



ALL EQUAL FOR THE LAW IN THE United Arab Emirates? The LGBT+ community

Introduction:

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The United Arab Emirates (UAE) is a relatively young federation with a rich history and a diverse community. It is a diverse community with almost 80% of the citizens is either a migrant worker or an expat, who come from countries that stretch from Pakistan to the US. On the other hand, the original culture of the UAE is in its core based on the Islamic tradition. The domestic law is till today based on the Sharia laws of the Islam, that can be found in the Quran and the Hadith. This report will delve into what this mixture between a traditional and multi-cultural environment means for a minority that stretches through all layers of the society; the LGBT+ community. 'LGBT' stands for Lesbian, Gay, Bisexual and Transgender, which are concepts that are used to define someone's sexual identity.

Throughout the world, debates are running about whether and how people should be able to express their sexual identity. The content and format of these discussions varies from country to country. One of the main pillars of this debate is based on religion. The Christian as well as the Islamic tradition agree that only love between a man and a woman as permitted by their God. This can create discrimination on an institutional level, with two women who for instance are not allowed to marry, but also on a societal level, when LGBT+ people may not share affection in public.

According to the Sharia legislation, homosexuality can be punished by a jail sentence or even a death penalty, depending on the interpretation of the Sharia. In the UAE, a romantic comedy which starred a gay couple, was banned and in 2017, a transwoman was sentenced to one year prison for 'attempting to resemble women'.¹ This report will look further into the legislation on LGBT issues and the consequences this has on the LGBT community in the UAE. Here are my suggestions before I edit this document. Focus on recent case of LGBT+ violence in UAE. Followed by what domestic laws and conventions of UEA and whether they really protect LGBT+ rights and why. When you start to answer why it will bring you to Islamic laws. Provide a little about what these laws says and how they are interpreted in the daily lives and as a result how this affects the LGBT+ community.

1. Human Dignity Trust. <https://www.humandignitytrust.org/country-profile/united-arab-emirates/>. Accessed on May 11, 2021.

Legislation in the United Arab Emirates

The United Arab Emirates is located in the east of Saudi Arabia and in the northwest of Oman. Surrounded by the Persian Gulf in the east and the north, it shares a maritime border with Iran. The UAE is formed by seven Emirates, the most known being Abu Dhabi and Dubai. It is a relatively young federation, having come into existence in 1971. Each Emirate has its own legislation. The Emirates are governed by a hereditary, absolute monarch and there are no democratic institutions.²

The UAE is not known for its respect for fundamental freedoms and human rights. According to a 2020 report made by the independent organization “Freedom House”, UAE is not a free country, with a total score of 17 points out of 100.^{3 4} This takes into account the civil liberties and the civil liberties of the LGBT+ community.

Even though the UAE Constitution states in the Art. 25 that: “all persons shall be equal before the law”,⁵ the principle of non-discrimination is based only on race, nationality, religious belief, and social position in UAE. In fact, the abovementioned provision continues in this manner:

No discrimination shall be practised between citizens of the Union by reason of race, nationality, religious belief or social position.⁶

So, the UAE Constitution does not include gender and sexual orientations in the non-discrimination principle, creating issues for the LGBT+ community. The country condemns many forms of gender expressions and LGBT+ members face social stigma from locals. In its last report, “Freedom House” states:

Same-sex sexual relations can draw harsh criminal penalties, and LGBT+ people are subject to widespread social stigma.⁷

The NGO Human Rights Watch has also dealt with the issue of the LGBT+ community in the country:

2. Cecilia Felicitas Fyfe, A comparison of women's rights in the United Arab Emirates and Saudi Arabia, referenced against the United Nations Human Rights Legislation and selected United Nations' millennium development goals (Auckland University of Technology, 2013): 20-23
“United Arab Emirates: Freedom in the World 2020 Country Report | Freedom House” (Freedom House, 2020) <<https://freedomhouse.org/country/united-arab-emirates/freedom-world/2020#CL>> accessed April 28, 2021.
3. The criteria are based on the political rights and civil liberties. The first one is sub-divided in other three small groups: Electoral Process, Political Pluralism and Participation and Functioning of Government. Otherwise, the civil liberties are formed by four sub-groups: Freedom of Expression and Belief, Associational and Organizational Rights, Rule of Law and Personal Autonomy and Individual Rights. Check more on the following website: https://freedomhouse.org/sites/default/files/2021-02/Freedom_in_the_World_2020_Methodology.pdf
4. Oxford University Press, Inc, “United Arab Emirates's Constitution of 1971 with Amendments through 2004” (2004) <https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf>.
5. Oxford University Press, Inc, “United Arab Emirates's Constitution of 1971 with Amendments through 2004” (2004) <https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf>.
6. Ibidem.
7. “United Arab Emirates: Freedom in the World 2020 Country Report | Freedom House” (Freedom House, 2020) <<https://freedomhouse.org/country/united-arab-emirates/freedom-world/2020#CL>> accessed April 28, 2021.

