



# United Arab Emirates Shadow report

## Report to the Committee against torture: Initial review of the United Arab Emirates

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INTRODUCTION	3
DEFINITION, PROHIBITION AND CRIMINALISATION OF TORTURE (ARTS 1 AND 2)	3
Definition and criminalisation of torture	3
Absolute prohibition	4
PROHIBITION TO EXPEL, RETURN OR EXTRADITE TO A STATE PRACTISING TORTURE (ARTICLE 3)	5
FAILURE TO TAKE MEASURES TO PREVENT TORTURE	6
Monitoring of detention facilities	7
Training of law enforcement personnel	7
VIOLATION OF LEGAL SAFEGUARDS	8
Arbitrary arrests	8
<i>Prolonged custody</i>	11
Interrogations and forced confessions	12
Right to legal counsel	12
Right to communicate with the consulate of the country of origin	14
Administrative detention	15
SYSTEMATIC PRACTICE OF TORTURE	16
Widespread use of solitary confinement	17
Violation of the right to medical care	18
ABSENCE OF AN EFFECTIVE COMPLAINT MECHANISM AND IMPUNITY OF TORTURE PERPETRATORS	19
Absence of effective complaint mechanism, denial of due process and refusal to open prompt and impartial investigations into torture allegations	19
Impunity of torture perpetrators	20



## INTRODUCTION

This report is submitted for the consideration of the Committee against Torture prior to its review of the initial report of the United Arab Emirates in July 2022 during its 74th session. The initial report of the United Arab Emirates to the Committee was due on August, 23, 2013. The State submitted its report in June, 20, 2018, five years after the deadline.

The Association for Victims of Torture in the UAE (AVTUAE) submits this shadow report to assess the implementation by the United Arab Emirates to the Convention against torture which the State ratified on July 19, 2012.

## DEFINITION, PROHIBITION AND CRIMINALISATION OF TORTURE (ARTS 1 AND 2)

### Definition and criminalisation of torture

The prohibition of torture is enshrined in article 26 of the Emirati Constitution. It is also criminalised by article 242 of the Penal Code. However, the provisions prohibiting torture are very vaguely worded and do not provide a clear definition of "torture" with all its constitutive elements enunciated in Article 1 of the Convention against Torture.

In its article 242, the Penal Code narrows down the definition of torture as provided in the Convention. It states that "any public official who uses torture, force or threats against an accused person, a witness or an expert, either directly or through an intermediary, for the purpose of obtaining a confession to an offence, or coercing the person into making a statement or providing information about an offence or concealing facts shall be sentenced to a fixed term of imprisonment". This provision limits the criminalisation to acts of torture inflicted in order to obtain confessions or information about an offence. This provision restricts the criminalisation of torture to these specific purposes, thus excluding an important part of the definition provided in the Convention.

Furthermore, article 242 restricts this prohibition to the use of torture against "an accused person, a witness or an expert," which imposes an additional limitation to the scope of application of article 242 and excludes a wide range of potential victims.

However, article 245 of the Penal Code prohibits the use, by public officials, of their authority "to subject others to cruel treatment, offend their decency or cause them bodily harm." If this provision does not give restrictions related to the purpose of the treatment inflicted, its wording suggests that the act referred to in this article is of lesser gravity and does not include torture *per se*.

It is noteworthy that the above-mentioned provisions appear under the chapter "abuse of office and misuse of authority." The legislator did clearly not take into consideration the gravity of the crime of torture and does not consider it as one of the most serious crimes.

To comply with article 4 of the Convention, the State Party must "make these offences punishable by appropriate penalties which take into account the grave nature of the crime."



Under article 242, the Penal Code provides that the crime of torture is punished with “a fixed term of imprisonment.” Under article 68(2), the Penal Code states that “[t]he term of temporary imprisonment shall neither be less than three years, nor more than fifteen years, unless the law provides otherwise,” whereas article 246 defines the minimum sentence to 1 year in prison or a 10 000 dirhams fine.

However, article 344 of the Penal Code states that:

[w]hoever illegally kidnaps, arrests, detains or deprives a person of his freedom, whether by himself or through another by any means without lawful justification, shall be punished by term imprisonment; however, punishment shall be life imprisonment in the following cases:

[...]

2. If the act is committed by trickery, by force, by threat of killing or serious injury or by inflicting physical or psychological torture [...].

This provision criminalises the unlawful deprivation of liberty by any individual, an act punished with “term imprisonment”, i.e., a prison term at least 3 years and maximum 15 years. The abduction and unlawful deprivation of a person’s liberty is aggravated if the act is committed by “by inflicting physical or psychological torture”. In this case, the author should be sentenced to life imprisonment.

The arrest and torture by State officials falls under article 242 of the Penal Code and is punished with “term imprisonment”, while the abduction and torture by other individuals falls under article 344 and is punished with life imprisonment. All the above mentioned provisions clearly do not take into account the gravity of torture. The minimum sentence at article 242 is beyond the sentence imposed if the acts are committed by private individuals. The status of public official is an inherent part of the definition of torture and should be an aggravating factor for sentencing purposes.

### **Absolute prohibition**

The definition of torture contained in the Emirati Penal Code does not explicitly stipulate the absolute prohibition of torture under all circumstances, and does not specify that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. The law does not specifically state either that an order from a superior may not be invoked as a justification of torture in accordance with article 2(3) of the Convention.

