

Inhuman sentencing of children in the United Arab Emirates

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Introduction

The United Arab Emirates is a federal state consisting of seven semi-autonomous Emirates. Criminal justice is governed primarily by federal law, although local laws (at Emirate level) are applicable in certain circumstances. *Shari'a* law is also applied in criminal matters.

Child offenders may lawfully be sentenced to capital punishment and corporal punishment under Islamic law. They cannot be sentenced to life imprisonment (information unconfirmed).

The main federal laws governing juvenile justice are the Penal Code 1987, amended 2005, the Criminal Procedure Code 1992, amended 2005, the Law of Evidence 1992, and the Juvenile Delinquents and Vagrants Act 1976. These criminal laws apply to non-Islamic offences and to most *ta'zir* (discretionary punishment) offences, but not to *hadd* (mandatory punishment), *qisas* (punished by retaliation) and *diyah* offences (which require the compensation of victims), which are governed solely by *Shari'a* law.¹ The Sharia Courts Act 1996 also applies.

The minimum age of criminal responsibility under criminal law is seven.² The Juvenile Delinquency and Vagrants Act defines a juvenile as a person under 18 at the time of the offence.³ Under *Shari'a* law, persons typically become liable for Islamic punishments at the onset of puberty.⁴ The Emirates differ as to which tradition of Islamic jurisprudence is considered to be the main source of *Shari'a* rules, and this is reflected in variation between the Emirates as to the age at which persons become liable for Islamic punishments.⁵

Legality of inhuman sentencing

Death penalty

¹ *Hadd* offences are apostasy, transgression, theft, highway robbery, adultery, slander and drinking alcohol. They are punished by *hadd*, doctrinal penalties prescribed in the *Quran* or by the *Sunna*, including flogging, amputation and stoning to death. *Qisas* offences include murder, manslaughter and crimes against the person, and punishment is about causing similar harm to the offender as the offender caused to the victim (retaliation). *Diyah* is commonly referred to as "blood money." *Ta'zir* offences include lesser crimes of the *hadd* and *qisas* categories, reduced penalties for *hadd* and *qisas* offences when the evidentiary requirements cannot be met, and regulatory offences which harm public welfare or undermine the precepts of Islam. *Ta'zir* punishments include corporal punishment, imprisonment, compensatory and punitive damages, and fines. (Sources: Bassiouni, M.C. (1997), "Crimes and the Criminal Process", *Arab Law Quarterly*, 12(3), 269-286; Al-Muhairi, B.S.B.A. (1997), "The Incompatibility of the Penal Code with Shari'a", *Arab Law Quarterly*, 12 (3), 307-329)

² Juvenile Delinquency and Vagrants Act, article 7; Penal Code, article 62

³ Article 1

⁴ Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited

⁵ Al-Muhairi, B.S.B.A. (1996), "The Islamisation of Laws in the UAE: The Case of the Penal Code", *Arab Law Quarterly*, 11(4), 350-371. According to the same source, the Draft Penal Code originally attempted to avoid variation regarding the age of the offender by exempting persons under 18 from *hadd* punishments and directing that such persons should be governed instead by the Juvenile Delinquents and Vagrants Act (articles 163 and 485), but these provisions were not included in the Penal Code as finally enacted.

Article 9 of the Juvenile Delinquents and Vagrants Act states: “A juvenile may not be condemned to capital punishment...” The prohibition applies to persons aged under 18 at the time of the offence.⁶ The Penal Code provides for the death penalty for a number of crimes,⁷ but states that persons aged 7-17 are governed by the Juvenile Delinquents and Vagrants Act.⁸ The latter allows for a juvenile who has reached the age of 16 to be punished under the Penal Code, substituting a sentence of detention not exceeding 10 years for that of capital punishment.⁹

However, the Penal Code and other criminal laws do not apply to *hadd* or *qisas* offences, punishments for which include death. The Code states in article 1: “In crimes of doctrinal punishment (*Hadud*¹⁰), retaliation (*Qisas*), and blood money (*Diyah*), the provisions of Islamic *Shari’a* shall be applied. The crimes and disciplinary punishments (*Ta’azir*) shall be determined according to the provisions of this Code and other criminal statutes.” The Sharia Courts Act provides for *Shari’a* courts to try cases concerning crimes allegedly committed by juveniles, and states that *Shari’a* punishments shall apply.¹¹

Corporal punishment

There is no provision for corporal punishment as a sentence of the courts in the Penal Code, the Juvenile Delinquents and Vagrants Act or other criminal law. However, child offenders may be subject to corporal punishment under *Shari’a* law. Punishments include flogging, amputation, and – as retaliation – injury similar to that for which the offender has been convicted of inflicting on the victim.

