



Inhuman sentencing of children in Saudi Arabia

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Introduction

Capital punishment, corporal punishment and life imprisonment are lawful sentences for child offenders.

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 Regulation and the Juvenile Homes' Regulation 1975, and the Basic Law of Governance 1992. All laws are based on *Sharia*. There is no written Penal Code and judges have considerable discretion in defining and punishing crime within the bounds of *Sharia*. There are three types of offences – *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.¹

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.² 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",³ 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.⁴

In 2009, the Government accepted recommendations made during the Universal Periodic Review process to prohibit and eliminate capital and corporal punishment of persons under 18. A review of legislation relating to children has been under way since at least 2006 with a view to harmonising laws with the Convention on the Rights of the Child.

Legality of inhuman sentencing

Death penalty

Persons convicted of offences committed under the age of 18 may lawfully be sentenced to death.

¹ Articles 10, 11, 128, 129, 195, 205 and 220

² Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility*, Farnham: Ashgate Publishing

³ Law of Criminal Procedure, article 13

⁴ Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, p.13

The Government has stated that persons who have not attained majority in accordance with Islamic law are never subject to capital punishment.⁵ But 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.⁶

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*)⁷ for actions the court considers to be criminal, such as witchcraft.⁸ Execution is usually by public beheading or, for adultery, stoning.⁹

Execution and stoning 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.¹⁰

Corporal punishment

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.¹¹ 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, stoning and amputation.

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.¹² Flogging should also be witnessed by these officials but there is no requirement for a Royal Order.¹³

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.¹⁴ The law allows judges to reduce the period of time which children spend in

⁵ 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

⁶ 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

⁷ Law of Criminal Procedure, article 129

⁸ Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, p. 25

⁹ 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*

¹⁰ Law of Criminal Procedure, article 220

¹¹ 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

¹² Law of Criminal Procedure, article 220

¹³ Law of Criminal Procedure, article 220

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

supervised institutions “if they memorize the Holy Koran or improve their behaviour”.¹⁵ There is no explicit prohibition of life imprisonment for child offenders.

Inhuman sentencing in practice

Official statistics on death sentences and executions are not published. In 2005, a 14-year old boy was reportedly sentenced to death for a murder committed when he was 13.¹⁶ In the same year, 126 children were held in juvenile detention centers for committing murder, and in 2006, 40 of the 220 detainees at the Jeddah Social Observation Home were boys under 16 charged with murder, suggesting that many children are at risk of judicial execution.¹⁷ 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).¹⁸

A review of sentences by Human Rights Watch found that it was rare for them not to include flogging.¹⁹

We have no information regarding children sentenced to life imprisonment.

Progress towards prohibition and elimination

Law reform needed

Legislation should be enacted to explicitly prohibit capital punishment, corporal punishment and life imprisonment of persons aged under 18 at the time of the offence.

Law reform under way

As at 2006, the Saudi National Commission for Childhood was preparing a comprehensive manual of legislation relating to children with a view to harmonising laws with the Convention on the Rights of the Child.²⁰ In 2008, a new child law was being drafted which reportedly defined a child as under 18 but would not prevent child offenders being sentenced to death: it would only require that execution is delayed until the child reaches 18.²¹ We have no further information on the draft law or its progress.

In 2009, the Government accepted the recommendations made during the Universal Periodic Review on prohibiting and eliminating capital and corporal punishment for persons under 18 (see below).

National campaigns

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

¹⁶ Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*
¹⁷ Reported in Human Rights Watch (2008), *The Last Holdouts: Ending the Juvenile Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, and Yemen*

¹⁸ Amnesty International, *Executions of juveniles since 1990*, www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990, accessed 4 May 2010

¹⁹ Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*
²⁰ 17 March 2006, CRC/C/SAU/CO/2, *Concluding observations on second report*, para. 9

²¹ Dr Abd al-Rahman al-Sabih, National Commission for Childhood, and Dr Khalid bin Suliaman al-Obaid, Human Rights Commission, reported in Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, p. 14

We are not aware of any national campaigns on the issue.

