

ACCESS TO JUSTICE FOR CHILDREN: **UNITED ARAB EMIRATES**

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The United Arab Emirates (UAE) ratified the CRC on 3 January 1987, with four reservations,¹ which concern:

- Nationality (Article 7): The UAE considers that the acquisition of nationality is an internal matter that could be regulated exclusively by domestic legislation;
- Freedom of thought, conscience and religion (Article 14): The UAE has only agreed to be bound by this Article to the extent that it does not conflict with Islamic law;
- Access to mass media (Article 17): Again, the UAE is only bound to ensure that a child has access to national and international news sources in a manner that does not violate the UAE's traditions and cultural values, and in the light of the requirements of its domestic statutes and laws; and
- Child protection (Article 21): The UAE placed a reservation on this Article on the basis that the system of adoption is not permitted under Islamic law.

Additionally, as at the date of this report, the UAE has not acceded to any of the optional protocols to the CRC.²

It is the duty of the Council of Ministers to supervise the execution of judgments rendered by Union Law Courts, and the implementation of international treaties and agreements concluded by the Union.³ However, it is unclear what status or force in law those international treaties (including the CRC) hold, and whether they become a part of the national law upon ratification.

B. Does the CRC take precedence over national law?

¹ United National Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDe
[c](#).

² United Nations Expert on Sale of Children, Child Prostitution and Child Pornography– End of Visit to the United Arab Emirates, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9541&LangID=e>.

³ Article 60(7) of the UAE Constitution, 1996, English translation available at: <http://aceproject.org/ero-en/regions/mideast/AE/united-arab-emirates-constitution-1996/view>

It is unclear whether international treaties such as the CRC take precedence over national law. However, Article 7 of the Constitution specifies that “Islamic Shari’ah shall be the main source of legislation”. This may suggest that if there is a conflict between domestic law and the CRC, the judge would most likely rely on the more Shari’ah-compliant law.

C. Has the CRC been incorporated into national law?

Article 125 of the UAE Constitution creates an obligation for the UAE government to implement treaties, which would include the CRC. There is no implementing legislation specifically in relation to the CRC.

The following domestic legislation implements certain provisions of the CRC:

- i. Federal Law No. 1/2012 Concerning the Custody of Children of Unknown Parentage has been promulgated. This law has very limited application. It details the UAE's obligations in the provision of care by the State and by adoptive custodial parent(s) where the birth parentage of children is unknown;
- ii. Federal Act No. 9 of 1976, concerning juvenile delinquents and vagrants. The Federal bill concerning juvenile delinquents is intended to replace the Federal Act No. 9 of 1976; and
- iii. Federal Personal Status Act No. 28 of 2005 contains a number of provisions concerning protection, care and services for children.

The Committee on the Rights of the Child ("Committee") has expressed concern that the principles of the CRC, such as non-discrimination and the child's best interests, are not adequately protected in the UAE's domestic law.⁴

The Federal National Council is due to enact a consolidated Law on Child Rights by the end of 2015. This Act will go beyond the Shari’ah Law, and supposedly protect the rights of all children regardless of their race, sex or religion.⁵

D. Can the CRC be directly enforced in the courts?

It appears that the CRC cannot be directly enforced in the UAE courts.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

⁴ F. Hassan Beshir Gomaa ‘Children’s Rights in United Arab Emirates’, Report for ‘Children’s Rights in the United Arab Emirates’, available at:

<https://dppcr.files.wordpress.com/2012/09/childrens-rights-in-uae-fatma-beshir-cairo.pdf>.

⁵ S Salama, FNC Passes Child Rights Bill, January 22nd 2015, available at:

https://www.zawya.com/story/UAE_FNC_passes_Child_Rights_draft_law-GN_22012014_230161/.

No relevant UAE case law could be located, so it has not been possible to confirm whether the domestic courts are applying the CRC. There is no formal system of case reporting in the UAE and decisions of the UAE courts are not published as a matter of course.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

See part III.A below.