Islamic law also provides for discretionary *ta’zir* punishments. *Ta’zir* offences and punishments are, with some exceptions, codified in the Penal Code and other criminal laws (see article 1 of the Penal Code, above). The Code does not provide for corporal punishment. However, according to *Shari’a* law, *ta’zir* punishments should be based on the *hadd* punishments which would be relevant for similar cases, and in practice persons charged under the Code and other criminal laws have been sentenced to corporal punishment following this reasoning.¹² In upholding the sentence of flogging in a case of *zina* (unlawful sexual intercourse) by a Muslim male (age not reported), the Federal Supreme Court confirmed that the Penal Code and other criminal laws apply to *ta’zir* offences, which must be punished according to statute. However, for *ta’zir* offences related to *hadd* offences that are not covered by the Penal Code, judges have discretion to specify other punishments related to those *hadd* offences, including flogging.¹³ We have been unable to ascertain whether subsequent judgments have concurred or conflicted with this ruling.

Life imprisonment

⁶ Article 1

⁷ For example, see articles 66, 149, 154 and 332. Other federal laws providing for the death penalty include the Control of Narcotics and Psychotropic Substances Act 1995, the Law on the Protection and Development of the Environment 1999 and the Martial Law Act 2009.

⁸ Article 63

⁹ Articles 8 and 10

¹⁰ *Hadud* is a plural form of *hadd*.

¹¹ Articles 1 and 2

¹² Al-Muhairi, B.S.B.A. (1997), “The Incompatibility of the Penal Code with *Shari’a*”, *Arab Law Quarterly*, 12 (3), 307-329

¹³ The Ahmad Malik case – Unpublished *Shari’a* Criminal Cassation Case No. 44 Year 14, decided on 30 January 1993. Described in Al-Muhairi, B.S.B.A. (1997), op cit.

Article 9 of the Juvenile Delinquents and Vagrants Act states: “A juvenile may not be condemned to ... imprisonment...” If a juvenile aged 16 or 17 is punished under the Penal Code, the sentence of life imprisonment should be replaced by a sentence of detention not exceeding 10 years.¹⁴

As noted above, criminal law does not apply to Islamic offences. To our knowledge *Shari'a* does not provide for life imprisonment (information unconfirmed).

Inhuman sentencing in practice

We have no official statistics relating to sentencing of child offenders to capital and corporal punishment.

However, according to one source, the courts regularly sentence people to death.¹⁵ At least 2 people were reportedly sentenced to death in 2007¹⁶ and 13 in 2009, age unspecified.¹⁷ In March 2010, 17 people were sentenced to death for one murder, including at least one 17-year-old.¹⁸ In April 2010, two men were sentenced to death for a 2003 murder they allegedly committed as 17-year-olds,¹⁹ and a court upheld the death sentence for a woman earlier convicted of murdering her husband in 2003 at the age of 17.²⁰ Amnesty International reports that at least one execution was carried out in 2008, age unspecified.²¹

Regarding corporal punishment, a 2007 report from Amnesty International notes that a court in al-‘Ain sentenced a teenage girl to 60 lashes for having “illicit sex” with a man when she was 14; the sentence was upheld in June 2007 but it is not known if the punishment was carried out.²²

Progress towards prohibition and elimination

Law reform needed

The law should explicitly prohibit all inhuman sentencing of child offenders – defined as persons under 18 at the time of the offence – including capital and corporal punishment under *Shari'a* law.

Law reforms under way

In responding to recommendations made concerning children’s rights during the Universal Periodic Review in 2008, the Government stated that the Ministry of Social Affairs, in consultation with relevant departments and civil society organisations, was studying a draft law which would improve

¹⁴ Articles 8 and 10

¹⁵ Amman Center for Human Rights Studies (2009), *The Death Penalty in the Arab World*

¹⁶ Amnesty International (2007), *Amnesty International Report 2007: The State of the World’s Human Rights*, London: Amnesty International Publications

¹⁷ Amnesty International (2010), *Amnesty International Report 2010: The State of the World’s Human Rights*, London: Amnesty International Publications

¹⁸ See <http://www.earthtimes.org/articles/news/360240.row-emirates-reject-settlement.html>

¹⁹ See <http://www.thenational.ae/news/uae-news/courts/two-on-death-row-for-teenage-murder>