The UAE's penal code does not explicitly prohibit homosexuality. However, Article 356 of the penal code criminalizes Zina offences with a minimum sentence of one year in prison.⁸ Zina offences include consensual sexual relations outside heterosexual marriage and other “moral” offences, including same-sex relations. The UAE courts could convict and sentence people for Zina offences under Article 356 which criminalizes but does not define “indecent”, punishable by at least one year in prison.⁹

Once again, the NGO Amnesty International in its 2020 report reiterates the same position:

Consensual sexual behaviour continued to be prosecuted under Article 356 of the Penal Code, authorizing a minimum of one year in prison for “consensual violation of honour”, a clause that could be used to punish both same-sex sexual activity and extramarital sex.¹⁰

Looking at UAE Federal Penal Code, Art. 354 is extremely controversial:

[...] whoever resorts to coercion in sexual intercourse with a female or homosexuality with a male, shall be punished by the death penalty. A case of coercion shall arise if the victim at the time of the crime was under fourteen years of age.¹¹

In this case, it is not clear if this law regards also consensual homosexual intercourse. Although lesbianism is not explicitly included, Art. 356 of the Penal Code, mentioned by Amnesty International, subtly refers to a same-sex relationship, regardless of distinctions:

[...] the crime of indecent assault with mutual consent shall be punished by detention for at least one year.¹²

Art. 358 is more specific:

Whoever openly commits an indecent and disgraceful act shall be punished by detention for a period of at least six months.¹³

Finally, art. 359, amended for the last time in 2005, discriminate transgenders:

[...] Shall be sentenced as well to the same penalty, any male disguised in a female apparel and enters in this disguise a place reserved for women or where entry is forbidden, at that time, for other than women. Should he perpetrate a crime in this condition, this shall be considered an aggravating circumstance.¹⁴

8. Arabic term which refers to unlawful sexual intercourse.

9. Human Rights Watch (ed), “Country Summary: United Arab Emirates” (www.justice.gov/january 2016) <https://www.justice.gov/sites/default/files/pages/attachments/2016/02/17/hrw_2016_united-arab-emirates.pdf> accessed April 29, 2021

10. “United Arab Emirates 2020” (Amnesty.org, 2020) <<https://www.amnesty.org/en/countries/middle-east-and-north-africa/united-arab-emirates/report-united-arab-emirates/>> accessed April 28, 2021.

11. “Legal Advice Middle East” (Legal Advice Middle East, 2021) <<https://legaladvice.com/legislation/117/uae-federal-law-3-of-1987-promulgating-penal-code>> accessed April 28, 2021.

12. Ibidem.

13. Ibidem.

14. Dubai Public Prosecution (ed), “Article 359” (Dubai Public Prosecution) <https://www.dxbpp.gov.ae/Law_Page.aspx?Law_ID=486&Grand_ID=2> accessed April 27, 2021.

Regarding the last point, in 2016 UAE approved the new “Medical Liability Law”, which allowed gender reassignment surgery, but only if the patient meets some requirements. Art. 7 of the Federal Decree Law No. 4 of 2016 on Medical Liability sets in which cases it is possible:

Sex correction operations may be made according to the following controls:

The person's gender is obscure and it is not certain whether he is male or female.

The person has sexual and physical features inconsistent with his/her physiological, biological and genetic characteristics.

The provision of Paragraphs (1 and 2) of this Article is proven by medical reports and approval of specialized medical committee formed by the health body with the aim of defining the patient's gender and approving the correction operation. The said committee shall refer the subject to the psychologist to make necessary psychological preparation.¹⁵

However, the law does not expressly include those who suffer from gender dysphoria. After the promulgation of this law, the General Authority for Islamic Affairs and Endowments (also known as Awqaf) released a fatwa.¹⁶ According to the article of journalist Shireena Al Nowais which was published by “The National”:

[...] such operations were permitted only for those whose “physical features may be different to their physiological and biological characteristics, such as a person with male features who are in reality female and vice versa”.

The fatwa applied to “people with both sex organs or those with unclear features that don't indicate a gender”.

It said this applied to anomalies that were “considered medical conditions”.

It said the gender correction surgery was “acceptable because it is a treatment for a medical condition and not a deliberate modification of God's creation”.

The operation was permissible “if medical professionals are convinced that the individual is in fact a male or female, and the authorities have all agreed”.