For the past decade, the Emirati authorities have suppressed peaceful dissenting voices and committed gross human rights abuses, including mass arbitrary arrests, enforced disappearances and torture, under the pretext of fighting against terrorism and protecting state security. In this context, it is crucial that the State Party urgently takes the necessary steps to explicitly incorporate the absolute prohibition of torture in its domestic law and ensure that such circumstances does not constitute an exception to the legal protection against torture.



## PROHIBITION TO EXPEL, RETURN OR EXTRADITE TO A STATE PRACTISING TORTURE (ARTICLE 3)

The principle of *non-refoulement* has been incorporated in article 9 of the Federal Law no. 39 of 2006 on Mutual Judicial Co-operation in Criminal Matters which forbids the extradition of a person if this person may be exposed to torture, inhuman or degrading treatment or a severe sentence not appropriate to the crime, or if the minimum legal safeguards guaranteed in the Code of Criminal Procedure may be violated.<sup>1</sup>

The same provision also prohibits the extradition of a person if the crime object of the request is a political crime or correlated to a political crime. It further states that “terrorist crimes” shall not be deemed political crimes and might therefore result in the extradition of the person. If this exclusion in itself is not of concern, the common use by the United Arab Emirates of “terrorist” accusations to criminalise peaceful dissent raises serious concerns about this exception.

The UAE are party to the Riyadh Arab Agreement for Judicial Cooperation<sup>2</sup> signed between the members of the League of Arab States. The UAE have also adopted several bilateral judicial cooperation agreements, including with Saudi Arabia, Egypt, China and Iran.

Even though these instruments contain provisions excluding political offences as a valid basis for an extradition request, they provide no protection against extradition in case the requesting State might subject the prisoner to acts of torture or ill-treatment. The law does not explicitly clarify which instrument will prevail if there is conflict.

Furthermore, given the terms of article 10(3), this provision might be used to justify the extradition of peaceful dissidents and political opponents despite the political character of the charges against them. Given the notorious record of many States which have signed bilateral agreements with the UAE and the widespread practice of torture in these countries, it appears clear that this provision does not provide an effective protection in accordance with article 3 of the Convention.

The state report does not provide any information on the measures taken to assess the risk of torture for the person and identify the existence, in the requesting State, of “a

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<sup>1</sup> Federal Law no. 39 of 2006 on Mutual Judicial Co-operation in Criminal Matters, available at: <https://www.moj.gov.ae/assets/662c1f38/federal-law-no39.aspx> (accessed on 1 March 2022).

<sup>2</sup> League of Arab States, *Riyadh Arab Agreement for Judicial Cooperation*, 6 April 1983, available at: <https://www.refworld.org/docid/3ae6b38d8.html> (accessed on 1 March 2022).



consistent pattern of gross, flagrant or mass violations of human rights”<sup>3</sup> as prescribed under article 2 of the Convention. The state report gives no information on the effective number of extraditions carried out and the measures taken to ensure that the process fully complies with article 3 of the Convention.

The UAE carried out several extraditions of peaceful dissidents to countries where the persons were at serious risk of torture. For example, the authorities have deported dozens of Egyptian nationals requested by Egypt for their connection to the Muslim Brotherhood. **Mosaab Abdelaziz**,<sup>4</sup> son of Ahmed Abdelaziz, media adviser of former Egyptian president Mohamed Morsi, was arrested on October 21, 2014, by the UAE State Security forces, held *incommunicado* and tortured for over three months in. He was later tried by the State Security Chamber of the Federal Supreme Court and sentenced to three years in prison and deportation upon release. On November 6, 2017, after spending three years at Al-Wathba prison, Mosaab Abdelaziz was deported to Egypt where he was taken to an undisclosed location and detained *incommunicado*.

## FAILURE TO TAKE MEASURES TO PREVENT TORTURE

The state report provides a list of provisions enunciating legal safeguards to protect persons deprived of liberty from torture and ill-treatment.<sup>5</sup> Among the most important preventive measures, legal safeguards are in fact crucial to protect persons deprived of liberty from torture and must be strictly upheld every time a person is arrested and placed in detention.

The state report concludes that “[i]t is clear from the provisions of the above articles that effective measures are in place for preventing acts of torture, particularly during the questioning, arrest and detention phases, and that every safeguard is taken to ensure that no torture is practised.”

However, the State fails to demonstrate how these rules are implemented in practice to ensure that all persons deprived of their liberty are not exposed to torture and ill-treatment.

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<sup>3</sup> Article 3, par. 2, of the Convention against torture.

<sup>4</sup> ICJHR, *UAE departs Mosaab Ahmed Abdul Aziz to Egypt despite threat of torture*, 30 November 2017, <https://ic4jhr.org/?p=4846> (accessed on 1 March 2022).

<sup>5</sup> State report, paras 116-132.



## Monitoring of detention facilities

As affirmed in the State report, Emirati law contains a legal provision on the monitoring of detention facilities, which states that “[c]ompetent prosecutors have the right to enter penal facilities at any time to ascertain that the laws and regulations are being implemented and that no prisoner is being held unlawfully. They may examine record and files to verify their conformity with the laws, regulations and rules.”<sup>6</sup>

This provision specifically mentions the right for public prosecutors to visit detention facilities to ensure that prisoners are not detained unlawfully and that “the laws and regulations are being implemented”. However, it does not mention anything about the monitoring of detention conditions, torture and ill-treatment. The state party does not provide information on potential effective measures taken to monitor the detention conditions. The state report does not either provide details on the effective implementation of this provisions and how often such visits are conducted.

