

## Inhuman sentencing of children in Saudi Arabia

Briefing for the 31st Session of the Universal Periodic Review in October 2018. Submitted by the Child Rights International Network - CRIN ([www.crin.org](http://www.crin.org)), March 2018.

### Inhuman sentencing of children in Saudi Arabia

1. The death penalty, life imprisonment and corporal punishment are lawful sentences in Saudi Arabia for offences committed while under the age of 18.
2. The main laws governing juvenile justice are the Juvenile Justice Act 1975, the Juvenile Justice Regulations 1969, the Law of Criminal Procedure 2001, the Detention and Imprisonment Act 1978, the Detention Regulations, the Juvenile Homes' Regulation 1975 and the Basic Law of Governance 1992. All laws are based on *Shari'a*. There is no written Penal Code and judges have considerable discretion in defining and punishing crime within the bounds of *Shari'a*. There are three types of offence - *qisas* (punished by retaliation), *hadd* (for which the prescribed penalty is mandatory) and *ta'zir* (for which the punishment is discretionary). The Law of Criminal Procedure sets out the jurisdiction of the courts in relation to sentences of death, stoning and amputation.
3. The minimum age for criminal responsibility has reportedly been raised from 7 to 12, but reports are inconsistent and the rise does not apply to girls or in *qisas* cases.<sup>1</sup>

### Legality of inhuman sentencing

#### **Death penalty**

The government has stated that persons who have not attained majority in accordance with Islamic law are never subject to capital punishment.<sup>2</sup> However, judges have discretionary power to decide that a person has reached the age of majority before the age of 18 and to impose capital punishment.<sup>3</sup>

Offences punishable by death include adultery, apostasy, "corruption on earth", drug trafficking, sabotage, political rebellion, murder and manslaughter. The death penalty can also be imposed as a discretionary punishment (*ta'zir*)<sup>4</sup> for actions the court considers to be

<sup>1</sup> Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility*, Farnham: Ashgate Publishing

<sup>2</sup> *Second periodic report of Saudi Arabia to the Committee on the Rights of the Child*, CRC/C/136/Add.1, 21 April 2005, paras. 68 and 120; *Initial state party report to the Committee on the Rights of the Child*, CRC/C/61/Add.2, 29 March 2000, paras. 57, 140, 249, 253.

<sup>3</sup> Committee on the Rights of the Child, *Concluding observations on second periodic report of Saudi Arabia*, CRC/C/SAU/CO/2, 17 March 2006, paras. 32 and 73; *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: Report of the Secretary-General*, E/2010/10, 18 December 2009, para. 78.

<sup>4</sup> Law of Criminal Procedure 2001, Article 129. Available at: <http://www.wipo.int/wipolex/en/details.jsp?id=10559>.

criminal, such as witchcraft.<sup>5</sup> Execution is usually by public beheading or, for adultery, stoning.<sup>6</sup>

Sentences of death, stoning, amputation or *qisas* (retaliatory punishment) in cases other than for death must be reviewed by an appellate court consisting of five judges.<sup>7</sup> These sentences become final once they are approved by the permanent panel of the Supreme Judicial Council.<sup>8</sup> Judgments imposing death or stoning can only be carried out pursuant to a Royal Order issued by the King or his representative and must be witnessed by representatives of the Administrative Governor, the court, the Bureau of the Promotion of Virtue and the Prevention of Vice and the police.<sup>9</sup>

Under Saudi Arabia's justice system, it is possible for a convicted person to forgo punishment for a *qisas* offence, most commonly homicide, by financially compensating the victim or his or her heirs. In practice, a number of people who have been sentenced to death for murder allegedly committed while under the age of 18 have been released following the payment of *diya* (blood money).<sup>10</sup>

### **Corporal punishment**

Corporal punishment in the form of amputation and flogging is lawful as a sentence, including for child offenders. Flogging is mandatory for a number of *hadd* offences and can also be ordered at the discretion of a judge for *ta'zir* offences. Sentences range from dozens to thousands of lashes, and are usually carried out in instalments, at intervals ranging from two weeks to one month.<sup>11</sup> The Juvenile Justice Regulations 1969 encourage juvenile courts to settle cases without placing children in supervised facilities and to limit penalties to admonishment, guidance, counselling or a reprimand, but under the Juvenile Justice Act 1975, young persons under 18 may be sentenced to corporal punishment, including flogging and amputation.