There are no specific provisions in the law giving the opportunity for children to be heard in proceedings affecting them, whether criminal or civil.⁶

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

The treatment of minors under UAE law is internally inconsistent. The Civil Code distinguishes between the age of majority (21 years) and the age of discretion (7 Hijra years).⁷ A person who lacks discretion by reason of their youth is not deemed competent to exercise his/her civil rights, on the grounds that persons between these two ages will lack capacity under the law. However, the Civil Code does not go on to explain whether a person lacking capacity may act through a parent, guardian or other representative in order to exercise those rights.

The Civil Code also considers the age at which a minor may be entitled to deal in their property.⁸ A minor who has not reached the age of discretion does not have the right to deal in his/her property. Between the age of discretion and the age of majority, his/her dealings will be deemed valid if they are of pure benefit to the minor (and, conversely, invalid if those dealings are purely to his/her detriment). In relation to dealings which are neither wholly beneficial nor wholly detrimental, the consent of the guardian may be obtained.

Although these rules do not clarify the child's *locus standi* before the UAE courts, it would seem to follow that a court will recognise the right of a guardian to represent a minor who has not yet reached the age of consent.

C. In the case of infants and young children, how would cases typically be brought?

⁶ Ibid.

⁷ English Translation of UAE Civil Code, available at: https://lexemiratidotnet.files.wordpress.com/2011/07/uae-civil-code-_english-translation_.pdf.

⁸ In this context, the word "property" is likely to be broadly construed, and to include rights to enforce and other choses in action: Ibid.

See part II.A above.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Legal aid is only available for “indigent”⁹ applicants with “serious applications”¹⁰. It is not known if any cases in which the provision or availability of legal aid has been considered by the courts. Generally speaking, funding for the relevant case must be provided by the child’s guardian or his/her representative.

If the child is a juvenile delinquent who is unaccompanied by their guardian, separated from their family, or qualifies for legal aid, then the government appoints a legal representative for them.¹¹

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

It is uncertain if a child must obtain the consent of his/her parents or guardian prior to bringing a case. There is very limited authority on the question of a child's *locus standi* in the UAE courts generally.

The 2005 Personal Status Code stipulates that the guardian of the child (distinguished from the custodian of the child) in a family must initially be the father. If this is not possible, then it becomes the obligation of the closest kinsman from the paternal family who would inherit from the father, otherwise the judge would act as the child’s guardian.¹² The Personal Status Code also specifies that a guardian must be a male who is a rational adult, and if the child in question is a Muslim, then the guardian must also be one.¹³

III. **How can children’s rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

There are limited options for challenging violations of children’s rights in the UAE. A civil case may be brought on behalf of a child to claim damages. Judicial review of laws or administrative acts is generally not available to individuals, and private prosecution is not permitted.

⁹ Administrative Decree No. 106/2011. See <http://www.adjd.gov.ae/portal/site/adjd/LegalAid>.

¹⁰ Ibid.

¹¹ Federal Law 43/1992, Article 50, available at:

https://www.dubaipolice.gov.ae/dp/portal/public/downloads/rules_proc.pdf?itemId=208.

¹² Personal Status Code 2005, Articles 32 and 34. See <http://theualaw.com/vb/showthread.php?t=28>.

¹³ Ibid., Article 33. See <http://theualaw.com/vb/showthread.php?t=28>.

As recommended by the UN, the UAE has made efforts to establish a national human rights institution by forming a permanent Human Rights Committee in the Federal National Council, and by creating a committee within the Ministry of the Interior that increases awareness of human rights when enforcing laws.¹⁴ The Human Rights Committee in the Federal National Council can receive complaints by non-governmental organisations (but not individuals) on human rights violations, and propose recommendations to amend laws. It also deals with criticism of international organisations, particularly the UN organs, and issues annual reports on the human rights conditions in the UAE.¹⁵

B. What powers would courts have to review these violations, and what remedies could they offer?

The UAE courts would normally award damages in civil cases. Equitable remedies (such as injunctions) are awarded only at the court's discretion and are rare. However, we have been unable to find any guidance concerning the available remedies when challenging the UAE government in connection with domestic law.¹⁶

The Union Supreme Court holds jurisdiction over the examination of the constitutionality of laws, legislation and regulations in general, if such request is referred to it by any court in the country during a pending case before it.¹⁷ The Constitution does not permit individuals to directly challenge unconstitutional laws, though it does specify that laws can be challenged by political leaders of one or more Emirates.¹⁸ The Constitution itself cancels any texts or provisions contrary to its amendments.¹⁹

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Research has not identified any options by which a challenge can be brought without naming a specific victim.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

The UAE does not have a mechanism for representative litigation, class

¹⁴ <http://www.law.yale.edu/rcw/rcw/jurisdictions/asw/unitedarabemirates/frontpage.htm>.

