



UNITED ARAB EMIRATES

ISSUES RELATED TO IMMIGRATION DETENTION

Submission to the UN Committee against Torture

*69th Session (20 April – 15 May 2020)**

Submitted in March 2020

* Session delayed to 72nd Session (April-May 2021) due to coronavirus pandemic.

THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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United Arab Emirates: Issues Related to Immigration Detention

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The Global Detention Project (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international immigration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes.

CONTEXT

The seven small semi-autonomous principalities of the United Arab Emirates (UAE) have one of the highest ratios of foreigners in the world with expatriates representing roughly 90 percent of the total population and 95 percent of the workforce. This unique demographic imbalance is starkly reflected in the country's prison population. According to the World Prison Brief, as of 2014 (the most recent year for which statistics are available), 87.8 percent of the country's prisoners were foreigners. However, with the government limiting access by rights actors to detention centres,² there is almost no information available regarding where, and in what conditions, migrants are held for immigration-related detention after they are arrested or as they await deportation.

The vulnerable situation of prisoners and detainees in the UAE has received particular attention since the outbreak of the coronavirus pandemic. Observers have highlighted the failure of Emirati authorities to provide critical medication in detention centres, including in particular people suffering from HIV or who otherwise have compromised immune systems. Since the outbreak of the coronavirus pandemic, organisations such as Human Rights Watch have urged authorities to release persons with underlying health conditions. The group added: "COVID-19, like other infectious diseases, poses a particularly serious risk to people who live in close proximity to each other, such as in prisons, jails, and immigration detention centres. In the UAE, these are institutions that have often been found to hold detainees in dismal and unhygienic conditions, and where overcrowding, inadequate health care facilities, and denial of medical care are widespread."³

Similar to other countries of the Gulf Cooperation Council (GCC), foreign workers enter the UAE through the *kafala* sponsorship scheme, which ties domestic workers' visas to their employers. Though both highly-skilled/high-wage workers and low-wage workers have migrated to the UAE, it is particularly the low-wage workers employed in certain industries—such as construction, services, and domestic work—who are most susceptible to exploitation under the *kafala* scheme. Domestic workers who leave their employer face punishment for "absconding," including fines, prison, deportation—and many low-paid migrant workers remain vulnerable to forced labour.⁴

As the UN Working Group on Arbitrary Detention (WGAD) found during its recent visit to neighbouring Qatar, which has similar laws in place concerning domestic workers, foreign workers often find themselves in situations of "de facto deprivation of liberty by private actors," which significantly increases their vulnerability to abuses. While the UAE has adopted important labour reforms in recent

¹ Session delayed to 72nd Session (April-May 2021) due to coronavirus pandemic.

² Rothna Begum (Human Rights Watch), Email Correspondence with Michael Flynn (Global Detention Project), 5-10 February 2015.

³ Human Rights Watch (HRW), "UAE: Prisoners with HIV Vulnerable to Coronavirus," 19 March 2020, <https://www.hrw.org/news/2020/03/19/uae-prisoners-hiv-vulnerable-coronavirus>

⁴ Human Rights Watch (HRW), "World Report 2020 – United Arab Emirates," 2020, <https://www.hrw.org/world-report/2020/country-chapters/uae>

years, as we note below, the WGAD's recommendations to Qatar can also apply to UAE: "Article 9 of the ICCPR bestows the right to personal liberty upon everyone and protects everyone against arbitrary deprivation of liberty. Every State party to the ICCPR ... not only has a duty to ensure that anyone acting on its behalf, such as State authorities and its agents, do not infringe this right, but also has a positive obligation to protect everyone in its territory or under its jurisdiction from violations of this right by private parties. The Working Group wishes to underline that this legal and positive duty ... to protect everyone in its territory or under its jurisdiction against any human rights violation extends to an obligation to provide effective remedies whenever a violation occurs. The Working Group calls ... to abolish the system of guardianship immediately and ensure that all women ... are free to leave the homes of their families and others if they choose to do so."⁵

LAWS, POLICIES, PRACTICES

According to Article 26 of the UAE Constitution, "Personal liberty is guaranteed to all citizens. No person may be arrested, searched, detained or imprisoned except in accordance with the provisions of law. No person shall be subjected to torture or to degrading treatment."⁶ Article 40 reads: "Foreigners shall enjoy, within the Union, the rights and freedom stipulated in international charters which are in force or in treaties and agreements to which the Union is party. They shall be subject to the corresponding obligations." Article 344 of the Penal Code reads: "Whoever 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." Punishment can be up to life imprisonment.⁷

