

Corporal punishment of children in the United Arab Emirates

Report prepared by the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), last updated December 2015



Child population

1,666,200 (UNICEF, 2013)

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools, as a sentence for crime and possibly in penal institutions.

Article 53 of the Penal Code 1987, confirmed by a 2010 Federal Supreme Court ruling, provides for the “right” of parents to “chastise” their children. Legal provisions against assault and violence are not interpreted as prohibiting corporal punishment. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or kind of such punishment is acceptable or lawful. All legal defences for the use of corporal punishment should be repealed, and prohibition enacted of all corporal punishment, however light and whoever the perpetrator.

Alternative care settings – Prohibition should also be enacted in relation to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition should be enacted in laws relating to all education settings, including public and private, religious and secular.

Penal institutions – Corporal punishment should be prohibited as a “disciplinary” measure in all institutions accommodating children in conflict with the law.

Sentence for crime – All provisions for flogging of children committed of an offence should be repealed and all judicial corporal punishment of juvenile offenders (under 18) prohibited, including under Shari’a law.

Detailed country report

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

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. 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.¹ 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).²

In January 2014, the Federal National Council passed the Child Rights Law; as at September 2014, the new Law was awaiting final approval from the President before publication in the Official Gazette.³ As at October 2015, the law had still not been enacted.⁴ The Law reportedly protects children from all forms of violence:⁵ we have yet to establish if it prohibits corporal punishment.

Alternative care settings

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 (see under "Home"). We have yet to examine the text of Federal Act No. 1 of 2012 concerning care for children of unknown parentage.

Day care

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.

Schools

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 urged to do likewise, and calls were being made for it to explicitly forbid the use of corporal punishment.⁶

Penal institutions

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

¹ 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

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

³ <http://www.thenational.ae/uae/government/fnc-passes-child-rights-law-after-three-day-debate>, accessed 16 September 2014; <http://gulfnnews.com/news/gulf/uae/general/parental-neglect-is-tantamount-to-child-abuse-says-official-1.1385380>, accessed 16 September 2014

⁴ 2 October 2015, CRC/C/ARE/CO/2 Advance Unedited Version, Concluding observations on second report, paras. 37, 38, 39 and 40

⁵ http://www.uaeinteract.com/docs/FNC_approves_draft_law_on_child_rights/60166.htm, accessed 16 September 2014

⁶ *DaijiWorld*, 3 February 2010

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.

Sentence for crime

Corporal punishment is lawful as a sentence for crime.

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.⁷ 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).

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”.

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.

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.”

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.⁸ 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.⁹ 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 2007.¹⁰

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.¹¹

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

⁸ Al-Muhairi, B.S.B.A. (1997), “The Incompatibility of the Penal Code with Shari'a”, *Arab Law Quarterly*, 12 (3), 307-329

⁹ The Ahmad Malik case – Unpublished Shari'a Criminal Cassation Case No. 44 Year 14, on 30 January 1993

¹⁰ *Amnesty International Report 2007: The State of the World's Human Rights*, London: Amnesty International Publications

¹¹ Human Rights Watch Submission to the CEDAW Committee of the United Arab Emirates' Periodic Report 62nd Session, February 2015

Universal Periodic Review of UAE's human rights record

The United Arab Emirates was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The following recommendation was recorded in relation to corporal punishment of adults:¹²

“Sweden noted that corporal punishment of adults is practiced in the country, and recommended that (b) it consider legislative changes to repeal corporal punishment and bring legislation into line with international human rights obligations....”

The Government rejected the recommendation.¹³ However, the Government did accept the following recommendations:¹⁴

“To vigorously pursue efforts to promulgate a national law guaranteeing better protection for children, and that the general principle of the best interest for the child, as contained in article 3 of the Convention, is fully reflected in that law (Djibouti);

“To enact national legislation to protect the rights of children (Yemen)”

In reporting to the Human Rights Council with regard to the above accepted recommendations, the United Arab Emirates Government stated that “the Ministry of Social Affairs, in consultation with the concerned departments and civil society organisations, was studying a draft law to guarantee better protection for children, including through the creation of juvenile justice courts”.¹⁵

The second cycle review took place in 2013 (session 15). The following recommendations were made:¹⁶

“Introduce legislation to prohibit the rights of men to physically punish their wives (Denmark);

“To elaborate the possibility to eliminate corporal punishment and the death penalty (Estonia);
Repeal corporal punishment and the death penalty from its penal system (Argentina);

“Take legislative measures to explicitly ban corporal punishment in all settings, including the home and penal institutions, set up effective complaints mechanisms and provide training in the identification, reporting and management of cases of ill-treatment to teachers, law enforcement and health professionals (Liechtenstein)”

The Government gave a mixed response to the recommendations. It rejected the recommendation to prohibit corporal punishment as a sentence and “took note of” the recommendation to prohibit it in all settings and to prohibit men physically punishing their wives. The Government also “took note of” the recommendations to set up complaints mechanisms and provide professional training related to the issue.¹⁷