²⁰ See <http://english.nessunotocchicaino.it/bancadati/schedastato.php?idstato=13000046&idcontinente=23>

²¹ Amnesty International (2009), *Amnesty International Report 2009: The State of the World’s Human Rights*, London: Amnesty International Publications; see also Amnesty International (2009), *Death Sentences and Executions in 2008*, AI Index ACT 50/003/2009, and Amman Center for Human Rights Studies (2009), op cit.,

²² Amnesty International (2007), op cit.

protection for children, including through the creation of juvenile justice courts. We have no details of the provisions in the draft.²³

National campaigns

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

National and international law conflicting with inhuman sentencing

The Constitution and other domestic legislation

A number of provisions in the Constitution (1971, amended 1996) protect the physical integrity of all persons, although exemptions are made for cruel punishments prescribed by law. Relevant articles include:

Article 7:

“Islam is the official religion of the Union. The Islamic Shari’ah shall be a main source of legislation in the Union. The official language of the Union is Arabic.”

Article 14:

“Equality, social justice, ensuring safety and security and equality of opportunity for all citizens shall be the pillars of the Society . Co-operation and mutual mercy shall be a firm bond between them.”

Article 16:

“Society shall be responsible for protecting childhood and motherhood and shall protect minors and others unable to look after themselves for any reason, such as illness or incapacity or old age or forced unemployment. It shall be responsible for assisting them and enabling them to help themselves for their own benefit and that of the community. Such matters shall be regulated by welfare and social security legislations.”

Article 25:

“All persons are equal before the law, without distinction between citizens of the Union in regard to race, nationality, religious belief or social status.”

Article 26:

“Personal liberty is guaranteed to all citizens. No person may be arrested, searched, detained or imprisoned except in accordance with the provisions of law. No person shall be subjected to torture or to degrading treatment.”

Article 27:

“Crimes and punishments shall be defined by the law. No penalty shall be imposed for any act of commission or omission committed before the relevant law has been promulgated.”

Article 28

“Penalty is personal. An accused shall be presumed innocent until proved guilty in a legal and fair trial. The accused shall have the right to appoint the person who is capable to

²³ A/HRC/10/29, 9 November 2009, *Report of the Human Rights Council on its tenth session*, para. 425

conduct his defence during the trial. The law shall prescribe the cases in which the presence of a counsel for defence shall be assigned.

Physical and moral abuse of an accused person is prohibited.”

Article 2 of the Criminal Procedure Code states:

“... It is forbidden to cause bodily or moral harm to the accused or subject any person to torture or degrading treatment.”²⁴

International human rights treaties

The United Arab Emirates has ratified or acceded to the following international treaties:

- Convention on the Rights of the Child (in 1997)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 2012)²⁵
- Convention on the Elimination of All Forms of Discrimination Against Women (in 2004)
- Convention on the Rights of Persons with Disabilities (in 2010)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1974)
- Arab Charter on Human Rights

The United Arab Emirates has not ratified the International Covenant on Civil and Political Rights, the Second Optional Protocol on the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, or the International Covenant on Economic, Social and Cultural Rights.

The United Arab Emirates has not ratified any complaints/communications mechanisms. It has signed but not ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities (in 2008).

Status of treaties

The UAE is a civil law system strongly influenced by French, Roman, Egyptian and Islamic law.²⁶ The Government has stated that once an international convention has been published in the Official Gazette, it has the force of law and takes precedence over domestic law.²⁷ We have been unable to

²⁴ Article 1 indicates that this also applies to Islamic law, but the translation is unclear: “The provisions of this Law shall apply to the procedures concerning offences whose punishments are not specified (*Ta'ziriah*) as well as procedures relating to Dogma offences (*Hodoud*) and punitive offences (*Kassas*) and blood money (*Diyyah*), if they do not violate the Shari'a rules.”

²⁵ In July 2012, the United Arab Emirates acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but in doing so declared that “the lawful sanctions applicable under national law, or pain or suffering arising from or associated with or incidental to these lawful sanctions, do not fall under the concept of ‘torture’ as defined in article 1 of this Convention or under the concept of cruel, inhuman or degrading treatment or punishment mentioned in this Convention.”

²⁶ Khedr, A. A. & Alnuaimi, B. (2010), *A Guide to United Arab Emirates Legal System*, www.nyulawglobal.org/globalex/united_arab_emirates.htm, accessed 17 September 2010

²⁷ CEDAW/C/ARE/CO/1, 5 February 2010, *Concluding observations of CEDAW on the state party's initial report*, para. 12

ascertain whether the Convention on the Rights of the Child has been published in the Gazette. The following articles of the Constitution are relevant.

