

## **Inhuman sentencing of children in Saudi Arabia**

Briefing for the Committee on the Rights of the Child's 73rd Pre-Sessional Working Group in February 2016. Submitted by the Child Rights International Network (CRIN) ([www.crin.org](http://www.crin.org)), October 2015.

### **Inhuman sentencing of children in Saudi Arabia**

1. The death penalty, life imprisonment and corporal punishment are lawful sentences 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 and 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> The Detention Regulation and the Juvenile Homes' Regulation 1975 define a juvenile as below the age of 18. There are provisions for juvenile courts and the law states that juveniles must be tried "in accordance with the relevant laws and regulations",<sup>2</sup> but the law does not require all child offenders to be tried in the juvenile justice system or require judges to base their decisions on children's age at the time of the offence. Judicial opinion on when a child can be tried as an adult varies widely and tends to be based on a child's physical development.<sup>3</sup> Under the Law of Protection from Abuse, a child is defined as a person under the age of 18.<sup>4</sup>

### **Legality of inhuman sentencing**

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

4. The Government has stated that persons who have not attained majority in accordance with Islamic law are never subject to capital punishment.<sup>5</sup> However, judges have

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

<sup>2</sup> Law of Criminal Procedure, Royal Decree No. M/39, 16 October 2001, Article 13. Available in English at: [http://www1.umn.edu/humanrts/research/saudi-arabia/criminal\\_procedure.html](http://www1.umn.edu/humanrts/research/saudi-arabia/criminal_procedure.html) and in Arabic at: <http://www.moj.gov.sa:50/downloads/file1.pdf>.

<sup>3</sup> Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, p.13

<sup>4</sup> Law on the Protection of the Child < Royal Decree No. M/14, Article 1(1). Available at: <https://www.boe.gov.sa/printsystem.aspx?lang=ar&systemid=356&versionid=333>.

<sup>5</sup> 21 April 2005, CRC/C/136/Add.1, Second state party report to the Committee on the Rights of the Child, paras. 68 and 120; 29 March 2000, CRC/C/61/Add.2, Initial state party report to the Committee on the Rights of the Child, paras. 57, 140, 249, 253.

discretionary power to decide that a person has reached the age of majority before the age of 18 and to impose capital punishment.<sup>6</sup>

5. Offences punishable by death include adultery, apostasy, “corruption on earth”, drug trafficking, sabotage, political rebellion, murder and manslaughter. It can also be imposed as a discretionary punishment (*ta’zir*)<sup>7</sup> for actions the court considers to be criminal, such as witchcraft.<sup>8</sup> Execution is usually by public beheading or, for adultery, stoning.<sup>9</sup>

6. 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>10</sup> These sentences become final once they are approved by the Permanent Panel of the Supreme Judicial Council.<sup>11</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 Prevention of Vice, and the police.<sup>12</sup>

7. 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>13</sup>

### **Corporal punishment**

8. Corporal punishment (amputation and flogging) is lawful as a sentence, including for child offenders. Flogging is mandatory for a number of offences (*hadd*), and can be ordered at the discretion of judges (*ta’zir*). 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>14</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

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<sup>6</sup> 17 March 2006, CRC/C/SAU/CO/2, Concluding observations on second report, paras. 32 and 73; 18 December 2009, E/2010/10, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: Report of the Secretary-General, para. 78.

<sup>7</sup> Law of Criminal Procedure, article 129

<sup>8</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>9</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>10</sup> Law of Criminal Procedure, Article 10.

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

<sup>12</sup> Law of Criminal Procedure, 16 October 2001, Article 220.

<sup>13</sup> For examples, see Human Rights Watch, *Adults Before Their Time: Children in Saudi Arabia’s Criminal Justice System*, 2008, pp. 28-32.

<sup>14</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

or a reprimand, but under the Juvenile Justice Act 1975 young persons under 18 may be sentenced to corporal punishment, including flogging, stoning and amputation.

9. Under the Law of Criminal Procedure, amputation is 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 Prevention of Vice, and the police.<sup>15</sup> Flogging should also be witnessed by these officials but there is no requirement for a Royal Order.<sup>16</sup>

10. 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>17</sup>

### ***Life imprisonment***

11. 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>18</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>19</sup> There is no explicit prohibition of life imprisonment for child offenders.

### **Inhuman sentencing in practice**

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

12. Saudi Arabia does not publish official statistics on death sentences and executions, but nonetheless 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 underrepresent the number of executions carried out.

