

Corporal punishment of children in the United Arab Emirates

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Child population 1,510,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

The United Arab Emirates' commitment to prohibiting corporal punishment

The United Arab Emirates expressed its commitment to prohibiting corporal punishment in all settings in accepting clearly recommendations to do so made during the Universal Periodic Review in 2018. It became a Pathfinder country with the Global Partnership to End Violence Against Children earlier in 2018.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and as a sentence for crime; prohibition in penal institutions requires confirmation.

Article 2.2 of the Law no. 3/2016 on the Rights of the Child recognises a “right” of parents to “discipline” their child. 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 All legal defences for the use of corporal punishment should be repealed, and prohibition enacted of all corporal punishment, however light and whoever the perpetrator.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 of corporal punishment should 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).

Penal institutions – Federal Act Regulating Penitentiaries 1995 prohibits beating of prisoners and there is no provision for corporal punishment among the disciplinary measures permitted for juvenile. Confirmation is required that all corporal punishment is prohibited 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Sentence for crime – All provisions for flogging of children committed of an offence should be repealed and all judicial corporal punishment of juvenile offenders (under 18) prohibited, including under Shari’a law.

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. Article 2.2 of Law no. 3/2016 on the Rights of the Child (or Law “Wadeema”) recognises a “right” of parents to “discipline” their child, stating: “The competent authorities and the concerned entities shall ... protect the child from all forms of neglect, exploitation and abuse and from any physical and psychological violence that exceeds the limits of the Sharia and the Law, such as the rights of the parents and their equivalents to discipline their children.” In 2016, the state reported that articles 33 to 37 of Law no. 3/2016 on the Rights of the Child protected children from all forms of violence:¹ however these articles do not explicitly prohibit corporal punishment and are undermined by article 2.2. Article 1 of the Law defines violence against children as the “deliberate use of force against any child by any individual or group that would lead to *actual harm* to the health, growth or survival of the child” (emphasis added).

The Government had reported 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), which allowed the “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....”² This was achieved by Federal Decree-Law no. 7/2016. Previously, a 2010 judgment by the Federal Supreme Court had 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

In reporting to the UPR in November 2017, the Government committed to finalising and enacting the draft Federal Act on Domestic Violence.⁴ We have been unable to examine the draft but there are no indications corporal punishment of children will be addressed.

The United Arab Emirates became a Pathfinder country with the Global Partnership to End Violence Against Children in 2018. This committed the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. In June 2018, the Government accepted clear recommendations to explicitly prohibit corporal punishment of children in all settings, signalling its commitment to full prohibition.⁵

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 to discipline in article 2.2 of the Law no. 3/2016 on the Rights of the Child (see under “Home”). The Federal Act No. 1 of 2012 concerning care for children of unknown parentage does not prohibit the use of corporal punishment.

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

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

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 13 November 2017, A/HRC/WG.6/29/ARE/1, National report, para. 68

⁵ 14 June 2018, A/HRC/38/14/Add.1 Advance unedited version, Report of the working group: Addendum, para. 5

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 to discipline in article 2.2 of the Law no. 3/2016 on the Rights of the Child.

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 It appears corporal punishment in schools was in fact prohibited in the 2017 amended version of the Code of Conduct for teachers and school staff⁷ - we have been unable to examine the text to confirm this.

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 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

⁶ *DaijiWorld*, 3 February 2010

⁷ See <http://www.arabnews.com/node/1172171/offbeat> and <https://www.thenational.ae/uae/education/teachers-told-not-to-mock-pupils-in-new-uae-education-code-of-conduct-1.663814>, accessed 13 October 2017

further information.⁸ The Government reported in 2017 that a draft Federal Act on Juvenile Delinquents was under discussion.⁹ 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.¹⁰ 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.¹¹ 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 2007.¹²

It has also been reported that courts convict people for *zina* offences under article 358 of the Penal Code, which punishes “indecentcy”, sometimes going beyond the codified laws and sentencing persons convicted to stoning and flogging.¹³

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

⁹ 13 November 2017, A/HRC/WG.6/29/ARE/1, National report, page 4

¹⁰ Al-Muhairi, B.S.B.A. (1997), “The Incompatibility of the Penal Code with Shari'a”, *Arab Law Quarterly*, 12 (3), 307-329

¹¹ The Ahmad Malik case – Unpublished Shari'a Criminal Cassation Case No. 44 Year 14, on 30 January 1993

¹² *Amnesty International Report 2007: The State of the World's Human Rights*, London: Amnesty International Publications

¹³ 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:¹⁴

“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.¹⁵ However, the Government did accept the following recommendations:¹⁶

“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”.¹⁷

The second cycle review took place in 2013 (session 15). The following recommendations were made:¹⁸

“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.¹⁹

Third cycle examination took place in 2018 (session 29). The following recommendations were extended:²⁰

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

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

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

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

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

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

²⁰ 18 April 2018, A/HRC/38/14, Report of the working group, paras. 141(180), 141(196) and 141(197)

“Amend the Penal Code, in particular article 53, in order to repeal the right of a husband to punish his wife and the right of parents or custodians to punish their minor children by means of physical violence (Iceland)”

“Explicitly prohibit corporal punishment of children in all settings, including in the home and in school (Estonia);

“Adopt law prohibiting corporal punishment of children in all settings (Montenegro)”

The Government later supported the recommendations, stating that (unofficial translation) “many of the recommendations it had supported had been or were in the process of being implemented”.²¹

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:

- 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

²¹ 14 June 2018, A/HRC/38/14/Add.1 Advance unedited version, Report of the working group: Addendum, paras. 3 and 5

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.”

Committee on the Rights of Persons with Disabilities

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

“The Committee is concerned that: ...

(b) Corporal punishment remains lawful in alternative care settings, at home, in day care establishments and as a sentence for committing a crime and that it is not explicitly prohibited in private schools;

(c) Parents have the right to “chastise” their children, including children with disabilities;

(d) There is a lack of information on how corporal punishment affects persons with disabilities in all settings, including migrant workers, especially domestic migrant workers.

“The Committee recommends that the State party: ...

(b) Prohibit all forms of corporal punishment in all settings;

(c) Provide information in its next periodic report on measures taken to protect persons with disabilities, including migrant workers with disabilities, from corporal punishment.”

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)