Despite these strong safeguards, there appears to be a wide gap between law and policy in the country. Arbitrary arrests, incommunicado detentions, and lengthy pretrial detentions of dissenting citizens and noncitizens alike are commonplace in the UAE.⁸

The rules governing residency in the UAE are spelled out in Federal Law No.6 on Entry and Residence of Aliens. This law requires that all foreigners entering the country be in possession of valid passports or travel documents (Article 2) and enter and exit through authorised, designated ports of entry (Article 3). Persons whose residence permits have expired or been cancelled, and who have failed to renew it or request a new one, may be fined 100 AED (approximately 27 USD) per day. Failure to pay this may result in detention (up to three months) or additional fines of 4,000 AED (1,090 USD) and deportation. With the UAE maintaining its no-minimum wage policy, many migrants cannot afford such fees, which thus leaves them vulnerable to detention. According to Amnesty International many are held indefinitely.⁹

Like other countries of the Gulf Cooperation Council (GCC), many households in the UAE employ female migrant workers as domestic servants. An International Labour Organisation (ILO) study on domestic workers in the UAE estimated that each household employs an average of three domestic workers, with most coming from the Philippines, Indonesia, Sri Lanka, India, and Ethiopia.¹⁰

⁵ Working Group on Arbitrary Detention (WGAD), "Preliminary Findings from its Visit to Qatar (3 - 14 November 2019)," <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25296&LangID=E>

⁶ Constitution of the United Arab Emirates – Constitutional Amendment No. (1) of 1996, <http://www.refworld.org/pdfid/48eca8132.pdf>

⁷ Federal Law No (3) of 1987 on Issuance of The Penal Code, [https://www.icrc.org/ihl-nat/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/\\$FILE/Penal%20Code.pdf](https://www.icrc.org/ihl-nat/6fa4d35e5e3025394125673e00508143/e656047207c93f99c12576b2003ab8c1/$FILE/Penal%20Code.pdf)

⁸ The Guardian, "US, Canadian and Libyan businessmen charged in UAE after 500 days in jail," 19 January 2016, <https://www.theguardian.com/world/2016/jan/19/us-canadian-libyan-businessmen-charged-united-arab-emirates-torture-terrorism-accusations>

⁹ Amnesty International (AI), "United Arab Emirates – 2019," 2020, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/united-arab-emirates/report-united-arab-emirates/>

¹⁰ R. Sabban, "Women Migrant Domestic Workers in the United Arab Emirates," *Gender and Migration in Arab States: the Case of Domestic Workers*, International Labour Organization, June 2004, http://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/publication/wcms_204013.pdf.

Domestic workers have traditionally not been covered in labour laws. Article 3 of Law No. 8 of 1980 specifically exempted “domestic workers working in private residences.” As they work in the isolation of private households, they are particularly vulnerable to abusive work conditions and exploitation. Domestic workers interviewed for the ILO study expressed feeling that they were completely controlled, isolated, and subject to demeaning treatment. The report fails to provide any details regarding potential detention of runaway domestic workers.

In 2017, UAE adopted a law that improves some of the conditions faced by domestic workers, providing among other things the rights to rest days and paid leave. However, according to HRW, the new law reinforces “the *kafala* (visa-sponsorship) system, which ties domestic workers to their employers, and prevents them from leaving or changing employers without their employer’s consent. Those who leave can be punished for ‘absconding’ and fined, imprisoned, and deported.”¹¹

CONDITIONS IN DETENTION

The GDP has information indicating that there are at least seven facilities in the UAE that have been used in recent years for immigration-related detention and that only one of these facilities—the Ajman Immigration Office—is immigration-only. All of the other facilities appear to combine criminal incarceration with immigration functions. And of these, only two, the Sharjah Jail for Men and the Al Sadr Prison, appear to have some system for segregating migrant detainees from the rest of the prison population. In addition, at least one of these facilities, the Dubai Central Jail for Women in Al Aweer, detains accompanied children alongside their mothers.