13. At the time of writing, three people were at imminent risk of execution for offences allegedly committed while they were children. Ali Mohammed al-Nimr,<sup>20</sup> Dawoud Hussain al-Marhon<sup>21</sup> and Abdullah Hass al-Zaher were all sentenced to death in 2014.<sup>22</sup>

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<sup>15</sup> Law of Criminal Procedure, article 220

<sup>16</sup> Law of Criminal Procedure, article 220

<sup>17</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>18</sup> 21 April 2005, CRC/C/136/Add.1, *Second state party report to the Committee on the Rights of the Child*, para. 36

<sup>19</sup> 21 April 2005, CRC/C/136/Add.1, *Second state party report to the Committee on the Rights of the Child*, para. 66

<sup>20</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>21</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>22</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/>.

In January 2013, the State carried out the execution of a woman for allegedly killing a baby in her care when she was 17 years old.<sup>23</sup> In March of the same year, seven men were executed for armed robbery, despite indications that some of the accused were under the age of 18 at the time of the offence.<sup>24</sup>

14. Amnesty International reported that in 2011, Bandar bin Juza' Rumaithan al-Luhaibi was executed and named as a "juvenile" by the Ministry of Interior, though it is not known how old he was at the time of the alleged offence.<sup>25</sup> The organisation also reported that that Sultan bin Sulayman bin Muslim al-Muwallad and 'Issa bin Muhammad 'Ummar Muhammad were executed in May 2009 for offences committed when they were 17 years old.<sup>26</sup>

15. Human Rights Watch reported on three executions of child offenders that took place during 2007, Abdullah bin Mohammed al-Otaibi, Dhahiyah bin Rakan bin Sa'd al Thawri al-Sibai'i and Mu'id bin Husayn bin Abu al-Qasim bin 'Ali Hakami.<sup>27</sup> According to Amnesty International, two child offenders were executed in 2007 (one aged 15 or 16 at the time of the offence, one aged 16 at the time of execution) and two in 2009 (both aged 17 at the time of the offence).<sup>28</sup>

16. In 2005, a 14-year old boy was reportedly sentenced to death for a murder committed when he was 13.<sup>29</sup>

### **Corporal punishment**

17. A review of sentences by Human Rights Watch found that it was rare for them not to include flogging.<sup>30</sup>

### **Life imprisonment**

18. 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 Committee on the Rights of the Child**

19. 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

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<sup>23</sup> Human Rights Watch, *Saudi Arabia: Halt execution of Sri Lankan migrant worker*, 8 January 2013. Available at:

<https://www.hrw.org/news/2013/01/08/saudi-arabia-halt-execution-sri-lankan-migrant-worker>.

<sup>24</sup> Huffington Post, "Saudi Arabia executions: 7 put to death for robbery", 13 May 2013. Available at: [http://www.huffingtonpost.com/2013/03/13/saudi-arabia-executes-7-men-by-firing-squad\\_n\\_2866655.html](http://www.huffingtonpost.com/2013/03/13/saudi-arabia-executes-7-men-by-firing-squad_n_2866655.html)

<sup>25</sup> Amnesty International, *Death Sentences and Executions in 2011*, p. 42.

<sup>26</sup> Amnesty International, *Death Sentences and Executions in 2009*, p. 21. Available at: <http://www.amnestyusa.org/pdfs/DeathSentencesExecutions2009.pdf>.

<sup>27</sup> Human Rights Watch, *Adults Before Their Time*, p. 28.

<sup>28</sup> Amnesty International, *Executions of juveniles since 1990*, [www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990](http://www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990), accessed 4 May 2010

<sup>29</sup> Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*

<sup>30</sup> Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*.

recommendations made to Saudi Arabia by the Committee on the Rights of the Child,<sup>31</sup> the Committee Against Torture<sup>32</sup> and during the Universal Periodic Review,<sup>33</sup> we urge the Committee to recommend that Saudi Arabia to:

- Immediately halt proceedings to carry out executions of
- 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;
- Provide disaggregated data about sentences handed down to children, including those who have been sentenced to death, by offence committed and date, as well as information about children in detention including gender, age and length of time spent in pre-trial detention in each case.

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

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<sup>31</sup> 17 March 2006, CRC/C/SAU/CO/2, Concluding observations on second report, paras. 32, 33, 42, 43, 44, 73, 74 and 75; 22 February 2001, CRC/C/15/Add.148, Concluding observations on initial report, paras. 9, 27, 28, 33, 34, 41 and 42.

<sup>32</sup> 12 June 2002, CAT/C/CR/28/5, Concluding observations on initial report, paras. 3, 4 and 8

<sup>33</sup> For a breakdown of these recommendations, see CRIN, Saudi Arabia: Inhuman sentencing of children, October 2015, p. 7. Available at: [www.crin.org/node/30435](http://www.crin.org/node/30435).