Furthermore, according to this provision, the competent prosecutors have the right but not the obligation to conduct visits to places of detention. This provision clearly does not provide a sufficient protection for inmates against torture and ill-treatment. The State party must take the necessary steps to incorporate an efficient process to monitor places of detention and ensure they are all visited by competent authorities on a regular basis.

## Training of law enforcement personnel

The state report sets out some data on trainings provided to law enforcement personnel. According to the report, “general human rights training is provided through police colleges, academies and schools” and several other human rights courses were organised for personnel of penal institutions and medical personnel in contact with detainees.<sup>7</sup>

However, the report does not detail how the authorities ensure that all public officials in contact with detainees are properly informed and trained about human rights and international standards on the treatment of prisoners. It does not mention whether these courses are mandatory.

The report provides data on the numbers of persons who attended the above mentioned courses so far. For example, between 2010 and 2014, about 10 000 members of personnel

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<sup>6</sup> Article 10 of the Federal Law No. 43 of 1992, available in Arabic: <http://rakpp.rak.ae/ar/Pages/اتحادى-قانون-العقابية-المنشآت-تنظيم-بشان-1992-لسنة-43.aspx> (accessed on 1 March 2022).

<sup>7</sup> State report, paras 170-181.



of the Ministry of the Interior attended human rights courses (between 1000 and 2000 a year). However, the state party does not provide data on the total number of law enforcement personnel; in 2018, the number of members of the Abu Dhabi Police alone was estimated at 34 000,<sup>8</sup> with the aim of increasing that number to 47 000 in 2021.

It is unclear what measures are taken to coordinate between all seven emirates and ensure that law enforcement personnel in every emirate are properly trained and able to implement human rights instruments in their work.

## VIOLATION OF LEGAL SAFEGUARDS

The state report provides a list of provisions enunciating legal safeguards to protect persons deprived of liberty from torture and ill-treatment.<sup>9</sup> Among the most important preventive measures, legal safeguards are in fact crucial to protect persons deprived of liberty from torture and must be strictly upheld every time a person is arrested and placed in detention.

The state report concludes that “[i]t is clear from the provisions of the above articles that effective measures are in place for preventing acts of torture, particularly during the questioning, arrest and detention phases, and that every safeguard is taken to ensure that no torture is practised.”

However, the State fails to demonstrate how these rules are implemented in practice to ensure that all persons deprived of their liberty are not exposed to torture and ill-treatment.

### Arbitrary arrests

Despite the legal protection enshrined in the Code of Criminal Procedure, reports have established the existence of systematic violations of procedural guarantees by police forces during arrests. The arrest of a suspect must be authorised by the public prosecution.<sup>10</sup>

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<sup>8</sup> Gulf News, *UAE police forces to become community police*, 17 April 2018, <https://gulfnews.com/uae/government/uae-police-forces-to-become-community-police-1.2207110> (accessed on 1 March 2022).

<sup>9</sup> State report, paras 116-132.

<sup>10</sup> Articles 101 - 102 of the Code of Criminal Procedure.





Provisional detention is allowed if there is enough evidence and if the incriminated act constitutes a felony or misdemeanour punished by other than a fine penalty.<sup>11</sup>

Article 8 of the Federal Law No. 12 of 1977<sup>12</sup> allows the use of force “if necessary whenever the need arises in order to carry out the duties entrusted to them”. No further details are given to define the “necessary use of force” and indicate the requirements that should be considered in such cases. It is crucial that law enforcement officers abide in all their actions by the principles of legality, necessity, non-discrimination, proportionality and humanity.<sup>13</sup>

It appears from the number of cases documented that arrests in the UAE are systematically carried out in violation of these principles. Reports of night raids, violent arrests and arbitrary searches are systematic during arrests, especially in cases related to national security charges. Consistent testimonies have reported being subjected to the same pattern of violations. The violence during arrests is not only directed against the suspect but also the family. Objects and personal belongings are stolen from the house of the suspect or destroyed without any justification. Furthermore, in the vast majority of cases, the suspect is arrested without being shown an arrest warrant and without even being informed of the reason for the arrest. The methods used during the arrests, especially the ones carried out by State Security forces, often appears more like an abduction than an actual arrest.

On August 26, 2008, **Naji Hamdan**,<sup>14</sup> a Lebanese-American citizen living in the UAE received a call from an anonymous number while he was resting at home during his lunch break. The caller told him that his car, parked downstairs was hit by a vehicle. When he immediately went to see what happened, he was surrounded by several individuals and handcuffed. Mr Hamdan asked them what was going on but they simply took him upstairs to search his apartment. He was not informed of the reason for his arrest, nor shown an arrest warrant or a search warrant. Mr Hamdan was then taken in a black SUV to the garage where he worked. Again, the men searched the entire place without giving any explanation. Naji Hamdan was then taken to an unknown location (which he learned later

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<sup>11</sup> Article 106 of the Code of Criminal Procedure.

