



United Arab Emirates (UAE): Address concerns of the UN Special Rapporteur on the independence of judges and lawyers

Amnesty International's written statement to the 29th session of the UN Human Rights Council (15 June – 3 July 2015)

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At its 29th session, the UN Human Rights Council will consider the report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul on her visit to the United Arab Emirates (UAE) from 28 January to 5 February 2014.

Amnesty International welcomed the Special Rapporteur's preliminary findings when they were published on 5 February 2014¹ and commends her efforts in positively engaging the UAE authorities and civil society. This statement supplements those findings, while taking into account the response of the UAE government² to the Special Rapporteur's draft report to the Human Rights Council, which was not published at the time of writing.

In November 2012, the UAE was elected to serve a three-year term as a member of the Human Rights Council after the government pledged to introduce legal and other reforms to promote and protect human rights in accordance with international standards. Far from living up to these pledges, however, the UAE authorities embarked on a ruthless crackdown on freedom of expression and association, which has seen a scale of human rights violations not previously witnessed by Amnesty International in the country.³

Amnesty International draws attention to the following concerns:

TERMS OF REFERENCE FOR COUNTRY VISITS

Amnesty International expresses serious concern that the UAE authorities failed to respect the agreed terms of reference for the Special Rapporteur's visit, including a guarantee that persons in contact with the Special Rapporteur in relation to her mandate would not suffer harassment or punishment or be subject to judicial proceedings.⁴ Twitter activist Osama al-Najjar, who met the Special Rapporteur

¹ Office of the High Commissioner for Human Rights, Preliminary observations on the official visit to the United Arab Emirates by the United Nations Special Rapporteur on the independence of judges and lawyers (28 January-5 February 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14223&LangID=E>

² UN Human Rights Council, 29th session, Mission to United Arab Emirates: comments by the State on the report of the Special Rapporteur, 6 May 2015, A/HRC/29/26/Add.6.

³ Amnesty International, There is no freedom here: Silencing dissent in the United Arab Emirates, 18 November 2014 (MDE 25/018/2014) <https://www.amnesty.org/en/documents/mde25/0018/2014/en/>; Amnesty International, UAE denies entry to Amnesty International expert, 27 May 2015 <https://www.amnesty.org/en/articles/news/2015/05/uae-denies-entry-to-amnesty-international-expert/>

⁴ UN Human Rights Council, 28th session, Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to Governments and replies received, 4 March 2015, A/HRC/28/63/Add.1.

during her visit, was arrested a month later and taken to a secret detention facility where he was tortured, denied access to a lawyer, and questioned about their meeting. In November 2014, he was convicted following an unfair trial before the State Security Chamber of the Federal Supreme Court, and sentenced to three years' imprisonment and a fine. His charges included "contacting foreign organizations and presenting inaccurate information" about the detention and unfair mass trial of 94 activists in 2013, including his father.⁵

VAGUE AND BROAD DEFINITION OF CRIMINAL OFFENCES

According to the response of the UAE government to the draft report of the Special Rapporteur, her report expresses concern at the vague and broad definition of criminal offences in the August 2014 Federal Law on Combating Terrorism Crimes,⁶ flouting the principle of legality, which imposes an obligation on states to define criminal offences precisely within the law.

Amnesty International shares this concern. Not only do some provisions in UAE laws severely restrict rights, they also equip the authorities with powers to criminalize freedom of expression and association and to restrict the effective enjoyment of these rights, especially by those expressing critical views about government practices.

Article 14 of the Federal Law on Combating Terrorism Crimes punishes with death or life imprisonment "*whoever commits an action or inaction intended... [to prevent] one of the State's institutions or the public authorities from practicing their activities, or prejudicing the national unity or the social security.*"

Article 15 imposes "temporary imprisonment" on "*whoever declares, by any means of communication, his opposition to the State, or to the ruling system therein or his non-allegiance to its leadership.*"

Article 180 of the Penal Code can criminalize peaceful criticism of the government or activities by associations, organizations, or groups that are remotely political.⁷ This provision was used to prosecute the 94 activists in the 2013 mass trial.⁸

These and many other similarly vague provisions in UAE law may be used to sentence human rights defenders or peaceful critics of the government to lengthy prison terms or even death.

