



## UNITED ARAB EMIRATES



### SHADOW REPORT

REPORT SUBMITTED TO THE COMMITTEE AGAINST TORTURE IN  
THE CONTEXT OF THE INITIAL REVIEW OF THE  
UNITED ARAB EMIRATES

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The initial report of the United Arab Emirates<sup>1</sup> (UAE), was submitted to the Committee against Torture on 20 June 2018, with almost five years delay. This report will be examined during the 74<sup>th</sup> session to be held from 12 July to 29 July 2022 in Geneva.

Alkarama regrets that the State Party has only provided a compilation of its national legislation without providing any information in relation to its obligations resulting from its ratification of the Convention.

This alternative report will attempt to provide a picture of the situation of torture in the UAE while expressing Alkarama's main concerns and recommendations to the State Party. This contribution aims to establish an analysis of the human rights situation and, in particular, that of torture in the country.

This contribution is based on Alkarama's work which consists of both documenting and submitting individual cases to the attention of the UN Special Procedures with the collaboration and participation of local actors, namely the victims themselves, their families and their lawyers. There are no local organizations in the country engaged in the defence and protection of human rights due to the prohibition of any activity of this nature.

## 1 INTRODUCTION

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The UAE Constitution prohibits the practice of torture and inhuman and degrading treatment in its articles 26<sup>2</sup> and 28<sup>3</sup>. Nevertheless, this constitutional prohibition, introduced in 1971, did not urge the authorities to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter "Convention") earlier. Indeed, the UAE only ratified this instrument in 2012 and, even today, refrain to ratify its Optional Protocol.

Despite the UAE's accession to the Convention and its commitment to take measures to prevent and combat this phenomenon, little has been done in practice. The human rights situation in the country has deteriorated, and cases of persecution in the name of "national security" are not uncommon, including against lawyers, teachers, human rights defenders, and anyone who openly criticised the government.

In 2013, only one year after the ratification of the Convention, the largest political trial in the country's history took place, in which 94 people were sentenced by the National Security Court of the State to long terms of prison following an unfair trial (UAE 94<sup>4</sup>).

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<sup>1</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention. -United Arab Emirates, June 20, 2018, CAT/C/ARE/1.

<sup>2</sup> Article 26 of the 1971 Constitution of the United Arab Emirates provides that "*Personal liberty is guaranteed to all citizens. No one may be arrested, searched, detained or imprisoned except as provided by law. No one may be subjected to torture or degrading treatment.*"

<sup>3</sup> Ibidem, article 28: "*It is forbidden to harm the physical or moral integrity of the accused.*"

<sup>4</sup> Alkarama Foundation, "UAE: Unfair Mass Trial of 94 Dissidents", 3 April 2013, <https://www.alkarama.org/en/articles/uae-unfair-mass-trial-94-dissidents> (accessed 7 June 2022).

Since that case, repression has intensified and numerous allegations of torture have been recorded.

Several recommendations have been made to the government, including during the Universal Periodic Review<sup>5</sup> (UPR), to ensure that allegations of torture are promptly and impartially investigated and perpetrators punished, but to no avail.

During a visit to the UAE in 2015, the UN Special Rapporteur on the independence of judges and lawyers stated that more than 200 complaints of torture and/or ill-treatment had been presented to judges and/or prosecutors, but none had been received or registered and therefore seriously investigated<sup>6</sup>, in violation of the Convention.

## 2 CONTEXT

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Following its independence in 1971, the UAE decided to form a federation of seven emirates, with a provisional constitution that was finally adopted in 1996. Federal institutions are not democratically elected and political parties are not allowed.

The Federal Supreme Council is the highest legislative body in the country. Composed of the seven local emirs, it elects a chairman and vice-chairman from among its members. In fact, the position of president is subject to succession, as the current president of the Council is Mohammed bin Zayed Al-Nahyan, who succeeded his recently deceased brother, who had been in office since 2004. The Emir of Dubai, Sheikh Mohammed bin Rashid Al-Maktoum, Vice-Chairman of the Council, serves as Head of Government. These two emirates have pre-eminence in the Council.