<sup>12</sup> Federal Law No (12) of 1977 On the Police and Security Force, available at: <https://www.moi.gov.ae/DataFolder/EN%20Laws%20and%20Regulations/Breaches%20of%20code%20of%20Conduct/Federal%20Law%20No%2012%20of%201977%20On%20the%20Police%20and%20Security%20Force.pdf> (accessed on 1 March 2022).

<sup>13</sup> OHCHR, *International Human Rights Standards for Law Enforcement*, available at: <https://www.ohchr.org/Documents/Publications/training5Add1en.pdf> (accessed on 1 March 2022).

<sup>14</sup> AVT UAE, *Naji Hamdan*, <http://www.avtuae.org/en/2019/01/26/naji-hamdan/> (accessed on 1 March 2022).



was the State Security headquarters) where he was interrogated and tortured for months. He was kept in stressful positions, violently beaten up and kicked on his entire body, including his head and his neck. He was deprived of sleep, exposed to extreme temperatures and threatened with rape. Eventually, when the interrogators threatened to rape his wife, he agreed to sign on written confessions without being allowed to read them. On November 26, he was finally transferred to Al-Wathba prison after three months of *incommunicado* detention.

It is concerning that the State Security apparatus does not abide by international norms or domestic law and continues to act with complete impunity.

**Khaled Ahmad**<sup>15</sup> was an employee at Emirates International Investment Company, a company owned by Saif Bin Zayed Al Nahyan, Minister of the Interior and Deputy Prime Minister at the time. Upon his return from vacation to visit his family, Mr Ahmad was arrested at the passport control. His passport was not stamped and his entry not recorded during the police control. He was then taken outside the airport and forced into a car which drove to his house. The officers searched his home and took his electronic devices without showing a search warrant. He was then taken to the State Security headquarters where he was kept for five months without a legal procedure. The State Security officials conducting the interrogations questioned him about official documents leaked from the company and accused him of stealing them. After five months in secret detention, Mr Ahmad was released and expelled from the UAE without being officially charged or brought to court. It was clear from the nature of the questions during the interrogation and the way his detention was carried out that his arrest was not official.

**Ayham Al-Endari**<sup>16</sup> signed a partnership deal with the owner of a car dealership business in 2014. Later on, he learned that this business was in fact a cover for a sex trade business. He immediately asked to cancel the partnership and take his money back. His partner threatened him, claiming that members of the ruling family were among his clients. When the man actually tried to hit him with his car, Mr Al-Endari filed a complaint at the nearest police station. He was then summoned to the police station and later to court. On June 22, 2014, the Al-Aïn court quickly tried and sentenced him to six months in prison and

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<sup>15</sup> AVT UAE, *Khaled Ahmad*, <http://www.avtuae.org/en/2019/01/26/khaled-ahmad/> (accessed on 1 March 2022).

<sup>16</sup> AVT UAE, *Syrian victim of torture Ayham Al Endari seeking justice for violations suffered in the UAE*, <http://www.avtuae.org/en/2019/08/27/syrian-victim-of-torture-ayham-al-endari-seeking-justice-for-violations-suffered-in-the-uae/> (accessed on 1 March 2022).



deportation to Syria at the end of his prison term. After hiding for a year, Mr Al-Endari was arrested and detained at Al-Ain prison. During his detention, Mr Al-Endari reported having been held in solitary confinement, severely beaten up and humiliated during his detention. Police officers accused him of “insulting the sheikhs”.

### *Prolonged custody*

Under Emirati law, the judicial police must hear the accused and transfer him to the public prosecution within 48 hours of the arrest.<sup>17</sup> The prosecutor has the obligation to hear the accused and inform him of the charges pending against him<sup>18</sup> no later than 24 hours after the transfer. After hearing the accused, the prosecutor may order the release or the remand in custody.<sup>19</sup> The authorities running the detention facility are not allowed to detain a person without a written order from the public prosecution.<sup>20</sup>

If the prosecution decides to detain the accused, provisional detention may be ordered for seven days, renewable. In case it is deemed necessary, the prosecution authority may order the extension of the custody of 30 days, renewable. In total, custody can legally last for 74 days.

In practice, arrested persons are most frequently detained in custody without charges for several months. In most of the case our organisations have documented, the victims were detained without charges for months before being brought before a judicial authority. Very often, in the hands of State Security forces, the police custody takes place in a secret location and detainees are not allowed to contact their families or seek a lawyer. Interrogations are conducted without the presence of a lawyer and often under torture. *Incommunicado* detention is systematic in cases handled by the State Security which keep victims detained for months outside the protection of the law.

The case known as the “**UAE 94**”<sup>21</sup> showed a pattern of arbitrary arrests and systematic *incommunicado* detention. In 2011, a group of over 300 individuals from all sectors of society, including academics, intellectuals, lawyers, judges and State officials, signed a reform petition urging the government to grant free and democratic elections of the Federal

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<sup>17</sup> Article 47(1) of the Code of Criminal Procedure.

<sup>18</sup> Article 99 of the Code of Criminal Procedure.

<sup>19</sup> Article 47(1) of the Code of Criminal Procedure.

<sup>20</sup> Articles 107 and 108 of the Code of Criminal Procedure.

<sup>21</sup> Working Group on Arbitrary Detention, Opinion No. 60/2013 (A/HRC/WGAD/2013/60), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/131/83/PDF/G1413183.pdf?OpenElement> (accessed on 1 March 2022).



