

Corporal punishment of children in the United Arab Emirates: Briefing for the Universal Periodic Review, 29th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, June 2017



Global Initiative to
**End All Corporal Punishment
of Children**

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In the United Arab Emirates, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, as well as those made during the 2nd cycle UPR of UAE in 2013.

We hope the Working Group will note with concern the legality of corporal punishment of children in UAE. We hope states will raise the issue during the review in 2018 and make a specific recommendation that UAE clearly prohibit all corporal punishment of children, however light, in all settings including in the home and as a sentence of the courts.

1 Review of the United Arab Emirates in the 2nd cycle UPR (2013) and progress since

- 1.1 UAE was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 15). The issue of corporal punishment of children was raised in the summary of stakeholders' information.¹ In contradiction with its international obligations, UAE rejected recommendations to prohibit all corporal punishment.²
- 1.2 Since the review in 2013, a Law on the Rights of the Child (law "Wadeema") was enacted. Although we have not been able to examine the full text of the Law, there are no indications that corporal punishment was explicitly prohibited in all settings.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in UAE. We hope states will raise the issue during the review in 2018 and make a specific recommendation that UAE clearly prohibit all corporal punishment of children, however light, in all settings including in the home and as a sentence of the courts.**

¹ 9 November 2012, A/HRC/WG.6/15/ARE/3, Summary of stakeholders' views, para. 25

² 4 June 2013, A/HRC/23/13/Add.1, Report of the working group: Addendum, paras. 3 and 5

2 Legality of corporal punishment in the United Arab Emirates

Summary of current law and opportunities for achieving prohibition

In UAE, corporal punishment of children is unlawful in schools and penal institutions. It is lawful in all other settings including in the home and as a sentence for a crime.

- 2.1 ***Home (lawful)***: The Penal Code 1987 states in article 53: “There is no crime if the act takes place in good faith in the use of a right provided for in the law and within the limits set for such right. The following shall be considered as a use of right: (1) Chastisement by a husband to his wife and chastisement of the parents, or whoever acts in their stead, to the minor children within the limits prescribed by Shari’a or by law....” Article 59 states: “Exceeding the legitimate limits in good faith shall be considered an extenuating excuse and a judgment of acquittal may be rendered if deemed appropriate by the judge.” A 2010 judgment by the Federal Supreme Court reportedly upheld a husband’s right to “chastise” his wife and children provided that beating and other forms of punishment leave no physical marks.³ However, the Government reported to the Committee on the Rights of the Child in 2015 that a committee chaired by a representative of the Ministry of Justice had been formed to review the Penal Code in relation to domestic violence and had included among its recommendations the deletion of article 53(1).⁴
- 2.2 In 2016, the Government reported to the Committee on the Rights of Persons with Disabilities that Law no. 3/2016 on the Rights of the Child or Law “Wadeema” had been passed. It further mentioned that articles 33 to 37 of the Law protected children from all forms of violence.⁵ The Law took effect on 15 June 2016⁶ – we have yet to obtain a copy in order to establish if it prohibits corporal punishment but there are no indications that explicit prohibition was included.
- 2.3 ***Alternative care settings (lawful)***: There is no explicit prohibition of corporal punishment in alternative care settings, where corporal punishment is lawful as for parents under the right of chastisement in article 53 of the Penal Code 1987. The Federal Act No. 1 of 2012 concerning care for children of unknown parentage does not prohibit the use of corporal punishment.
- 2.4 ***Day care (lawful)***: There is no explicit prohibition of corporal punishment in early childhood care or in day care for older children. It is lawful as for parents under the right of chastisement in article 53 of the Penal Code 1987.
- 2.5 ***Schools (unlawful)***: Corporal punishment is prohibited in schools under article 9 of Ministerial Decision No. 454/2 1998 regulating students’ behaviour in school premises. It is considered unlawful in private schools under the Regulation of Behavioural Direction for Private School Students, which states that schools should not resort to non-pedagogic methods for modifying student behaviour, but there is no explicit prohibition. In 2010, the Ministry of Education was reportedly developing a new code of conduct for public schools and private schools were being

³ Joint submission to the UPR, 2013, from Human Rights Watch, Network for Human Rights Information, Gulf Centre for Human Rights, and Index on Censorship; Submission to the UPR, 2013, from Amnesty International

⁴ 6 July 2015, CRC/C/ARE/Q/2/Add.1, Reply to list of issues, paras. 13, 14 and 15