Article 47:

“The Supreme Council of the Union shall exercise the following matters :- ...

4. Ratification of treaties and international agreements. Such ratification shall be accomplished by decree....”

Article 60:

“The Council of Ministers, in its capacity as the executive authority of the Union, and under the supreme control of the President of the Union and the Supreme Council, shall be responsible for dealing with all domestic and foreign affairs which are within the competence of the Union according to this Constitution and Union laws.

The Council of Ministers shall, in particular, assume the following powers: ...

7. Supervising the execution of judgements rendered by Union Law Courts and the implementation of international treaties and agreements concluded by the Union....”

Article 91:

“The Government shall inform the Union Assembly of international treaties and agreements concluded with other states and the various international organisations, together with appropriate explanations.”

Article 125:

“The Governments of the Emirates shall undertake the appropriate measures to implement the laws promulgated by the Union and the treaties and international agreements concluded by the Union, including the promulgation of the local laws, regulations, decisions and orders necessary for such implementation.

The Union authorities shall supervise the implementation by Emirates' Governments of the Union laws, decisions, treaties, agreements and Union judgements. The competent administrative and judicial authorities in the Emirates should forward to the Union authorities all possible assistance in this connection.”

Article 147:

“Nothing in the application of this Constitution shall affect treaties or agreements concluded by member Emirates with states or international organisations unless such treaties or agreements are amended or abrogated by agreement between the parties concerned.”

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child

(13 June 2002, CRC/C/15/Add.183, Concluding observations on initial report, paras. 7, 8, 32, 33, 42 and 43)

“The Committee ... is also concerned that with respect to the enjoyment of children’s rights throughout the State party, the application of different laws governing different legal jurisdictions may lead to discrimination. In particular, the Committee is concerned that:

a) gaps in federal and local legislation may result in irregularities and disparities in the outcomes of the judicial process;

b) discrepancies may occur between Shariah judges' decisions, and between Shariah court decisions and decisions of other types of courts in the State party;

...

d) Shariah courts are not regulated by uniform procedural rules, including in the area of criminal matters; and

e) in Shariah courts federal and local laws are considered as secondary sources, and Shariah judges allegedly do not follow Supreme Court interpretation of United Arab Emirates law.

“The Committee recommends that the State party:

a) conduct a comprehensive review of its domestic laws, including customary laws, administrative regulations and legal procedural rules, to ensure that they conform to international human rights standards, including the Convention;

b) ensure the speedy promulgation of legislation relating to child rights and its effective implementation; and

c) ensure that laws are sufficiently clear and precise, are published, and are accessible to the public.

“Contrary to article 37 (a) of the Convention, the Committee is seriously concerned that there is a possibility that persons under 18 may be subjected to judicial sanctions such as flogging.

“The Committee recommends that the State party take immediate steps to abolish the imposition of flogging and other forms of cruel, inhuman or degrading treatment and punishment to persons who have committed crimes when they were under 18.

“Noting with appreciation measures to reform the administration of juvenile justice, the Committee is nevertheless concerned that the age of criminal responsibility of 7 years is too low, and that persons under 18 may be prosecuted for crimes in the same manner as adults (i.e. without special procedures), and be subjected to the same penalties as adults.

“The Committee recommends that the State party:

a) raise the minimum age of criminal responsibility in accordance with the principles and provisions of the Convention;

b) ensure that its system of juvenile justice includes the establishment of juvenile courts and that it fully integrates the provisions of the Convention, in particular articles 37, 39 and 40, as well as with 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 Guidelines for Action on Children in the Criminal Justice System;

c) expedite the promulgation of the draft juvenile justice law, ensuring that it is applicable to all persons under 18 and that adequate resources are allocated for its effective implementation;

d) ensure that deprivation of liberty is only used as a measure of last resort, for the shortest possible time, is authorized by the court, and that persons under 18 are not detained with adults....”

Universal Periodic Review

The United Arab Emirates was examined under the Universal Periodic Review process in 2008. Recommendations were made concerning judicial corporal punishment and the death penalty.²⁸ The Government did not support the recommendations.²⁹

²⁸ A/HRC/10/75, 12 January 2009, *Report of the Working Group on the Universal Periodic Review: United Arab Emirates*, paras. 55, 61, 62, 67, 69, 73, 78

²⁹ *ibid.*, para. 93