However, the UAE has neglected to grant international human rights organisations access to facilities that are used to detain people for immigration-related reasons. In its 2014 report on abuses suffered by female domestic labourers in the country, Human Rights Watch (HRW) reported, “Due to the failure of the UAE authorities to respond, Human Rights Watch was unable to visit the Ewa’a Shelters, the deportation center, and prisons. The Dubai Foundation for Women and Children said they were unable to arrange a visit to their shelter. Human Rights Watch cannot, therefore, verify the circumstances in which shelters admit foreign domestic workers or assess their conditions and treatment in shelters when detained pending deportation or in prisons.”¹²

What information does exist about sites of detention used for immigration purposes has been gleaned from an assortment of sources, including media reports, U.S. State Department human rights reports, interviews with representatives of international organisations, testimonies provided by former detainees, and information provided by foreign embassies. As one former detainee told Migrant-Rights.org in 2015, “prison blocks were divided according to nationality” and in his cell “there were only Arabs; many were long-term or even life-long residents of the UAE, but many were ‘visa violators’ or had pending ‘labor disputes.’” “If one cell takes 10 men, the Bangladeshi migrants would be 50 to a cell. Indian and Filipino migrants are reportedly better treated as their embassies make regular visits to their nationals in detention. In general, convicts are treated better than immigration detainees.”

According to the U.S. State Department’s 2019 Country Reports on Human Rights Practices prison conditions in the UAE vary widely. “There were reports that individuals within state security detention facilities were mistreated, abused, and tortured. Prisoners complained to Western diplomatic missions that they witnessed routine abuse of fellow prisoners, stating that prison guards claimed they were able to erase footage from security cameras.”¹³ As well as physical abuse, several facilities were reported to be

¹¹ HRW, “UAE: Domestic Workers’ Rights Bill A Step Forward,” 7 June 2017, <https://www.hrw.org/news/2017/06/07/uae-domestic-workers-rights-bill-step-forward>

¹² Human Rights Watch, “‘I Already Bought You’: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates,” October 2014, <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>

¹³ U.S. State Department, “2019 Country Reports on Human Rights Practices – United Arab Emirates,” 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/united-arab-emirates/>

overcrowded and lacking adequate sanitary conditions or medical care. According to reports, non-citizen detainees who are HIV positive are rarely provided with regular access to antiretrovirals and are held in segregated units. Other detainees have also reported delays in accessing medical assistance and obtaining necessary medication such as insulin.¹⁴

COVID-19

As of 21 March 2020, the UAE had reported 140 confirmed cases of the Covid-19, and two confirmed deaths.¹⁵ In these current circumstances, detainees in the UAE face a very serious risk. Many have underlying health conditions, and the reported detention conditions—including overcrowding, limited access to medical assistance, and poor sanitation facilities—will create environments in which this highly-infectious disease can spread easily. As Human Rights Watch stated on 19 March 2020, those who have been denied access to medicines—such as persons with HIV who have been segregated and denied antiretrovirals—face a particularly acute risk as their immune systems are already significantly weakened.

On 23 March, authorities further announced plans to suspend all inbound and outbound flights from the country, making removal extremely difficult—if not impossible.¹⁶

In light of the current circumstances, organisations such as HRW have begun to urge the UAE's authorities to release persons with underlying health conditions—such as HIV—as well as persons whose detention lacks any legal basis.¹⁷

PRIORITIES

Based on the details provided in this submission, the GDP urges the UN Committee against Torture to request the following from UAE authorities:

- Statistics on the practice and scope of immigration detention in the country, including disaggregated statistics (based on age, gender, and reasons for detention) revealing the numbers of people placed in immigration detention annually.
- Details on whether immigration detainees are separated from criminal detainees in each place of detention used for immigration purposes.
- Access to all places of detention by external observers so that they may monitor conditions inside detention facilities.
- The provision of adequate sanitation facilities and health care for all detainees, to avoid the spread of Covid-19 inside detention facilities.
- Ensure that non-citizens in detention are tested for Covid-19.
- Provide details on response to calls for detainees to be released, particularly in light of the health consequences of the Covid-19 pandemic.

¹⁴ U.S. State Department, “2019 Country Reports on Human Rights Practices – United Arab Emirates,” 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/united-arab-emirates/>

¹⁵ Al Jazeera, “UAE Confirms First Two Covid-19 Deaths,” 21 March 2020, <https://www.aljazeera.com/news/2020/03/uae-confirms-covid-19-deaths-200321054815203.html>

¹⁶ G. Duncan, “Coronavirus: UAE Passenger Flights Grounded, Malls to Close and Stay-Home Order Given,” *The National*, 23 March 2020, <https://www.thenational.ae/uae/health/coronavirus-uae-passenger-flights-grounded-malls-to-close-and-stay-home-order-given-1.995954>

¹⁷ Human Rights Watch (HRW), “UAE: Prisoners with HIV Vulnerable to Coronavirus,” 19 March 2020, <https://www.hrw.org/news/2020/03/19/uae-prisoners-hiv-vulnerable-coronavirus>