National Council (the UAE legislative authority) and empower the Council with full legislative authority. 94 of the signatories were accused of “plotting to overthrow the government of the United Arab Emirates” and other vague and unfounded charges. Most of them were detained *incommunicado* for several months, interrogated without the presence of lawyer and severely tortured. The victims reappeared months after their arrest at their first appearance before a prosecution authority. During this period of time, their families were completely unaware of their whereabouts.

Regardless of the treatment suffered in custody, *incommunicado* detention constitutes in itself a serious violation of the Convention<sup>22</sup> given the important risks of torture and ill-treatment while there is no oversight of a judicial authority over the detention facility. The State party should immediately address this situation to comply with the Convention and take urgent measures to place all detention facilities under the control of judicial authorities.

### **Interrogations and forced confessions**

Under the Code of Criminal Procedure, interrogations must be strictly carried out by the public prosecution. The public prosecution may assign tasks of the investigation to the judicial police but interrogation of the suspect may never be delegated.<sup>23</sup>

A considerable gap remains between this provision and the reality on the ground. It appears from the majority of the cases that interrogations are systematically carried out during custody by law enforcement personnel without the presence of a magistrate or even the lawyer of the accused. When the accused is finally brought before a prosecution authority and later a judge, the interrogation appears to be a mere formality. Very often, written confessions are prepared and signed by the accused under duress before the first appearance before a judicial authority.

### **Right to legal counsel**

The right to legal counsel is one of the most important legal safeguards to prevent torture and arbitrary detention. Domestic law<sup>24</sup> guarantees for the accused the right to be assisted by a lawyer during the trial and throughout pre-trial detention. However, the provisions do not go further in the definition of the protection. The law should be more specific and grant

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<sup>22</sup> Committee against torture, *Bendib v. Algeria* (CAT/C/51/D/376/2009), para 6.4.

<sup>23</sup> Article 68 of the Code of Criminal Procedure.

<sup>24</sup> Articles 4, 100 and 109 of the Code of Criminal Procedure and Article 18 of the Federal Law No. 43 of 1992 regulating Penal Institutions.



all persons deprived of liberty a prompt access to a lawyer from the onset of arrest, and no later than 48 hours after the arrest, in accordance with international standards.<sup>25</sup>

The state report does not detail further what measures are taken to ensure that all persons deprived of liberty are systematically granted access to a lawyer. The state party should also provide information on the implementation of this guarantee with regards to persons arrested on charges related to national security and held in custody for excessive periods of time. Once again, it is concerning to see the gap between the few legal protections contained in the domestic law and the actual practices of the authorities.

Another component of the right to an attorney is the obligation to protect the independence of lawyers and abstain from interfering in lawyers' work. The submitting organisations have documented numerous cases where the lawyers were threatened and intimidated to drop certain cases.

**Alya Abdulnoor**,<sup>26</sup> arrested on July 29, 2015, was held *incommunicado* for four months under severe torture and ill-treatment before finally being brought before a prosecutor and able to contact her family. The public prosecutor charged her with financing terrorism in relation to payments she made to support Syrian war-affected families. Ms Abdulnoor and her family appointed a lawyer to assist her in trial. However, during the trial, her lawyer was intimidated and threatened of punitive actions if did not abandon the case of Ms Abdulnoor. He eventually decide to withdraw from the case, leaving Alya Abdulnoor without a lawyer to assist her.

**Dr Mohammed Al-Roken**,<sup>27</sup> a prominent lawyer and human rights defender in the UAE, was the defence lawyer in many sensitive cases that most lawyers would refuse given the risk they may expose them to. In 2012, Dr Al-Roken was the lawyer of the defendants in the case of seven Emirati activists tried in a grossly unfair trial and stripped of their citizenship, known as the case of the "UAE 7". Despite the political nature of the charges and the nature of the case, Al-Roken refused to abandon the case. He criticised the arbitrary nature of the decree revoking his clients' citizenship and shared publicly his intention to appeal the decision. Days later, the State Security forces arrested Dr Al-Roken

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<sup>25</sup> Basic principles on the role of lawyers.

<sup>26</sup> ICJHR, *In memory of Alya Abdulnoor: Four years after the beginning of a nightmare*, <https://ic4jhr.org/?p=5563> (accessed on 1 March 2022).

<sup>27</sup> *Open letter to the United Arab Emirates calling for the release of prominent lawyer and human rights defender Dr Mohammed Al-Roken*, <https://ic4jhr.org/?p=6189> (accessed on 1 March 2022).



and took him to an undisclosed location without access to a lawyer or any contact with his family.

### Right to communicate with the consulate of the country of origin

The right to communicate with the consulate of the country of origin is among the important safeguards that should be protected, particularly given the diversity of origins among the population of the UAE. The state report outlines the existence of a legal protection<sup>28</sup> to grant non-nationals the right to contact the embassy of their country of origin. Yet, the cases show that this legal protection is not effectively granted.

Among these cases, **Tiina Jauhiainen**,<sup>29</sup> a Finnish expatriate living in Dubai, helped her friend Sheikha Latifa Bint Mohammed Al-Maktoum, to escape the UAE. Their yacht was navigating in international waters off the Indian coast when they were suddenly surrounded by dinghies and attacked by Emirati and Indian special forces. Ms Jauhiainen was kidnapped and taken back to Dubai, where she was detained in a secret location. There, she was interrogated for days. At the moment of her arrest on the yacht and upon her arrival in the UAE, she immediately asked to call her embassy but her request was rejected. She was held incommunicado for weeks without anybody knowing what had happened to her.

