

## Inhuman sentencing of children in the United Arab Emirates

Briefing for the 29th Session of the Universal Periodic Review in January 2018. Submitted by the Child Rights International Network - CRIN ([www.crin.org](http://www.crin.org)), June 2017.

### Inhuman sentencing of children in the United Arab Emirates

1. The law of the United Arab Emirates falls short of prohibiting the death penalty and corporal punishment for offences committed while under the age of 18 under all systems of law.
2. The main 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.<sup>1</sup> The Sharia Courts Act 1996 also applies.
3. Anyone under the age of 18 at the time of committing an offence is considered a juvenile.<sup>2</sup> Where a child aged seven to 16 is convicted of an offence, a judge is empowered to order "the measures he deems adequate"<sup>3</sup> but where the child was aged 16 or older at the time of committing an offence, the judge may impose measures set out under the law on juvenile delinquents and vagrants.

### Legality of inhuman sentencing

#### *Death penalty*

4. Under the Law on Juvenile Delinquents and Vagrants, a juvenile may not be condemned to death, imprisonment or to financial penalties.<sup>4</sup> Under this law, where the penalty would otherwise be death, a juvenile may not be sentenced to more than detention for 10 years.<sup>5</sup>
5. 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

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<sup>1</sup> *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)

<sup>2</sup> Federal Law No. 9, concerning Juvenile Delinquents and Vagrants, Article 1.

<sup>3</sup> Federal Law No. 9, concerning Juvenile Delinquents and Vagrants, Article 7.

<sup>4</sup> Federal Law No. 9, concerning Juvenile Delinquents and Vagrants, Article 9.

<sup>5</sup> Federal Law No. 9, concerning Juvenile Delinquents and Vagrants, Article 10(1).

punishment (*Hadud*)<sup>6</sup>, 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.<sup>7</sup>

### **Corporal punishment**

6. 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.

7. 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.<sup>8</sup> 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.<sup>9</sup> We have been unable to ascertain whether subsequent judgments have concurred or conflicted with this ruling.

### **Inhuman sentencing in practice**

8. The United Arab Emirates is not known to have carried out an execution of a child offenders in recent history. However, cases have emerged in which it is alleged that people have been sentenced to death for offences committed while under the age of 18. In March 2010, 17 people were sentenced to death for one murder, including at least one 17-year-old.<sup>10</sup> In April 2010, two men were sentenced to death for a 2003 murder they allegedly committed as 17-year-olds,<sup>11</sup> and a court upheld the death sentence for a woman earlier convicted of murdering her husband in 2003 at the age of 17.<sup>12</sup>

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<sup>6</sup> *Hadud* is a plural form of *hadd*.

<sup>7</sup> Articles 1 and 2

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

<sup>9</sup> 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.

<sup>10</sup> See <http://www.earthtimes.org/articles/news/360240.row-emirates-reject-settlement.html>

<sup>11</sup> See <http://www.thenational.ae/news/uae-news/courts/two-on-death-row-for-teenage-murder>

<sup>12</sup> See

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

9. 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.<sup>13</sup>

### **The review of the United Arab Emirates by the Human Rights Council**

10. In light of the clear international human rights consensus against the imposition of the death penalty and corporal punishment on child offenders and the specific recommendations made to the United Arab Emirates by the Committee on the Rights of the Child<sup>14</sup> and during previous cycles of the Universal Periodic Review, we urge the members of the Human Rights Council to recommend that the UAE:

- Explicitly prohibit corporal punishment and the death penalty for offences committed by children under all systems of justice;
- Raise the minimum age of criminal responsibility.

For more information, see CRIN's full report, available at: [www.crin.org/node/23986](http://www.crin.org/node/23986).

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<sup>13</sup> Amnesty International (2007), op cit.

<sup>14</sup> Committee on the Rights of the Child, *Concluding observations on the initial report of the United Arab Emirates*, CRC/C/15/Add.183, 13 June 2002, paras. 7, 8, 32, 33, 42 and 43.