

The Legality of Child Executions in Saudi Arabia

# Analysis of the 2018 Juvenile Law and 2020 Royal Decree



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## Introduction

The Government of Saudi Arabia habitually denies that it executes children, and often repeats in international forums that the judiciary does not issue death sentences against children. This is categorically false. Saudi authorities have executed at least 11 persons who allegedly committed capital offences as minors since 2011, and Saudi law explicitly permits the use of the death penalty against juveniles for certain crimes, in that it does not differentiate between minors and adults in many cases. This paper will briefly analyse the Saudi Juvenile Law of 2018 and accompanying Royal Decree No. 46274 of 29/7/1441 (henceforth referred to as the Royal Decree, or simply the Decree), on the subject of child executions, according to international law, to the provisions of Islamic Sharia, and to Saudi laws, showing why Saudi Arabia's definition of juvenility is so problematic and affirmatively proving that Saudi law contemplates and even condones sentencing children to death. To summarize, the carve-outs for capital crimes in the Juvenile Law and Royal Decree mean that Saudi Arabia is not committed to setting a specific age that prevents the implementation of the death penalty for some crimes that are punishable by death. This, combined with a problematic definition of juvenility in the uncodified Sharia provisions in Saudi Arabia, and considering the ability of judges to manipulate the definition of crimes not covered by the law, grants Saudi judges significant discretion in sentencing minors to death.

## Saudi Law

According to the Convention on the Rights of the Child issued on 20 November 1989, to which Saudi Arabia acceded on 26 January 1996, the child is defined, "... every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." The Saudi system defines juveniles in its Juvenile Law of 2018, issued on 11/18/1439 AH, in the first Article as "every male or female who has completed the age of seven and has not yet completed eighteen years of age."

On the surface, there appears to be no discrepancy between Saudi law and international human rights law. Why, then, do we see Saudi Arabia continue to sentence to death and execute children? Why does the public prosecutor continue to demand their executions, and why does the judiciary respond to these demands? Why, even after the imposition of the Royal Decree of 2020 ostensibly banning child executions, can the public prosecutor still seek the death penalty against persons that committed their alleged offences as juveniles? A closer examination of the law reveals carved-out exceptions to juvenility as it relates to the death penalty that, when put into practice, allow the Saudi state to continue using the death penalty against minors.

## The Juvenile Law of 2018

Article (15) of the juvenile law contemplates the penalties that a judge can inflict on a person under the age of eighteen.

- A) Reprimand them and warn them;
- B) Hand them over to parents who live with them or who possess guardianship;
- C) Preventing them from frequenting certain places for a period not exceeding three years;
- D) Preventing them from obtaining certain jobs;
- E) Putting them under social control in their natural environment for a period not exceeding two years;
- F) Obliging them with certain duties for a period not exceeding three years; and
- G) Placement in a social or therapeutic institution for a period not exceeding one year, provided that they complete (twelve) years of age at the time of the commission of the punishable act..."

The death penalty does not appear among the penalties that may be applied to the juvenile, and in fact the law specifically contemplates alternative penalties for juveniles between the age of 15 and 18 who have committed crimes otherwise considered capital offences.

If the crime requires penalty by capital punishment, the juvenile shall be admitted to the detention center for a period not exceeding ten years.

However, the government carved out exceptions to the law in Article (16), which made it clear that the Juvenile Law as a whole, including those sections which define juvenility, do not apply in certain circumstances.

The provisions contained in this Law shall not prejudice the legally prescribed provisions on hudud crimes and qisas.

According to that Article, the provisions in the law defining juvenility do not override the Sharia law in cases of hudud or qisas crimes,<sup>1</sup> for which the death sentence has been specifically prescribed in the Islamic Sharia provisions. In these cases, the definition of juvenility put into place by the Juvenile Law will not apply, and the defendant's status as a juvenile or adult would instead need to be judged by standards enshrined in the Sharia.