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 October 2015, CRC/C/ARE/CO/2 Advance Unedited Version, Concluding observations on second report, paras. 37, 38, 39 and 40)

“The Committee, while noting that a new policy has been formulated for the investigation of cases of abuse and neglect of children, remains particularly concerned that:

¹² 12 January 2009, A/HRC/10/75, Report of the working group, para. 62

¹³ 12 January 2009, A/HRC/10/75, Report of the working group, para. 93

¹⁴ 12 January 2009, A/HRC/10/75, Report of the working group, paras. 91(11) and 91(12)

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

¹⁶ 21 March 2013, A/HRC/23/13, Report of the working group, paras. 128(92), 128(127) and 128(133)

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

- a) the existing legislation of the State party does not specifically criminalize all forms of violence against children;
- b) article 53 (1) of the Penal Code authorizes men to use violence against their wives and children within the limits prescribed by *Sharia* or by law and provides that perpetrators of crimes can escape punishment if ‘performed in good faith’;
- c) in 2010, the State party’s Federal Supreme Court issued a ruling indicating that beating and other forms of punishment or coercion by husbands on their wives were allowed provided they do not leave physical marks;
- d) whereas corporal punishment of children is prohibited in school, it is lawful in the home and as a sentence for crime.

“Recalling the recommendations of the United Nations study on violence against children of 2006 (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children establish a comprehensive national framework to protect children and families from violence, provide rehabilitation measures to child victims of violence and prosecute perpetrators of abuse. The Committee further recommends that the State party take into account general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, and in particular:

- a) repeal without delay all laws that allow, condone or excuse gender-based violence and violence against children, especially articles 53 and 56 of the Penal Code, and ensure accountability for all forms of violence against children;
- b) adopt a comprehensive law that addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing;
- c) ensure children’s access to justice, including by making the reporting of violence mandatory and by providing legal support and making available child-friendly and confidential complaint mechanisms in institutions, schools, detention centres, hospitals and other relevant settings;
- d) ensure the availability and quality of prevention, protection, access to justice, rehabilitation and reintegration programmes, including health services and psychosocial support, free helplines and adequate shelters for victims.

“The Committee is seriously concerned that in spite of its previous recommendation (CRC/C/15/Add.183 para. 33), inhuman or degrading treatment or punishment can still be imposed on children as judicial sanctions. The Committee is particularly concerned that the Law on Juvenile Offenders provides that whipping may be imposed for a child over 16 years for murder, assault and battery as well as alcohol-related offences, theft or illicit sexual intercourse outside marriage.

“With reference to the Committee’s general comment No. 8 (2006) on corporal punishment and general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee urges the State party to immediately abolish legislation which provides for the imposition of flogging and other forms of cruel, inhuman or degrading treatment and punishment on children.”

Committee on the Rights of the Child

(13 June 2002, CRC/C/15/Add.183, Concluding observations on initial report, paras. 32, 33, 34 and 35)

“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.

“The Committee is concerned that there is insufficient information and awareness of the ill-treatment of children, including corporal punishment, within the family, schools and institutions.

“The Committee recommends that the State party:

- a) conduct a study to assess the nature and extent of ill-treatment and abuse of children, and design policies and programmes to address it;
- b) take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools and in institutions;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment....”

Committee on the Elimination of Discrimination Against Women

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

“The Committee is concerned about violence against women resulting from the criminalization of consensual sexual relations between adults outside marriage under article 356 of the Penal Code as well as the use of this article to criminalize women in prostitution, women victims of trafficking, sexual exploitation and abuse. The Committee is concerned that in all these cases, women face harsh sentences such as prison sentences, the death penalty and torture or inhuman, cruel or degrading punishment in the form of stoning or flogging and that hundreds of women in the State party are reportedly serving sentences for convictions of *zina*.

“The Committee calls upon the State party to repeal article 356 of the Penal Code and to promptly release women and girls convicted of *zina* offences, especially foreign women victims of sexual violence and abuse.”

Prevalence/attitudinal research in the last ten years

In a poll conducted for Al Aan TV’s Nabd al Arab programme and carried out by YouGov Siraj, 53% of the 770 respondents agreed parents should have the right to “discipline” their children including through physical punishment. One in five (21%) said corporal punishment was a form of domestic violence, and 10% said it was “backward”. The majority (84%) said teachers could “discipline” children, with 32% happy for a teacher to strike the child, including with an object such as a ruler; 7% thought it acceptable to slap a child in the face or swear at them.

(Reported in *The National*, 5 March 2011)

Eighty-four per cent of parents and educationalists who took part in a 2011 poll said corporal punishment of children is outdated and should not be condoned or encouraged; 16% said “spanking” should be used to discipline children.

(Reported by *Emirates 24/7*, 23 February 2011, www.emirates247.com)

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