¹⁵ Resolution No. (7), 2013. The Human Rights Committee, available at: <https://www.almajles.gov.ae/AboutTheFNC/ConstitutionandSystems/Pages/HumanRightsCommittee.aspx>.

¹⁶

<http://www.iclg.co.uk/practice-areas/litigation-and-dispute-resolution/litigation-and-dispute-resolution-2015/united-arab-emirates>.

¹⁷ Article 99 of the UAE Constitution, 1996.

¹⁸ Ibid.

¹⁹ Ibid., Article 3.

actions or collective action. Each claim must be filed separately.²⁰

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

The UAE allows for the appointment of third party experts in courts if their assistance is needed. The court alone would decide on the sufficient expert, who will be selected from a list of accepted experts.²¹

Non-governmental organisations (NGOs) must register with the Ministry of Social Affairs and are subject to many burdensome restrictions.²² There are currently no laws specifically regulating the activities of NGOs in the UAE, although proposed legislation is being drafted.²³

IV. **Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

There are three branches of courts in the UAE: civil, criminal and Shari'ah.

In civil claims, the case would first be heard by the Court of First Instance, which consists of three judges. Proceedings are commenced by filing a claim (called a "plaint") in the court office and paying the required fee.²⁴

A criminal case would begin with a police investigation, which is transferred to the prosecutor's office within two days of filing. The prosecutor will decide if charges are to be made or dropped after documenting statements from witnesses, which must be collected within two weeks from receiving the case from the police. If charges are pressed then the parties may hire qualified attorneys.

There are juvenile courts in the UAE, with appointed juvenile judges.²⁵ Criminal responsibility begins at the age of seven;²⁶ from this age a crime is punishable by flogging, amputation, or retaliation of the pain inflicted by

²⁰ PLC, Litigation and enforcement in United Arab Emirates: overview, available at: <http://uk.practicallaw.com/4-501-9686>.

²¹ Ibid.

²² Freedom House, 'United Arab Emirates', 2015, available at: <https://freedomhouse.org/report/freedom-world/2015/united-arab-emirates#.Ve2wnsa6k7A>.

²³ <http://gulfbusiness.com/2014/04/uae-plans-law-regulate-ngos/#.VeV7fLxVK1E>.

²⁴ Article 10 of Court Fee Law No. (1), 1994.

²⁵ UAE Penal Code, Article 63(1), available at: [https://www.icrc.org/ihl-nat/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/\\$FILE/Penal%20Code.pdf](https://www.icrc.org/ihl-nat/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/$FILE/Penal%20Code.pdf)

²⁶ Ibid., Article 62.

him/her on the victim.²⁷ Although corporal punishment is permitted from the age of seven, capital punishment is not. Juvenile judges are given complete discretion in the punishment of children aged seven to 16. In cases of children between 16 and 18, only partial discretion is given to the judge.²⁸

The Shari'ah court has exclusive jurisdiction over cases concerning family disputes, divorce, inheritance, custody and/or guardianship of children and child abuse. The Shari'ah court may also hear appeals from the criminal court at the federal level, unless the case does not concern any Muslim parties.

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above. In exceptional cases (e.g. where the claimant has been the victim of an accident) the filing fees for a plaint may be waived.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

We have been unable to find any guidance regarding the provision of assistance on a pro bono basis. However, we are not aware of any reason why this would not be permitted. UAE law does not permit contingency fee arrangements.

The Dubai Foundation for Women and Children (DFWAC), a non-profit shelter, provides free services to child victims of violence, including legal assistance.²⁹ This is only available to citizens of Dubai.

