhumane, cruelly disproportionate punishment to the crimes allegedly committed by these young men.

I am not questioning the solemn duty of the Saudi government to protect its citizens and maintain law and order rather, my point is that even under the most strict Islamic law interpretations, the charges brought against these young men carry maximum punishment of amputation of their hands and legs and NOT executions.

I wonder if the Saudi authorities would find the guts to impose the same punishment had the offenders were its own citizens or those of powerful foreign country, a sad fact that speaks volumes about the state of administration of justice in the Muslim world today!

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