**Dr Mahmood Al-Jaidah**<sup>30</sup> was arrested on February 26, 2013, without a warrant by UAE State Security Forces while transiting through Dubai on his way home from Thailand. After being searched and questioned, he was asked to come to the police station to sign a document confirming the authorities had interrogated him. He first refused asking to call his embassy first, but the border control agent told him he would be able to do so at the police station. The officers brought him outside the airport and forced him into a car, while handcuffing and blindfolding him.

He was then held in a secret facility for eight and a half months and denied contact with the outside world. He was interrogated about the situation in Qatar, his home country, and accused him of supporting illegal organisations in the UAE. During this period, he was subjected to severe acts of torture, including beatings and sleep deprivation. State security

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<sup>28</sup> State report, par. 122.

<sup>29</sup> AVT UAE, *Tiina Jauhiainen*, <http://www.avtuae.org/en/2020/01/06/tiina-jauhiainen/> (accessed on 1 March 2022).

<sup>30</sup> AVT UAE, *Dr Mahmood Al-Jaidah*, <http://www.avtuae.org/en/2019/01/26/dr-mahmoud-al-jaidah/> (accessed on 1 March 2022).





officers also threatened to electrocute him, remove his names, hang him and bury him in the prison graveyard.

On October 4, 2013, his trial began and nine hearings took place between then and March 3, 2014, when the court sentenced him to seven months of imprisonment on the sole basis of confessions he was forced to sign during his secret detention and had not been allowed to read.

### **Administrative detention**

Over the past decade, the Emirati authorities have multiplied abuses on peaceful dissent and adopted several legislations to suppress free speech, under the guise of the fight against terrorism. In 2014, the adoption of Federal Law No. 7 on Combatting terrorism offences,<sup>31</sup> which contains a number of vaguely worded provisions, allowed for human rights violations to take place, including a number of breaches to legal safeguards.

According to the law, the court can decide to place a person in administrative detention in a counselling centre (also called *Munasaha* centre) upon request of the prosecution, if this person is deemed to pose a terrorist threat or seems likely to commit a terrorist offence.<sup>32</sup> This same law includes free speech as terrorist offences. It states that “temporary imprisonment shall be imposed 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.”<sup>33</sup>

Even though the law requires that the decision be taken by a court and reassessed every three months, this measure still constitutes a serious violation of fundamental rights and allows the detention without a judgement. In addition, the practice shows that, even the above mentioned requirements are not respected and detainees are simply kept in prison without a formal decision or a reassessment every three months.

In addition, there is no limit as to the number of times the court can extend the decision indication in the law, on the number of times the Court is allowed to extend the detention, which therefore can be renewed indefinitely. In addition, there is no opportunity for detainees to challenge the Court’s decision.

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<sup>31</sup> Federal Law No. 7 of 2017 on Combatting terrorism offences, <https://www.adgm.com/documents/project/adgm/operating-in-adgm/financial-crime-prevention-unit/aml-tab/04-eng-federal-law-7-2014-on-combating-terrorism-offences.pdf> (accessed on 1 March 2022).

<sup>32</sup> Article 40, Law No. 7 of 2017 on Combatting terrorism offences.

<sup>33</sup> Article 14, Law No. 7 of 2017 on Combatting terrorism offences.



There are currently seven known cases of administrative detention under the Anti-Terrorism Law. Three other detainees previously held under the administrative detention regime were released in August 2019 after the authorities forced them to record videos in which they were “repenting”.<sup>34</sup>

Administrative detention clearly constitutes a breach to legal safeguards and increases the risk of torture and ill-treatment. Furthermore, administrative detention in itself may constitute a violation of the Convention given the prolonged state of uncertainty and psychological torture caused by lengthy periods of detention. The Committee had previously raised concerns over this form of detention which allows to hold individuals indefinitely, and concluded that administrative detention does constitute a violation of article 16 of the Convention.<sup>35</sup>

## SYSTEMATIC PRACTICE OF TORTURE

The state report provides a wide range of legal provisions to demonstrate the compliance of UAE domestic law with the Convention. However, it provides no information on effective practices or information about detention conditions inside detention facilities.

Over the past years, the high number of reported cases of torture and ill-treatment have illustrated a widespread and systematic use of physical and psychological torture in detention facilities in the UAE. Despite the considerable number of victims denouncing acts of severe torture and describing extremely harsh detention conditions, the state report did not make any statement on these allegations.

The submitting organisations have documented numerous cases of torture in the United Arab Emirates, all outlining and showing a systematic use of torture during interrogations and in custody, but also extremely harsh conditions and systematic ill-treatment in detention. Reports of torture have particularly outlined the absence of accountability and monitoring over State Security forces, which act without any judicial oversight and in a climate of complete impunity.

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<sup>34</sup> ICJHR, *UAE: Three detainees granted presidential pardon after forces self-incriminating statements*, <https://ic4jhr.org/?p=5558> (accessed on 1 March 2022).

<sup>35</sup> Committee against torture, *Consideration of reports submitted by State parties under article 19 of the convention at its 42nd session, 27 April - 15 May 2009: Concluding observations of the Committee against Torture, Israël*, 23 June 2009, CAT/C/ISR/CO/4, available at: <https://undocs.org/CAT/C/ISR/CO/4> (accessed on 1 March 2022).