Under the Law of Criminal Procedure, amputation is carried out pursuant to a Royal Decree issued by the King or his representative and must be witnessed by representatives of the Administrative Governor, the court, the Bureau of the Promotion of Virtue and the Prevention

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<sup>5</sup> Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, p. 25. For further information see, Amnesty International, *Defying World Trends: Saudi Arabia's extensive use of capital punishment*. Available at: <https://www.amnesty.org/en/documents/mde23/015/2001/en/>

<sup>6</sup> Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*; see also Human Rights Watch (2008), *The Last Holdouts: Ending the Juvenile death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, and Yemen*

<sup>7</sup> Law of Criminal Procedure 2001, Article 10.

<sup>8</sup> Law of Criminal Procedure 2001, Article 11.

<sup>9</sup> Law of Criminal Procedure 2001, Article 220.

<sup>10</sup> For examples, see Human Rights Watch, *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, 2008, pp. 28-32.

<sup>11</sup> Amnesty International (January 2008), AI Index: MDE 23/003/2008, 11 January 2008, Further Information on UA 69/07 (MDE 23/013/2007, 16 March 2007) Fear of Flogging/ Prisoners of conscience/ Torture and other ill-treatment and Update on MDE 23/040/2007, 19 November 2007.

of Vice and the police.<sup>12</sup> Flogging should also be witnessed by these officials but there is no requirement for a Royal Order.<sup>13</sup>

The Law of Protection from Abuse and the Law of the Protection of the Child both contain legislative protections against the physical abuse of children, but do not prohibit corporal punishment.<sup>14</sup>

### ***Life imprisonment***

Life imprisonment appears to be lawful as a punishment for child offenders. The Government has stated that minors may not be detained in a public prison and must be placed in supervised residential institutions.<sup>15</sup> The law allows judges to reduce the period of time which children spend in supervised institutions “if they memorise the Holy Koran or improve their behaviour”.<sup>16</sup> There is no explicit prohibition of life imprisonment for child offenders.

### **Inhuman sentencing in practice**

#### ***Death penalty***

Saudi Arabia does not publish official statistics on death sentences and executions but a substantial number of cases have been documented of people executed for offences committed while under the age of 18. It is likely that these reported cases underestimate the number of executions carried out.

Since Saudi Arabia was last reviewed as part of the Universal Periodic Review in October 2013 the state has continued to hand down death sentences and carry out executions of people who were under the age of 18 at the time of their alleged offence.

In January 2016, Saudi Arabia carried out executions of 47 people, including four who are alleged to have been under the age of 18 at the time they were sentenced to death.<sup>17</sup> There are also reports that one juvenile was executed in 2015 on an unspecified date.<sup>18</sup>

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<sup>12</sup> Law of Criminal Procedure, article 220

<sup>13</sup> Law of Criminal Procedure, article 220

<sup>14</sup> Law of Protection from Abuse, Royal Decree No. M/52. Available at: <https://www.boe.gov.sa/printsystem.aspx?lang=ar&systemid=356&versionid=333>. Law of the Protection of the Child, Royal Decree No. M/14. Available at: <https://www.boe.gov.sa/printsystem.aspx?lang=ar&systemid=309&versionid=287>.

<sup>15</sup> *Second state party report to the Committee on the Rights of the Child*, CRC/C/136/Add.1, 21 April 2005, para. 36.