Although there was no law criminalising a sex-change operation, it was allowed only within the framework issued by Awqaf.¹⁷

15. “Federal Decree Law No. (4) of 2016 on Medical Liability on Medical Liability”(www.dha.gov.ae, 2016) <[https://www.dha.gov.ae/AssetLibrary/MarketingAssets/20180611/\(E\)FederalDecree.no.4of2016.pdf](https://www.dha.gov.ae/AssetLibrary/MarketingAssets/20180611/(E)FederalDecree.no.4of2016.pdf)> accessed April 28, 2021

16. Non-binding legal opinion of the Islamic Law (Sharia).

17. Shireena Al Nowais, “New UAE Law Allows Gender Reassignment Surgery” (The National, September 21, 2016) <<https://www.thenationalnews.com/uae/health/new-uae-law-allows-gender-reassignment-surgery-1.218691>> accessed April 28, 2021.

Moreover, she summarized the opinion of Emirati lawyers on this law.

“Our laws are based on Shari'a,” said Salm Al Kithiri, an Emirati lawyer. “If a person has both organs and one is hidden, for example, they have a right to undergo a sex-change operation. But a complete woman with female organs wanting a sex-change operation was unacceptable.”

Ali Al Mansoori, the lawyer representing a 29-year-old Emirati woman who wants the surgery, said that before the new law gender reassignment surgery was difficult for individuals with gender dysphoria – not because it was illegal but because there was no law governing it.¹⁸

About Shari'a, it is important to outline that Islamic law condemns same-sex intimacy with death penalties.¹⁹

In addition, each emirate judges the matter by additional acts, for example, anti-sodomy laws. For instance, the Art. 80 of the Criminal Code in Abu Dhabi criminalises “unnatural sex with another person”²⁰ and it is punishable by up to 14 years in jail. Similarly, Art. 177 of the Penal Code of Emirate of Dubai allows prosecuting gays, lesbians, bisexuals, transgenders and so on for sodomy.²¹

The laws applied in the country are clearly against homosexual relationships. In general, same-sex unions and marriages are not allowed, and adoption for homosexual couples is forbidden. They do not enjoy legal protection for many forms of discrimination (including employment and housing), while conversion therapy is not banned.²² This creates an unsafe environment for the LGBT+ community in UAE.

International law and human rights violations against LGBT + Community in UAE

The Community rights of LGBT+ individuals are protected under the Universal Declaration of Human Rights (1948), which is legally non-binding but it is the basis of the international human rights law.²³ Along with the UDHR, there are other two binding treaties: the “International Covenant on Civil and Political Rights” and the “International Covenant on Economic, Social, and Cultural Rights”.²⁴ The three Conventions form the “International Bill of Human Rights”.²⁵ The UAE has not signed the two binding acts but it is part of the UDHR.²⁶ Furthermore, it is part of the Organization of the Islamic Cooperation (OIC) which has created the Cairo Declaration on Human Rights in Islam (CDHRI).²⁷

18. Ibidem.

19. Aengus Carroll and Lucas Mendos, “STATE-SPONSORED HOMOPHOBIA a WORLD SURVEY OF SEXUAL ORIENTATION LAWS: CRIMINALISATION, PROTECTION and RECOGNITION 12TH EDITION MAY 2017” () <https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf>.

20. Ibidem.

21. Ibidem.

22. “LGBT Rights in United Arab Emirates | Equaldex” (Equaldex.com2018) <<https://www.equaldex.com/region/united-arab-emirates/>> accessed April 28, 2021.

23. “Human Rights in the United Arab Emirates - Chronicle Fanack.com” (Fanack.com April 26, 2021) <<https://fanack.com/united-arab-emirates/human-rights-in-uae/>> accessed April 29, 2021.

24. Ibidem.

25. Ibidem.

26. International Campaign for Freedom in UAE, “Human Rights in the United Arab Emirates - Briefing” ([http://icfuae.org.uk/September 13, 2017](http://icfuae.org.uk/September%2013,%202017)) <[http://icfuae.org.uk/sites/default/files/Human Rights Violations Briefing_13-09-2017.pdf](http://icfuae.org.uk/sites/default/files/Human%20Rights%20Violations%20Briefing_13-09-2017.pdf)> accessed April 29, 2021

27. “Human Rights in the United Arab Emirates - Chronicle Fanack.com” (Fanack.com April 26, 2021) <<https://fanack.com/united-arab-emirates/human-rights-in-uae/>> accessed April 29, 2021.

Particularly, the UAE is breaching Aart. 7 of UDHR, which states:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.²⁸

Concerning the CDHRI, the country is contravening Aart. 1, which asserts:

(a) All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. True religion is the guarantee for enhancing such dignity along the path to human integrity.

