

Inhuman sentencing of children in Saudi Arabia

Briefing for the 17th session of the Human Rights Council Universal Periodic Review in October 2013, submitted by the Child Rights International Network (www.crin.org), March 2013

Inhuman sentencing of child offenders in Saudi Arabia

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.

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

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

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

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.⁷ 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.

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.⁸ The law allows judges to reduce the period of time which children spend in supervised institutions "if they memorize the Holy Koran or improve their behaviour".⁹ 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 13.¹⁰ In the same year, 126 children were held in juvenile detention centres 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.¹¹ 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).¹² In January, Saudi Arabia is also reported to have carried out the execution of a woman who was 17 years old when she allegedly killed a baby in her care.¹³

A review of sentences by Human Rights Watch found that it was rare for them not to include flogging.¹⁴

We have no information regarding children sentenced to life imprisonment.

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

In its Concluding observations (CRC/C/SAU/CO/2, 17 March 2006), the Committee on the Rights of the Child expressed deep concern over the discretionary power that judges have "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

⁷ 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

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

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

¹⁰ Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*

¹¹ Reported in Human Rights Watch (2008), *The Last Holdouts: Ending the Juvenile Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, and Yemen*

¹² Amnesty International, *Executions of juveniles since 1990*, , accessed 4 May 2010

¹³ Human Rights Watch, "Halt execution of Sri Lankan migrant worker" 8 January 2013

¹⁴ Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*

reached the age of 18."¹⁵ The committee urged "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."¹⁶

The Committee was also "concerned at reports of extrajudicial and summary floggings of teenagers suspected of behaviour deemed immoral and acts of police brutality" and urged "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."¹⁷

In its 2001 Concluding Observations (CRC/C/15/Add.148), the Committee had also recommended "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" and that Saudi Arabia "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."¹⁸

The Committee was also "concerned that [...] the age of majority is not defined"¹⁹ and recommended "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..."²⁰

Committee Against Torture

In its Concluding observations (12 June 2002, CAT/C/CR/28/5), the Committee against Torture was concerned about "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" and recommended the State party to "re-examine its imposition of corporal punishments, which are in breach of the Convention..."

UN Special Procedures' Recommendations

(UN Special Rapporteur on the independence of judges and lawyers, country visit 20 to 27 October 2002, E/CN/2003/65/Add.3, paragraphs 71, 104 and 111i respectively)

"The Special Rapporteur was informed that the punishment that can be imposed on juveniles was within the discretion of the judge concerned. They are usually sentenced to periods of several months' imprisonment, but could be given a sentence of flogging of around 20 to 40 lashes, administered in a manner not to harm, or potentially to kill, but the Special Rapporteur was informed that usually the age of the offender was taken into consideration in these situations."

"Article 37 of the Convention on the Rights of the Child prohibits the imposition of capital punishment upon a person under the age of 18 years and in this respect the Special Rapporteur is concerned about a judge's discretionary power to impose capital or corporal punishment on such persons. The Special Rapporteur refers to paragraph 33 of the concluding observations of the Committee on the Rights of the Child on this matter (CRC/C/15/Add.148)."

15 17 March 2006, CRC/C/SAU/CO/2, *Concluding Observations on second report*, para. 32

16 *ibid.*

17 *ibid.* at paras. 42 and 43

18 22 February 2001, CRC/C/15/Add.148, *Concluding Observations on initial report*, para. 28

19 *ibid.* at para. 22

20 *ibid.* at para. 42

“Punishments imposed on individuals under the age of 18 years should not involve capital or corporal punishment.”

The review of Saudi Arabia by the members of the Human Rights Council

In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment of child offenders, and the specific recommendations to Saudi Arabia made by the Committee on the Rights of the Child and the Committee against Torture, we hope that the members of the Human Rights Council will urge the government of Saudi Arabia to:

- Explicitly prohibit sentences of death, corporal punishment and life imprisonment in Saudi Arabia, 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:

<http://www.crin.org/violence/search/closeup.asp?infoID=23448>