<sup>16</sup> *Second state party report to the Committee on the Rights of the Child*, CRC/C/136/Add.1, 21 April 2005, para. 66

<sup>17</sup> Ali al-Rihb, Mohammad Fathi, Mustafa Akbar and Amin al-Ghamadi. The cases were identified in the Concluding observations of the Committee on the Rights of the Child on the combined third and fourth periodic review of Saudi Arabia, CRC/C/SAU/CO/3-4, 25 October 2016, para. 20.

<sup>18</sup> Arabian Business website, ‘Saudi Arabia executes 54 people in first 3 months of 2015’, 9 April 2015. Available at: <http://www.arabianbusiness.com/saudi-arabia-executes-54-people-in-first-3-months-of-2015-588431.html>.

At the time of writing, at least five people were at imminent risk of execution for offences allegedly committed while they were children. Ali Mohammed al-Nimr,<sup>19</sup> Dawoud Hussain al-Marhon<sup>20</sup> and Abdullah Hass al-Zaher were all sentenced to death in 2014.<sup>21</sup> Mujtaba al-Sweikat was sentenced to death in 2017.<sup>22</sup> The death sentence of Abdulkarim al-Hawaj was upheld in July 2017 for an offence he allegedly committed when he was 16.<sup>23</sup>

### ***Corporal punishment***

A review of sentences by Human Rights Watch found that it was rare for them not to include flogging.<sup>24</sup>

### ***Life imprisonment***

CRIN has not been able to locate any statistics on the sentencing of people to life imprisonment for offences committed while children.

### **The review of Saudi Arabia by the Human Rights Council**

In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment for child offenders and the specific recommendations made to Saudi Arabia by the Committee on the Rights of the Child,<sup>25</sup> the Committee Against Torture<sup>26</sup> and during the Universal Periodic Review we urge members of the Human Rights Council to recommend that Saudi Arabia:

- Immediately halt proceedings to carry out executions of anyone who was under the age of 18 at the time of their alleged offence;

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<sup>19</sup> UN News Centre, *UN Rights experts urge Saudi Arabia to immediately halt child executions*, 22 September 2015. Available at:

<http://www.un.org/apps/news/story.asp?NewsID=51943#.VieEnRARJE4>.

<sup>20</sup> See Joint letter to Saudi Arabia's Minister of Justice. Available at: [www.crin.org/node/41705](http://www.crin.org/node/41705).

<sup>21</sup> Amnesty International, *Saudi Arabia: Fears grow that three young activists could soon be executed*, 16 October 2015. Available at:

<https://www.amnesty.org/en/latest/news/2015/10/saudi-arabia-three-young-activists-could-soon-be-executed/>.

<sup>22</sup> Reprieve, "14 Saudis facing imminent execution for protest offences" 14 July 2017. Available at:

<https://reprieve.org.uk/press/14-saudis-facing-imminent-execution-protest-offences/>.

<sup>23</sup> Amnesty International, "Saudi Arabia: Death penalty used as political weapon against Shi'a as executions spike across country" 12 July 2017. Available at:

<https://www.amnesty.org/en/latest/news/2017/07/saudi-arabia-death-penalty-used-as-political-weapon-against-shia-as-executions-spike-across-country/>.

<sup>24</sup> Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*.

<sup>25</sup> Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic review of Saudi Arabia*, CRC/C/SAU/CO/3-4, 25 October 2016, paras. 24, 26 and 28.

<sup>26</sup> Committee against Torture and other cruel inhuman or degrading treatment or punishment, *Concluding observations on the second periodic report of Saudi Arabia* CAT/C/SAU/CO/2, 8 June 2016, paras. 10, 11 and 42

- Explicitly prohibit sentences of death, corporal punishment and life imprisonment under all systems of justice and without exception to ensure full compliance with international standards;
- Raise the minimum age of criminal responsibility.

To read CRIN's detailed report on inhuman sentencing of children in Saudi Arabia, see [www.crin.org/node/30435](http://www.crin.org/node/30435).