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The UAE Civil Code contains general rules relating to limitation. In general, a claim is time-barred after 15 years, unless a specific provision states otherwise. However, there are many exceptions to the general rule. Several statutes contain limitation periods, depending on the type of dispute.

²⁷ <http://humanium.org>.

²⁸ Franklin E. Zimring, David S. Tanenhaus, Maximo Langer, *Juvenile Justice in Global Perspective*.

²⁹ Dubai Foundation for Women and Children, <http://www.dfwac.ae/en/>.

Subject to the exceptions, the limitation period is three years for causing harm (tort).³⁰

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

No specific rules apply to evidence which is produced or presented by children. A party files the documents that it wishes to rely on for its case with the court, and there is no obligation on a party to file a document which is damaging to its case. All proceedings in civil matters are based on written submissions supported by documentary evidence. The case is determined on the basis of the written submissions and documentary evidence, and there is no oral testimony. Although a witness statement can be filed in court, it has very little evidentiary value.³¹

In the criminal court, if a person is called upon to give evidence before a judicial authority but refuses to take the oath or testify without an acceptable excuse, then they may be punished by detention (of up to a year) and/or by fine (no more than five thousand Dirhams).³²

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

The litigation process in the UAE is generally very slow. It is likely that a case will take one to two years to be heard before the Court of First Instance, and appeals will take significantly longer.³³

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

Decisions of the Court of First Instance may be appealed to the Court of Appeal, or to the Shari'ah Court if the case concerns family disputes or certain crimes. Ultimately cases can be appealed to the Court of Cassation (in all Emirates except Ras-al-Kaimah, which has no Court of Cassation).³⁴

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

It is difficult to assess the impact of an adverse decision in view of the limited information available in connection with children's rights before the

³⁰ UAE Civil Code, 1987, Article 210 (3), available at: https://lexemiratidotnet.files.wordpress.com/2011/07/uae-civil-code-_english-translation_.pdf.

³¹ Litigation and enforcement in United Arab Emirates: overview.

³² Ibid.

³³ ICLG, 'United Arab Emirates - Litigation & Dispute Resolution 2015', available at: <http://www.iclg.co.uk/practice-areas/litigation-and-dispute-resolution/litigation-and-dispute-resolution-2015/united-arab-emirates>.

³⁴ Litigation and enforcement in United Arab Emirates: overview.

UAE courts. There is no system of precedent which would make any published decision binding on a subsequent court, and every case is decided on its own merits and facts. This can make it difficult to predict the outcome of litigation in the UAE. Moreover, the judiciary is not independent, with court rulings subject to review by the political leadership.³⁵

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

See part IV.H above.

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Helplines

The Dubai Community Development Authority has established a Child Protection helpline to ensure that children whose rights are being violated can seek protection by way of a complaints mechanism. Social workers and psychologists are on standby to assist minors in reporting any violations to the police.³⁶ This mechanism is only available to residents of Dubai.

Shari'ah Law

Article 7 of the Constitution states that Islam is the official religion of the Union and Shari'ah Law is the main source of legislation in the Union. Shari'ah Law entails the rulings from the Quran and from the accepted Hadiths and Sunnahs (sayings and doings of the Prophet Mohammed). Due to its status as the highest source of law, upon ratifying the CRC the UAE made reservations to Articles 14, 17 and 21 as they are considered incompatible with Shari'ah.³⁷ This impedes the child's right to freedom of thought, conscience and religion, access to information, and adoption under certain circumstances. Shari'ah Law also interferes with the child's custody and guardianship, as well as inheritance, as it differentiates between the amount a daughter and a son inherit (daughters inherit half the amount that sons do).³⁸

This report is provided for educational and informational purposes only and should not be construed as legal advice.

³⁵ Freedom House.

³⁶ Community Development Authority, Dubai Official Webpage, available at: <https://www.cda.gov.ae/ar/socialcare/childrenandyouth/Pages/ChildProtectionCenter.aspx>.

³⁷ Article 99 of the UAE Constitution, 1996.

³⁸ Ibid.