⁵ 8 July 2016, CRPD /C/ARE/Q/1/Add.1, Reply to list of issues, para. 15

⁶ http://www.uaeinteract.com/docs/UAE_Child_Protection_Law_takes_effect_on_June_15/75931.htm, accessed 5 December 2016

urged to do likewise, and calls were being made for it to explicitly forbid the use of corporal punishment.⁷

2.6 Penal institutions (unlawful): It appears that corporal punishment is unlawful as a disciplinary measure in penal institutions. Penal institutions are regulated by Ministerial Decree No. 471 1995 on the Promulgation of the Executive Regulations for Federal Act No. 43 1992 Regulating Penitentiaries 1995. Article 86(1) states: "Cruelty, beating, torture or any other manifestation of material aggression against a prisoner shall not be authorised. Any form of psychological abuse shall also be prohibited. Disciplinary action against a prisoner shall be within the limits of specified penalties which are in accordance with the provisions of the law and text of this chapter." There is no provision for corporal punishment among the disciplinary measures permitted for juveniles.

2.7 Sentence for crime (lawful): The main federal laws governing juvenile justice are the Penal Code 1987, the Criminal Procedure Code 1992, 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 punishments), *qisas* (punished by retaliation) and *diyah* offences (requiring compensation of victims), which are governed solely by Shari'a law. In 2008, the Government reported that the Ministry of Social Affairs was studying a draft law that would improve protection for children, including through the creation of juvenile justice courts, but we have no further information.⁸ The Sharia Courts Act 1996 provides for Shari'a courts to try cases concerning crimes allegedly committed by juveniles, and states that Shari'a punishments shall apply (arts. 1 and 2).

2.8 The Constitution 1971 prohibits torture and degrading treatment (art. 26) and there is no provision for corporal punishment as a sentence of the courts in the Penal Code, the Juvenile Delinquents and Vagrants Act 1976 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.

2.9 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. Article 1 of the Penal Code states: "In crimes of doctrinal punishment (*Hadud*), 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."

2.10 While the Penal Code itself does not provide for corporal punishment, 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 have therefore been sentenced to corporal punishment.⁹ The Federal Supreme Court has confirmed that for *ta'zir* offences which are related to *hadd* offences that are not covered by the Penal Code, judges have discretion to specify *hadd* punishments, including flogging.¹⁰ According to Amnesty International, in 2007, 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 2007.¹¹

⁷ *DaijiWorld*, 3 February 2010

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

⁹ Al-Muhairi, B.S.B.A. (1997), "The Incompatibility of the Penal Code with Shari'a", *Arab Law Quarterly*, 12 (3), 307-329

¹⁰ The Ahmad Malik case – Unpublished Shari'a Criminal Cassation Case No. 44 Year 14, on 30 January 1993

¹¹ *Amnesty International Report 2007: The State of the World's Human Rights*, London: Amnesty International Publications

2.11 It has also been reported that courts convict people for *zina* offences under article 356 of the Penal Code, which punishes “indecenty”, sometimes going beyond the codified laws and sentencing persons convicted to stoning and flogging.¹²

3 Recommendations by human rights treaty bodies

3.1 **CRC**: The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in UAE and recommended it be prohibited in all settings – in the concluding observations on the initial report in 2002 and on the second report in 2015.¹³

3.2 **CEDAW**: In 2015, the Committee on the Elimination of Discrimination Against Women expressed concern at the corporal punishment women faced under Shari’a law.¹⁴

3.3 **CRPD**: The Committee on the Rights of Persons with Disabilities has expressed concern at the legality of corporal punishment and recommended its prohibition in all settings, in 2016.¹⁵

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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

¹² Human Rights Watch Submission to the CEDAW Committee of the United Arab Emirates’ Periodic Report 62nd Session, February 2015

¹³ 13 June 2002, CRC/C/15/Add.183, Concluding observations on initial report, paras. 32, 33, 34 and 35; 2 October 2015, CRC/C/ARE/CO/2 Advance Unedited Version, Concluding observations on second report, paras. 37, 38, 39 and 40

¹⁴ 20 November 2015, CEDAW/C/ARE/CO/2-3, Concluding observations on second/third report, paras. 29 and 30

¹⁵ 3 October 2016, CRPD/C/ARE/CO/1, Concluding observations on initial report, paras. 29 and 30