(b) All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.²⁹

Understandably, the violations of these articles entail the non-recognition of the basic human rights to members of the LGBT+ community in UAE, such as the freedom of opinion and expression, the freedom of association, the right to work and so on. Though these articles are not legally binding, the UAE's signature entails a commitment to uphold international standards of human rights.

28. United Nations, "Universal Declaration of Human Rights" (1948) <https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf>.

29. "University of Minnesota Human Rights Library" (Umn.edu, 2021) <<http://hrlibrary.umn.edu/instree/cairodeclaration.html>> accessed April 29, 2021.

LGBT+ Community in the United Arab Emirates

The aforementioned contrast between the modern and conservative sides of the UAE affects its LGBT+ citizens immensely. The Quran reads, for instance, the following on homosexuality: 'You approach men with lust instead of women. No, you are a people who go beyond the limits.'³⁰ Consequently, in conservative families, any LGBT+ identification is often not accepted. This makes it hard or even impossible for some persons to express their full identity.

Then there is the other, more modern side of society which is mainly influenced by the large ex-pat community. The Emirates has a population of about 9.3 million, of which 7.8 million are ex-pats. Most of them come from Asian countries, like India and Bangladesh, or Arab countries like Jordan, but they also come from Western countries. This makes the population very diverse.³¹ In an online blog on traveling, there is an interview with a young man about how he experiences being homosexual in the United Arab Emirates. He says that it was hard to grow up as a homosexual, as he experienced homophobia in many forms and intensities. Thereby, LGBT+ issues are not visibly present. However, he also mentions that people nowadays do discuss LGBT+ issues more because of the animosity on the internet. Even though it is sometimes negatively discussed, he argues that it is still a step forward because at least it is discussed. To conclude, he brings forward that expats and higher levels of education also create more open-mindedness. Still, when two men openly share affection, they will be punished according to the laws.³²

30. Quran, Sunna 7, verse 81-82.

31. Françoise De Bel-Air, "Demography, Migration, and the Labour Market in the UAE," in Explanatory Note 7 (2015): 3-23. Accessed 30th of April, 2021. https://cadmus.eui.eu/bitstream/handle/1814/36375/GLMM_ExpNote_07_2015.pdf?sequence=1&isAllowed=y

32. Stefan Arestis, Gay Emirati Zayed tells us about the gay life in Dubai and the UAE (2021). <https://nomadicboys.com/gay-life-in-dubai/>. Accessed 28th of April 2020.

Conclusion

In the last few years, the UAE is trying to open up its society, and the “Medical Liability Law” made in 2016 is a clear example of this attempt. However, UAE efforts are not enough to counter the discriminations against LGBT+ community members. When they are “found in flagrante delicto”³³ or they are found “guilty” of homosexuality, after the detention period they are repatriated. In 2008, a couple of lesbians was sentenced to one month's imprisonment and then deported for kissing at the beach.³⁴ In 2012 three different arrests for the same reason were followed by the deportation.³⁵³⁶³⁷

The UAE should change its laws in the matter to be a more inclusive society and to respect the conventions which it has signed. Global Human Rights Defence is calling to action all the most relevant actors of the international community to defend members of the LGBT+ community from these repeated violations of human rights made by the State.

33. Latin expression which means “caught red-handed”

34. “Lesbian Couple Jailed for Kissing on Dubai Beach : Gay News from Gay Agenda – GayAgenda.com” (Archive.org2011) <<https://web.archive.org/web/20100116090641/http://www.gayagenda.com/2008/09/lesbian-couple-jailed-for-kissing-on-dubai-beach/>> accessed April 29, 2021.

35. “Two Men Jailed for Consensual Sex” (Archive.org2011) <<https://web.archive.org/web/20120410033032/http://gulffnews.com/news/gulf/uae/crime/two-men-jailed-for-consensual-sex-1.1006368>> accessed April 29, 2021.

36. Dan Littauer, “Dubai: British Man Jailed for Three Years for Public Gay Sex” (PinkNews - Gay news, reviews and comment from the world's most read lesbian, gay, bisexual, and trans news service April 12, 2012) <<https://www.pinknews.co.uk/2012/04/12/dubai-british-man-jailed-for-three-years-for-public-gay-sex/>> accessed April 29, 2021.

37. Aaron Coleman, “Man in Dubai Gets 1 Year in Prison for Gay Relationship” (Queerty June 6, 2012) <<https://www.queerty.com/man-in-dubai-gets-1-year-in-prison-for-gay-relationship-20120606>> accessed April 29, 2021.

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