ENFORCED DISAPPEARANCE, TORTURE AND OTHER ILL-TREATMENT

The Special Rapporteur noted in her preliminary observations that in state security cases, individuals are often kept incommunicado for weeks or months in secret detention facilities. She received evidence that in many of these cases, detainees are tortured or otherwise ill-treated.

Amnesty International shares the findings by the Special Rapporteur. The organization has received testimonies and documented dozens of cases where the country's State Security apparatus has subjected UAE nationals, including human rights activists, lawyers, and academics, as well as foreign nationals, to enforced disappearance and torture and other ill-treatment.⁹ The security authorities deny such detainees in their custody any access to the outside world. They have been allowed to continue

⁵ Amnesty International, UAE: Man tortured and jailed after defending imprisoned father on Twitter, 25 November 2014 <https://www.amnesty.org/en/articles/news/2014/11/uae-man-tortured-and-jailed-after-defending-imprisoned-father-twitter/>; Amnesty International, UAE: Further information: Twitter activist Osama al-Najjar jailed (MDE 25/023/2014, 2 December 2014) <https://www.amnesty.org/en/documents/mde25/023/2014/en/>

⁶ Federal Law No. 7 of the Year 2014 on Combating Terrorism Crimes.

⁷ Federal Law No.3 of 1987, Concerning the Penal Code.

⁸ Amnesty International, United Arab Emirates: Stop the charade and release activists convicted at the mass UAE 94 trial, 3 March 2015 <https://www.amnesty.org/en/documents/mde25/1097/2015/en/>

⁹ Amnesty International, United Arab Emirates: Disclose whereabouts of detained Egyptian: Mos'ab Ahmed 'Abdel-'Aziz Ramadan (MDE 25/0003/2015), 28 January 2015, <https://www.amnesty.org/en/documents/mde25/0003/2015/en/>; Amnesty International, United Arab Emirates: Qatari doctor tortured and detained 248 days: Mahmood al-Jaidah (MDE 25/010/2013), 1 November 2013 <https://www.amnesty.org/en/documents/mde25/010/2013/en/>

these practices with impunity.¹⁰ Such practices flout requirements of both international law, as well as some safeguards in UAE law.

Defendants have described some of methods of torture they have faced in secret detention:

- prolonged solitary confinement;
- sleep deprivation through exposure to continuous bright fluorescent lighting;
- slapping and punching in the face and having fingernails pulled out;
- forced to kneel on the ground while beaten with a stick on backs and buttocks;
- suspended upside down for long periods;
- having hair torn from beards and chests;
- forced to sit in an electric chair and subjected to electric shocks to different parts of bodies;
- forced to hold stress positions for long periods;
- threatened with electric shock torture, rape, death, and with HIV infection.

The Special Rapporteur recommended that the authorities establish an independent committee of experts to investigate all claims of torture and other ill-treatment. Amnesty International fully concurs with this recommendation.

The government, however, continues to deny the prevalence of torture and other ill-treatment in the UAE's detention facilities and has failed to date to implement the Special Rapporteur's recommendation.

DUE PROCESS AND UNFAIR TRIAL

The Special Rapporteur expressed concerns that the authorities who arrest people on alleged state security crimes almost systematically violate due process and international fair trial guarantees. She noted serious procedural violations from the moment of arrest, usually carried out without a warrant, until the end of trial.

Amnesty International shares these concerns and has reported on many cases where activists, critics of the government, and others charged with state security offences, have been imprisoned following unfair trials before the State Security Chamber of the Federal Supreme Court.¹¹ Defendants in these cases are generally arrested without judicial warrants, and allowed limited or no access to lawyers throughout their pre-trial detention, and sometimes even once their trial is underway. Some, when brought to trial, have told the court they were forced under torture to put their signatures to statements they were not permitted to read and which were then presented to the court as their "confessions." The State Security Chamber of the Federal Supreme Court, which tries such cases, has admitted these "confessions" as evidence of defendants' guilt, despite defendants repudiating them, and has failed to investigate allegations that they were extracted under torture.¹²

The State Security Chamber of the Federal Supreme Court is a court of first instance, yet its judgements are not open to challenge and therefore cannot be appealed. Article 230 of the Criminal Procedure Law¹³ provides a right of appeal only for judgements rendered by ordinary criminal courts of first degree, not the State Security Chamber of the Federal Supreme Court. Article 101 of the