Royal Decree No. 46274 of 29/7/1441

In late April 2020, the government promulgated Royal Decree No. 46274. In a statement announcing the decision, the Saudi Commission on Human Rights, Saudi Arabia's national human rights institution,<sup>2</sup> stated that the order would abolish the practice of executing minors or persons that committed offences while minors in the Kingdom. Careful analysis of the law, however, shows that this is not true.

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1-Hudud offences are those for which a penalty has been predetermined in the Koran, and include, but are not limited to murder, banditry, and unmarried intercourse. Qisas offences are retributions-in-kind – for example, a family may seek the death penalty for the murder of their relative.

2-[In 2016, the Committee against Torture, in its second periodic report on Saudi Arabia, found that the Commission takes direction from the country's executive branch, is not independent from the government, and does not conform with the Paris Principles for effective national human rights institutions.](#)

The full text of the Royal Decree does not appear to have been released at this time. However, leaked copies obtained by ESOHR through its tracking show that the law appears to move a step further towards abolition of the death penalty for minors, in that it makes the 2018 law retroactive on previous ta'zir offences and prevents the government from seeking the death penalty for terrorism-related offences. Problematically, however, the decree maintains the carve-outs for hudud and potentially also for qisas crimes mentioned above, wherein a judge must fall back on Sharia provisions to adjudicate a defendant's status as a minor.

## The Child in Sharia Law

As relates to those crimes, both laws therefore revert to the definitions of juvenility and adulthood supplied by the Sharia. To understand the implications of the use of these definitions in situations concerning the death penalty, we must return to the provisions of Islamic Sharia relating to the definition of the child.

Who, then, is a child in Islamic Sharia, and therefore immune to death sentences for hudud or qisas crimes? Islamic Sharia divides the responsibility of a person into three stages of life, and differentiates between criminal and civil responsibility according to the age of the person, as follows: in the first and second stages, a child is immune to criminal responsibility, including for hudud or qisas crimes; in the third stage, that of adulthood, a person assumes all criminal responsibility for their actions.

The first stage is from birth to the age of seven years, which is the stage of non-discrimination, and at this age the child does not bear any criminal responsibility whatsoever, but still bears civil responsibility – a concept consistent with most schools of jurisprudence. Never before has a death sentence been issued for a child of this age in Saudi Arabia, according to research on this topic.

The second stage lasts from the age of seven to the onset of “puberty,” and is considered the age of “discrimination” but not the age of commissioning. At this stage, the child does not bear criminal responsibility, and cannot be subjected to an act of retribution. However, the child does have a disciplinary responsibility under ta’zir – punishment for offences at the discretion of the judge. This is consistent with what was stated in the 2018 Juvenile Law, the punishments for which are laid out in Article 15, mentioned above.

The third stage starts from the age of puberty. This stage is known as “the stage of cognition,” and the child, now an adult, bears criminal responsibility, and hudud and qisas punishments can be issued against him.

In the absence of a codified law, the border between the second and third stages and the line between puberty and adulthood exacerbates the problem of child executions in Saudi Arabia. According to the Juvenile Law, adulthood begins at 18. According to the Sharia, however, which is



used exclusively in determining the applicability of the death sentence in hudud and qisas offences, adulthood begins at puberty. As will be seen, Saudi judges have wide discretion in determining when a person has reached the age of puberty, and actively exploit that discretion to sentence children to death.

## The Definition of the Child as Applied to Capital Punishment

The problem, then, centres on the exclusion of hudud and qisas offences from the 2018 Juvenile Law and the Royal Decree and the lack of a codified age of adulthood for hudud and qisas crimes. Given that the Codified Law nullifies itself entirely in the cases of hudud and qisas, including nullifying the provisions that set a minimum age of criminal responsibility and the age of majority, Saudi judges are free to fall back on the definitions given by uncodified Sharia sources – definitions that the Sharia itself does not clearly provide – in order to make the determination. Certain progressive schools of Sharia jurisprudence, such as that founded by Abu Hanifa,<sup>3</sup> consider the age of puberty as beginning at 18, while others would say it begins at the age of 15. Signs of puberty also differ from one child to another, so they may appear early for one child and delayed for another. Some children may display the signs of puberty before the 15th year and some after, perhaps even as early as 12 or 13. However, the majority of jurists in Saudi Arabia have determined the age to be 15.