Victims have reported being exposed to very serious acts of torture, especially in the hands of State Security forces. Beatings, sleep deprivation, sexual harassment, rape, exposure to extreme temperatures, and other serious abuses are all common practices.

### Widespread use of solitary confinement

Solitary confinement remains a widespread practice in Emirati detention facilities. It is often used as a punitive measure, to put pressure on detainees, or as a form of reprisals. This practice is all the more concerning that long periods of isolation are imposed to detainees.

For example, prominent human rights defender **Ahmed Mansoor** has been held in solitary confinement since his arrest on March 20, 2017. Mr Mansoor was known as the “last human rights defender in the UAE” for his remarkable and courageous work to support victims and denounce human rights abuses while many had been arrested and some discouraged to pursue any form of activism. After his arrest, he was detained *incommunicado* for a month until UN Special Procedures<sup>36</sup> urged the authorities to disclose Mr Mansoor's whereabouts. To this day, he remains in solitary confinement at Al-Sadr prison and faces extremely harsh detention conditions.

**Ahmed Mekkaoui**,<sup>37</sup> a Lebanese citizen, was arrested during a night raid by the State Security forces on October 13, 2014. He was detained *incommunicado* and tortured for seven months without being allowed to contact his family or his lawyer. Mekkaoui was accused of belonging to a terrorist group affiliated with the Hezbollah on the basis of confessions made by another detainee under torture. During his *incommunicado* detention, Mr Mekkaoui was severely tortured and eventually forced to sign written confessions, which were later admitted as evidence in court. After a trial marred with gross irregularities, he was sentenced to 15 years in prison and deportation at the end of his sentence. The UN Working Group on Arbitrary Detention (WGAD) adopted an Opinion<sup>38</sup> on his case in August 2017, stressing the grave violations he suffered and recognising the arbitrary nature of his

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<sup>36</sup> OHCHR, *UN rights experts urge UAE: ‘Immediately release Human Rights Defender Ahmed Mansoor’*, 28 March 2017

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21449&LangID=E> ((accessed on 1 March 2022)).

<sup>37</sup> AVT UAE, *Ahmad Mekkaoui at risk of torture at Al-Wathba prison*,

<http://www.avtuae.org/en/2019/07/05/ahmad-mekkaoui-at-risk-of-torture-at-al-wathba-prison/> ((accessed on 1 March 2022)).

<sup>38</sup> Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its 79th session, 21-25 August 2017: No. 47/2017, UAE*, 15 September 2017, A/HRC/WGAD/2017/47, available at: [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A\\_HRC\\_WGAD\\_2017\\_47.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A_HRC_WGAD_2017_47.pdf) ((accessed on 1 March 2022)).



detention. Later on, his sister and lawyer raised his case during a TV interview and denounced the violations he had suffered in prison. In April 2019, Mr Mekkaoui was placed in solitary confinement and denied all contacts with the outside world. He was allowed to speak with his family in November 2019 and remains in solitary confinement at Al-Wathba prison to this day.

Especially used as a form of punishment against prisoners of conscience and political detainees, solitary confinement has become very frequent. Several inmates at Al-Razeen prison were placed in solitary confinement for months and sometimes over a year. For example, prominent lawyer and human rights defender **Dr Mohammed Al-Mansouri** is currently serving a ten-year prison sentence at Al-Razeen prison. He was tried and sentenced within the case of the UAE 94. After his arrest, he was detained *incommunicado*, tortured and exposed to the same pattern of violations inflicted to most of the defendants in this case as described above.<sup>39</sup> In late 2018, Dr Al-Mansouri that was placed in a solitary confinement cell and deprived of contact with his family. It was only in January 2020 that he was finally allowed to contact his family for the first time in over a year.

### **Violation of the right to medical care**

The authorities have the obligation to provide health care to any person deprived of liberty. Whenever the state of health of prisoners requires medical attention, they must be provided with an appropriate treatment. Article 29 of the Federal Decree regulating penal facilities grants the right for detainees to be examined by a doctor at the entry to the facility and anytime it is required by their state of health.

In most cases, no medical examination is performed at the entry of the detention facility. Furthermore, inmates are systematically denied adequate medical care even despite the deterioration of the health condition of some of them. The health condition of most detainees have deteriorated in prison due to the poor detention conditions, especially the lack of hygiene, prison overcrowding, the deprivation of detainees of a proper bedding, the absence of heating in winter and air-conditioning in summer, especially in prisons located in the middle of the desert, where extreme temperatures can be reached.

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<sup>39</sup> ADHRB, Prisoner Profile: Dr. Mohammed al-Mansoori, <https://www.adhrb.org/2015/12/prisoner-profile-dr-mohammed-al-mansoori/> (accessed on 1 March 2022).