¹⁰ Amnesty International, UAE: Release sisters secretly detained for three months over tweets, 15 May 2015

<https://www.amnesty.org/en/articles/news/2015/05/uae-release-sisters-secretly-detained-for-three-months-over-tweets/>

¹¹ Amnesty International, UAE: Further information: Twitter activist's unfair trial continues (MDE 25/020/2014), 8 October 2014 <https://www.amnesty.org/en/documents/mde25/020/2014/en/>

¹² Amnesty International, UAE: Government critics languish in prison a year after mass show trial, 2 July 2014

<https://www.amnesty.org/en/articles/news/2014/07/uae-government-critics-languish-prison-year-after-mass-show-trial/>; Amnesty

International, UAE: Further information: Men convicted after unfair mass trial in UAE (MDE 25/007/2014), 14 February 2014, <https://www.amnesty.org/en/documents/mde25/007/2014/en/>

¹³ Federal Law No.35 of 1992, Criminal Procedure Law.

Constitution¹⁴ and Article 67 of the Law Concerning the Federal Supreme Court¹⁵ declare that its judgements are final, binding and not open to challenge.

The Special Rapporteur recommended the government to revise all legislation to ensure the right of appeal in cases currently heard in the first instance before this court. In its response to the Special Rapporteur's draft report, the government said it is considering amending its laws to allow for rulings of the State Security Chamber to be challenged.

Amnesty International reminds the UAE government of similar commitments it has previously made and urges it not only to consider, but to urgently implement, the Special Rapporteur's recommendation.

RECOMMENDATIONS

Amnesty International urges the UAE authorities to address the concerns of the Special Rapporteur and to implement the following recommendations from the organization, as well as those outlined in the Special Rapporteur's report:

- Immediately and unconditionally release all prisoners of conscience – that is, persons imprisoned solely for the peaceful exercise of their rights to freedom of expression, association or assembly or other legitimate exercise of their human rights;
- Ensure a narrow and clear definition of internationally recognizable offences; in particular amend the overly broad provisions in all legislation that criminalizes the peaceful exercise of freedom of expression, association or assembly;
- Prohibit the practice of secret detention and enforced disappearance, and institute safeguards against torture and other ill-treatment, breaking down the isolation in which these abuses occur, and establishing institutional responsibility for the welfare of detainees and prisoners;
- Ensure in law and practice that no one is coerced into testifying against themselves or others, or to confess guilt and that no such “confessions” are accepted as evidence in court, except against a person accused of torture or other ill-treatment as evidence that the “confession” or other statement was made;
- Establish an independent committee of experts to investigate claims of torture and other ill-treatment of persons in detention. Where sufficient admissible evidence is found, those suspected of such actions must be brought to justice in proceedings that adhere to international fair trial standards;
- Revise all relevant legislation to ensure the right of appeal, including in cases currently heard in the first instance by the State Security Chamber of the FSC;
- Ensure that human rights defenders are able to carry out their peaceful activities without fear of harassment and reprisals by the government; ensure that they are fully protected in accordance with the UN Declaration on Human Rights Defenders and that the principles contained in the Declaration are fully incorporated into national law; and
- Ratify the International Covenant on Civil and Political Rights and its Optional Protocols and the International Convention for the Protection of all Persons from Enforced Disappearance.

¹⁴ UAE Constitution, 18 July 1971.

¹⁵ Federal Law No.10 of 1973, Concerning the Federal Supreme Court.