<sup>3</sup> A historic Islamic legal scholar responsible for founding one of the four recognized schools of Islamic jurisprudence.

In the absence of a codified law, this becomes a critical distinction in discussing the death penalty as it relates to minors. This is because the personal understanding of the judge in a minor's trial will often be determinative in whether or not a child may be sentenced to death. Should a child be lucky enough to encounter a judge that follows the Abu Hanifa school of thought, for example, then the child would not be subjected to the death penalty. This is something of a statistical impossibility in Saudi Arabia, however, as judges in the Kingdom tend to or are even sometimes obligated to follow stricter interpretations. More likely is that the child would encounter a judge that sets the age of puberty as commencing at 15, as this is the most widely-held belief in Saudi Arabia. In such an instance, a child that has reached adulthood according to the Sharia, but has not yet reached adulthood according to the standards of either the Juvenile Law nor those of the Convention on the Rights of the Child, could be sentenced to death. Finally, should a child be particularly unlucky and encounter a judge that believes that adulthood begins at the emergence of the physical signs of puberty, such as the first growth of pubic hair, for example, that child may be executed at a particularly young age – perhaps even significantly younger than 15. This isn't merely an academic idea – the government sought the death penalty against the minor Murtaja al-Qureiris in 2019. He was arrested when he was 13, and could not possibly have committed a capital crime after he turned 15.

Magnifying this problem is the murkiness of certain provisions of hudud. While qisas is easy to define, itself being most basically translated as “eye-for-an-eye” punishments for crimes like murder, certain categories of hudud are more easily manipulated. At present time, for example, the Saudi prosecution is trying no less than five minors for the hudud al-hirabah, loosely translated as rebellion, banditry, piracy, or perhaps terrorism - in relation to their protest activities against the government. Such is the case of Mohammed Issa al-Faraj, a young man arrested at the age of 15 and accused of attending protests, attending funerals of deceased anti-government dissenters, and making statements against the government that disrupted public order. The first of the offences that appeared on his charge sheet related to a protest he attended at the age of nine. Because the provisions of the codified Saudi law contained in the Juvenile Law and Royal Decree do not apply to hudud offences, the prosecution can legally try minors such as Mohammed al-Faraj as adults, and thereby ask for a death sentence.

## Recommendations

The lack of the codification of the minimum age of criminal responsibility and the age of majority for hudud and qisas offences and the failure of the 2018 Law and 2020 Decree to categorically prohibit the death penalty for all children, provide Saudi judges with both ample ability and wide discretion in sentencing minors to death. This is exacerbated by the various interpretations on the concept of puberty among Sharia jurists - which varies between the age of 15 and 18 - and the manipulation of hudud offences by the judicial authorities. Such failures place the Saudi Law in stark contrast to well-accepted standards of international law, including those enshrined in the Convention on the Rights of the Child, to which Saudi Arabia has acceded. ESOHR therefore asks your government to call on Saudi Arabia to respect its human rights obligations, especially as they relate to:

- 1) The adoption of a clear, precise, and codified definition of childhood in Saudi Arabian law as relates to hudud and qisas punishments, in line with Saudi Arabia's international commitments to human rights law and with the goal of completely and totally abolishing capital punishment for any persons under the age of 18;
- 2) The adoption of a penal code which codifies all offences, in line with the internationally established principle of legality, while ensuring that rights and freedoms as recognised under

international law are not unduly restricted or criminalised;  
and

3) The immediate withdrawal of demands for the death penalty at trial against any person against whom capital punishment is sought for offences allegedly committed prior to that individual attaining the age of 18.

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