National and international law conflicting with inhuman sentencing

The Constitution

There is no prohibition in the Constitution (the Basic Law of Governance) of cruel, inhuman or degrading treatment or punishment.

International human rights treaties

Saudi Arabia has ratified or acceded to the following international treaties:

- Convention on the Rights of the Child (in 1996)
Reservation: “[The Government of Saudi Arabia enters] reservations with respect to all such articles as are in conflict with the provisions of Islamic law.”
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1997)
Reservation: “The Kingdom of Saudi Arabia does not recognize the jurisdiction of the Committee as provided for in article 20 of this Convention. The Kingdom of Saudi Arabia shall not be bound by the provisions of paragraph (1) of article 30 of this Convention.”²²
- Convention on the Elimination of All Forms of Discrimination Against Women (in 2000)
Reservation: “1. In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention....”
- Convention on the Rights of Persons with Disabilities (in 2008)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1997)
Reservation: “[The Government of Saudi Arabia declares that it will] implement the provisions [of the above Convention], providing these do not conflict with the precepts of the Islamic Shariah....”
- Arab Charter on Human Rights (in 2009)

Saudi Arabia has not ratified the International Covenant on Civil and Political Rights, the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty, or the International Covenant on Economic, Social and Cultural Rights.

Saudi Arabia has ratified or acceded to the following complaints/communications mechanisms:

- Optional Protocol to the Convention on the Rights of Persons with Disabilities (in 2008)

Status of treaties

The Basic Law states in article 70: “International treaties, agreements, regulations and concessions are approved and amended by Royal Decrees.”

²² Article 30(1) concerns the use of arbitration in disputes between state parties regarding interpretation of the Convention

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(17 March 2006, CRC/C/SAU/CO/2, Concluding observations on second report, paras. 32, 33, 42, 43, 44, 73, 74 and 75)

“The Committee takes note of the information that no child is sentenced to death and that capital punishment is not passed to persons who commit a crime before they reach the age of majority (in general 18 years). Nevertheless, it is deeply concerned that judges have the discretionary power which is often when presiding over criminal cases involving children, to decide that a child has reached the age of majority at an earlier age, and that as a consequence capital punishment is imposed for offences committed by persons before they have reached the age of 18. The Committee is deeply alarmed that this is a serious violation of the fundamental rights under article 37 of the Convention.

“The Committee urges the State party to take the necessary steps to immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, to take the appropriate legal measures to convert them into penalties in conformity with the provisions of the Convention and to abolish as a matter of the highest priority the death penalty as a sentence imposed on persons for having committed crimes before the age of 18, as required by article 37 of the Convention.

“While noting articles 2 and 13 of the Code of Criminal Procedure promulgated in Royal Decree No. M/39 of 15 October 2001 which prohibit torture or degrading treatment and the State party’s reassurance that corporal punishment is not imposed upon minors, the Committee is concerned at reports of extrajudicial and summary floggings of teenagers suspected of behaviour deemed immoral and acts of police brutality.

“The Committee urges the State party to take all necessary steps for the immediate abolition of extrajudicial and summary floggings of teenagers, and also other forms of cruel, inhuman or degrading punishments imposed on persons having committed a crime when under the age of 18 years, including acts of police brutality.

“While noting with appreciation the regular circulars issued by the Ministry of Education, which prohibit the beating or ill-treatment of children during all stages of general education and prescribe penalties designed to deter teachers from committing such acts, the Committee notes with concern that corporal punishment is lawful and widely used in the home and that it is a lawful penal sanction.

“The Committee is encouraged by the State party’s efforts to reform its juvenile justice system, inter alia, through adoption of the new Code of Criminal Procedure and Practice for Lawyers in 2001.... As noted in paragraph 32, the Committee is deeply concerned about reports that persons are sentenced to death for crimes committed while under the age of 18, and at the fact that capital and corporal punishment can be imposed on persons having committed a crime when under 18 years of age at the discretion of the judge.

“The Committee urges the State party to ensure the full implementation of juvenile justice standards in particular articles 37, 40 and 39 of the Convention, and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System, and take into account the recommendations adopted by the Committee on its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238).

