

## UAE lawyer calls for clarity on evidence to avoid unfair criminal trials | The National

*Roberta Pennington*

ABU DHABI // The absence of clear rules of evidence in the criminal law system has created ambiguity and contradictory judicial decisions that threaten the rights of individuals, an Emirati criminal lawyer argues.

Writing in last month's Asian Journal of Criminology, Dr Mohammed Al Hammadi, who is also an assistant dean for research and graduate studies at UAE University's College of Law, said that "the lack of stated rules and procedures and what evidence could be accepted and what cannot are not definite" in the legal system.

"For any judiciary to properly safeguard the interest of its citizens, it must have clear rules on what evidence it should accept and what should be rejected."

When it came to criminal matters, judges must first decide whether a case would be tried under the principles of Sharia or the Criminal Procedural Law. The basis for making this decision was also not always clear, Dr Al Hammadi said.

"There is no clear-cut or specific answers in the law or in the Union Supreme Court decisions that guide judges and courts when the Islamic law and when the Criminal Procedure Law are applied," he wrote.

This is significant because in some criminal cases tried under Sharia, such as hudud and qisas, only the testimony of two males, Muslim witnesses or the confession of the defendant can be considered as evidence. The Criminal Procedural Law also gives judges the right to consider other evidence, such as testimony from women and non-Muslims.

Should a judge choose to try a case outside of hudud and qisas under Sharia, the matter is further complicated by the fact that Sharia is not uniform. In the UAE, for example, there are four major schools of thought that guide Sharia – Maliki, Shafi'i, Hanbali and Hanafi.

"In many cases, these schools contradict one another on the acceptability of particular types of evidence," Dr Al Hammadi wrote.

The judge's choice of jurisprudence can lead to "a big difference" on how the case is prosecuted and, ultimately,

on the potential outcomes for a defendant, he said.

If a Muslim killed a non-Muslim, for example, and the judge decided the case should be tried under the jurisprudence of either Maliki, Shafi'i or Hanbali, the defendant would be spared the death penalty because he was Muslim. If the judge were to follow the Hanafi school of thought, however, the death penalty would be applied.

"Because there is no law to restrict judges from applying a certain school, he has a right to apply whatever school he wants," said Dr Al Hammadi.

Diana Hamade, a lawyer and founder of International Advocate Legal Services in Dubai, said something needed to be done to promote uniformity in how Sharia was applied in the courts.

"All lawyers, may they be civil, commercial or criminal practitioners, have one single problem, which is the contradicting opinions in Sharia and the ability of the judges to pick and choose," said Ms Hamade, who practises civil, commercial and family law.

"Every time we advise a client on their chances of winning a case, we really can't say much because we are dealing with Sharia, where the interpretations are varied. Every judge has his own preference of a school of thought and this is the main cause of the uncertainty."

But Ms Hamade disagreed that rules of evidence should be enacted in relation to the criminal law, and said it would contradict the main principle of criminal law evidence and procedure in general.

"The regulation as called for is not the solution. The solution in my opinion is to adopt a more general approach as far as Sharia is concerned in the legal system, especially where procedural law is involved, like setting guidelines for judges to abide by when selecting the school of thought to be followed and always try to adopt the unanimous scholars' opinion."

Dr Al Hammadi hoped his paper would bring attention to the issues and encourage legislators to take action.

"These problems will persist until the UAE passes a law of evidence to unify the implementation of the rules," he wrote. "In the absence of clear evidentiary rules, the UAE's theoretical separation between when a crime is handled under the Islamic law and when it is not is meaningless."

[rpennington@thenational.ae](mailto:rpennington@thenational.ae)

**One-page article**

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