ANNEX – INDIVIDUAL CASES OF PRISONERS OF CONSCIENCE

- **Dr Mohammed al-Mansoori**, who has a PhD from the UK's Glasgow Caledonian University and is a high profile lawyer in the UAE, is serving an 11-year prison sentence following his conviction at two unfair mass trials, including the UAE 94 trial. He was detained incommunicado and in solitary confinement for eight months in pre-trial detention with no access to a lawyer. He was ill-treated in prison in 2013, prompting him to go on hunger strike in protest. Dr Mohammed al-Mansoori had been harassed by the authorities over several years because of his criticism of the human rights situation in the UAE. He was arrested without a judicial warrant in 2006 for allegedly "insulting the Public Prosecutor." He was placed on a travel ban in 2007 and had his passport confiscated in 2008. He was arrested again in June 2009 but released without questioning the same day and, in December of that year, he was dismissed from his post as a legal adviser to the Ruler of Ras al-Khaimah, after he criticized on a satellite television channel the lack of free speech in the UAE. He was also barred from giving interviews to local media.
- **Dr Mohammed al-Roken**, who has a LLM and PhD from the UK's University of Warwick, is a human rights lawyer and academic serving a 10-year prison sentence following his conviction in the UAE 94 trial. He was arrested on 17 July 2012 and held for eight months in secret pre-trial detention without access to a lawyer. Prior to his arrest, Dr Mohammed al-Roken had been a target of government harassment because of his work as a human rights lawyer, his criticism of the UAE's human rights record, and his advocacy of democratic reforms. The authorities arrested and detained him on a number of occasions and placed him for some time on a travel ban. In addition to placing him under surveillance, the authorities also barred him from teaching, writing in newspapers, and giving interviews to local media.
- **Hossein Ali al-Najjar Al-Hammadi** is a science teacher serving an 11-year prison sentence following his conviction at two unfair mass trials, including the UAE 94 trial.
- **Saleh Mohammed al-Dhufairi** is a former teacher who is serving a 14-year prison sentence following his conviction in two unfair mass trials, including the UAE 94 trial. Before his arrest, Saleh Mohammed al-Dhufairi had kept both a blog and a Twitter account, in which he expressed criticism of the UAE's State Security body and called for greater rights and freedoms.
- **Dr Ahmed al-Zaabi** is a university professor and a former judge who is serving a 10-year prison sentence following his conviction in the UAE 94 trial. He was tortured and otherwise ill-treated in secret detention. He was hung upside down and beaten; his feet became swollen and he was left with bruises all over his body. His fingernails were pulled out and, in court, he recalled that the beatings had made him urinate blood.
- **Sheikh Dr Sultan Kayed Mohammed al-Qassimi**, who has a PhD from the UK's University of Manchester and is a prominent member of the Ras al-Khaimah ruling family and co-founder of Ittihad University in the UAE, is serving a 10-year prison sentence following his conviction in the UAE 94 trial.
- **Khalifa al-Nuaimi** is a university student and blogger serving a 10-year prison sentence following his conviction in the UAE 94 trial. Before his arrest, he kept a blog and Twitter account, in which he criticized the human rights situation in the UAE.
- **Abdulla al-Hajri** is a graduate student serving a seven-year prison sentence following his conviction in the UAE 94 trial. He was tortured and otherwise ill-treated for eight months in pre-trial detention by his interrogators who beat him and forced him to sit on an electric chair, threatening to give him electric shocks if he refused to "cooperate" with them and "confess" to whatever was dictated to him.

- **Osama Al-Najjar** is the son of Hussain Ali al-Najjar al-Hammadi from the UAE 94 trial. He was arrested in March 2014 and prosecuted under the cybercrimes law on charges based on messages he posted on Twitter defending his father. In November 2014, he was sentenced to three years' imprisonment and a substantial fine for charges including "offending the State"; "designing and running a website on social networks with the aim of publishing inaccurate, satirical and defaming ideas and information that are harmful to the structure of State institutions"; and "contacting foreign organizations and presenting inaccurate information" about the UAE 94 trial and living conditions inside Al-Razeen Prison where many political prisoners are held. He was tortured and otherwise ill-treated during the first four days of his detention when he was held in a secret location without any access to the outside world. His trial before the State Security Chamber of the Federal Supreme Court was unfair and he had no right to appeal the verdict.

- **Obaid Yousef al-Zaabi**, is a blogger and brother of Dr Ahmed al-Zaabi. He was prosecuted on several charges based on his Twitter posts about the UAE 94 trial, including spreading "slander concerning the rulers of the UAE using phrases that lower their status and accusing them of oppression" and "disseminating ideas and news meant to mock and damage the reputation of a governmental institution." In June 2014, Obaid Yousef Al-Zaabi was acquitted of all charges but, despite this, the authorities continue to arbitrarily detain him, even though there is no legal basis for depriving him of his liberty.