“The Committee refers to its recommendations made in paragraphs 33 on right to life and capital punishment and on 43 on protection from torture, inhuman or degrading treatment or punishment and it urges the State party to:

- a) critically review its legislation with a view to abolishing the imposition of capital and corporal punishment on persons having committed crimes when under 18 years of age at the sole discretion of the judge;
- b) implement alternative measures to deprivation of liberty, such as probation, community service or suspended sentences;
- c) amend the Detention and Imprisonment Regulations (1977) and the Juvenile Justice and Social Surveillance Centre Regulations to prohibit flogging or any other form of corporal punishment for persons under 18 deprived of their liberty....”

Committee on the Rights of the Child

(22 February 2001, CRC/C/15/Add.148, Concluding observations on initial report, paras. 9, 27, 28, 33, 34, 41 and 42)

“The Committee is concerned that several rights contained in the Convention are not reflected in domestic law. In particular, the Basic Law and other applicable laws do not expressly guarantee non-discrimination on the basis of all the grounds contained in article 2 of the Convention. In addition, the Committee notes the incompatibility of certain areas of domestic law with the Convention (e.g. discrimination against females and non-Muslims and the use of judicial punishments such as flogging)....

“As the age of majority is not defined, the Committee is seriously concerned that there is a possibility that the death penalty may be imposed for offences committed by persons who were below 18 years at the time the crime was committed, contrary to articles 6 and 37 (a) of the Convention.

“The Committee strongly recommends that the State party take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons under 18.

“In light of article 37 (a) of the Convention, the Committee is seriously concerned that persons under 18 may be subject while in detention to corporal punishment, such as flogging, under article 28 of the 1977 Detention and Imprisonment Regulations. It is also disturbed that persons who committed crimes when they were under 18 may be sentenced to a variety of methods of cruel, inhuman or degrading treatment or punishment such as flogging, stoning and amputation, which are systematically imposed by judicial authorities. The Committee finds that application of such measures is incompatible with the Convention...

“The Committee recommends that the State party take all necessary steps to end the imposition of corporal punishment, including flogging and other forms of cruel, inhuman or degrading treatment and punishment on persons who may have committed crimes when they were under 18. It also recommends that the State party take all appropriate measures to ensure that law enforcement officials respect and protect human dignity and maintain and uphold the human rights of all persons in the course of their duties.

“The Committee is concerned that as the age of majority is not defined, and in the absence of a published criminal code and code of criminal procedure, persons under 18 may be prosecuted for crimes in the same manner as adults (i.e. without special procedures) and be subject to the same penalties as adults....

“The Committee recommends that the State party establish a system of juvenile justice, fully integrating into its legislation and practice the provisions of the Convention, in particular articles

37, 40 and 39, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System....”

Committee Against Torture

(12 June 2002, CAT/C/CR/28/5, Concluding observations on initial report, paras. 3, 4 and 8)

“The Committee welcomes the following:

...

c) the State party’s expression that its domestic law provides that no exceptional circumstances, including superior orders, may be invoked as a defence to a charge of torture, the reassurance that statements obtained by torture are inadmissible in proceedings, and the oral assurance that confessions are revocable at any point of proceedings. The State party’s reassurance that corporal punishments are not imposed upon minors was noted;

...

“The Committee is concerned about the following:

...

b) the sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention.

...

“The Committee recommends, in particular, that the State party:

...

b) re-examine its imposition of corporal punishments, which are in breach of the Convention....”

...

Universal Periodic Review

Saudi Arabia was examined under the Universal Periodic Review process in February 2009. Recommendations were made to prohibit and eliminate capital and corporal punishment of persons under the age of 18.²³ The Government accepted the recommendations.²⁴

²³ 4 March 2009, A/HRC/11/23, *Report of the Working Group on the Universal Periodic Review: Saudi Arabia*, para. 87

²⁴ 9 June 2009, A/HRC/11/23/Add.1, *Report of the Working Group on the Universal Periodic Review: Saudi Arabia, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, para. 38