Among those who suffered severely from this violation is **Alya Abdulnoor**.<sup>40</sup> She was arrested on July 28, 2015 and taken to an undisclosed location without being brought before a prosecutor or a judge. Ms Abdulnoor was diagnosed with a breast cancer a month after her arrest. The tumour was still small and doctors assured that it could easily be treated with chemotherapy. Despite the seriousness of the diagnosis, Alya Abdulnoor was taken back to prison and remained in *incommunicado* detention for four months until she first appeared before a prosecutor. During these months, Ms Abdulnoor was exposed to severe torture and inhuman detention conditions. After her appearance before the prosecution, she was transferred to Al-Wathba female prison. Months later, another medical examination showed the important progress of the tumour. She urged the authorities to transfer her to a specialised hospital to treat her condition. She was taken to Mafraq hospital, a poorly equipped hospital to treat her cancer. After receiving medication for some time, Alya suspected that she was not receiving the adequate treatment and later learned that the medicines she was given were in fact painkillers and antidepressants. Ms Abdulnoor and her family addressed multiple requests to the Public Prosecutor and relevant authorities asking for a treatment. In late 2018, doctors informed the family that the tumour had spread to her entire body and vital organs and that she was living her final days. They also advised the authorities to release her. UN experts sent an urgent appeal<sup>41</sup> to the authorities urging them to release Ms Abdulnoor and allow her to spend her final days with her family in dignity. Yet the authorities continued to ignore these calls. Instead, they worsened her detention conditions and kept her in an isolated shackled to her bed and increased the sufferings of Alya by shackling her to her bed until she eventually died in pain on May 4, 2019.

## ABSENCE OF AN EFFECTIVE COMPLAINT MECHANISM AND IMPUNITY OF TORTURE PERPETRATORS

### Absence of effective complaint mechanism, denial of due process and refusal to open prompt and impartial investigations into torture allegations

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<sup>40</sup> ICJHR, *Alya Abdulnoor died in custody after the authorities refused to release her on medical grounds*, <https://ic4jhr.org/?p=5622> (accessed on 1 March 2022).

<sup>41</sup> OHCHR, *UAE: Terminally ill prisoner, Alia Abdulnoor, must be released to "live final days in dignity", say experts*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24214&LangID=E> (accessed on 1 March 2022).



Under article 13 of the Convention against Torture, the State Party has the obligation to ensure the existence of an effective complaint mechanism for victims of torture and grant a protection of victims from any form of retaliation. In its report, the State Party provides a list of general legal provisions without providing further information on the existence of a specific mechanism to protect victims of torture from reprisals.

The State does not only have the obligation to ensure the existence of an effective complaint mechanism, but also to make sure that competent authorities systematically open prompt and impartial investigations “whenever there is reasonable grounds to believe that an act of torture has been committed.”

In practice, the UAE judicial system does not to comply with articles 13 and 14 and clearly fails to protect victims of torture. Victims of torture who attempt to initiate a complaint about their torture and ill-treatment have systematically been subjected to reprisals. Moreover, in all cases documented by our organisations, none of the victims was able to obtain the opening of a fair and independent investigation into their torture claims.

More than that, victims have sometimes appeared in court after months of secret detention and torture carrying visible marks of torture on their body. Yet, the judges never ordered an investigation, even when victims informed the judge of the treatment suffered in custody and asked for the opening of an investigation.

We note that the State report does not provide any specific information on the implementation of the complaint mechanisms in torture claims. It does not provide data on the number of complaints received and examined nor indicate the outcome of these proceedings.

The underlying issue at stake here is the absence of a fair and impartial judicial system. It is crucial that the State Party takes important steps forward to reinforce the independence of the judiciary, and strengthen the rule of law.

The rules on the appointment of judges must be reviewed and amended to ensure the security of tenure of judges and protect the judiciary from any form of interference of the executive. The State party should also secure the tenure of non-national judges and ensure they are not bound by considerations related to the renewal of their work contract and residency permit.

After her visit to the UAE in 2014, the Special Rapporteur on the independence of judges and lawyers, Ms Gabriela Knaul, highlighted in her report<sup>42</sup> the lack of independence of the judiciary and raised concerns over the persistence of the authorities to deny the existence of torture without opening independent and impartial investigations despite the existence of over 200 complaints.

## Impunity of torture perpetrators

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<sup>42</sup> Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul: Mission to the United Arab Emirates*, paras 54-55, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/088/85/PDF/G1508885.pdf?OpenElement> (accessed 1 March 2022).



The absence of effective complaint mechanism, the partial judicial system and the systematic refusal of judges to open prompt and impartial investigations, are all obstacles to ensure the accountability of torture perpetrators and grant the victim a proper compensation. This flawed system grants impunity to torture perpetrators and reinforces the practice of torture.

The impunity is also reinforced by the absence, in criminal law, of a clear and comprehensive definition of torture, which takes into account the serious nature of this crime.

Finally, we note that the crime of torture is not excluded from offences subject to limitation. The Code of Criminal Procedure stipulates that the criminal action for felonies punished by other than life imprisonment or death sentence are subject to a statute of limitation of 20 years<sup>43</sup> while the statutes of limitations for the enforcement of penalties is of 30 years.<sup>44</sup> Under article 242 of the Penal Code, torture is punished with temporary imprisonment, which shall be between 3 to 15 years in prison.<sup>45</sup> It appears obvious that the State party failed to take into account the grave nature of the crime of torture.

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<sup>43</sup> Article 20 of the Code of Criminal Procedure, available at: <https://legaladvice.com/legislation/156/uae-federal-law-35-of-1992-concerning-criminal-procedural-law> (accessed 1 March 2022).

<sup>44</sup> Article 315 of the Code of Criminal Procedure.

<sup>45</sup> Article 68 of the Penal Code.