The Federal Council was renewed in December 2006 and the method of selection of its members was revised to allow citizens to elect half of the representatives, while the others are still appointed by the rulers of the emirates. It has forty members from all emirates.

In recent years, the growing role of the State Security Directorate ("Amn al-Dawla"), based in Abu Dhabi, has given the emirate an even stronger voice within the federation. State security is under the direct control of the Ministry of the Interior and operates without judicial review. It intervenes in the appointment and dismissal of civil servants, interferes in court cases, and does not hesitate to change verdicts or put pressure on the judiciary.

In addition, harassment of opponents increased after the attacks of September 11, 2001, from political activists of all stripes to defenders of human rights and civil liberties. More and more organizations and individuals are banned from association, assembly, or speech, which is also a consequence of the country's refusal to ratify the

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<sup>5</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, United Arab Emirates, A/HRC/38/14.

<sup>6</sup> Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to the United Arab Emirates, A/HRC/29/26/Add.2, para 53.

International Covenant on Civil and Political Rights. Many activists were arbitrarily arrested, detained, and tortured.

These human rights violations are not limited to UAE's territory. The UAE has been supporting the forces responsible for the arbitrary detentions, enforced disappearances, abuses and torture of many people since its involvement in security operations in Yemen, where it has carried out many clandestine detentions.

## **3 PROHIBITION OF TORTURE: LOOPHOLES IN THE LEGISLATIVE SYSTEM (Article 1, 2, 4)**

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### **3.1 *Definition and absolute prohibition***

In its report, the State party states that the legislature has sought to prohibit all forms and manifestations of torture and that "*[t]he Emirati Constitution makes specific provision for combatting torture and inhuman or degrading practices as defined in the Convention<sup>7</sup>*".

Indeed, as indicated by the State party, article 242 of the Penal Code prohibits torture and degrading treatment. However, the definition enshrined in domestic law is limited to acts of torture inflicted for specific purposes - such as obtaining confessions - and excludes a significant part of the definition enshrined in article 1 of the Convention. Article 242 also restricts this prohibition to the use of torture against "an accused person, witness or expert", which imposes a further limitation on the scope of the article by excluding a wide range of potential victims.

Furthermore, article 2 paragraph 2 of the Convention provides that "*[N]o 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 Convention thus establishes an *erga-omnes*, absolute and non-derogable prohibition.

However, the definition of torture in the UAE's Penal Code does not explicitly provide an absolute prohibition of torture in all circumstances, nor does it specify that no exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

In its report, the UAE states that the legal provision referring to article 2 paragraph 2 of the Convention is Martial Law No. 11 of 2009, which provides that "*[t]he detainee or his legal representative may file a complaint for the action taken against him*

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<sup>7</sup> Report of the State party, para. 115.

*pursuant to the provisions of Martial Law*<sup>8</sup>. However, this legal provision clearly does not meet the requirements of the Convention, since the possibility to file a complaint does not constitute an explicit prohibition of torture within the meaning of paragraph 2 article 2 of the Convention.

Such a provision should be incorporated as a matter of priority into the legislation of a country, where “national security” and the “fight against terrorism” are systematically invoked to justify human rights violations.

With regard to article 2, paragraph 3, of the Convention, the State party states that “[a]n order from a superior officer or a public authority may not be invoked as a justification of torture” and adds that “[a]rticle 21 of Ministerial Order No. 109 of 1989 (...) punishes anyone who refuses to carry out a legitimate order or hesitates to implement it.” According to the State party, the inclusion of the precondition of legitimacy in this article clearly demonstrates the interest of the UAE legislator in this issue.

However, this statement raises interrogations, since there is no domestic legal provision that explicitly allows a civil servant to refuse to carry out an illegal order from a superior without being punished for insubordination. In addition, there is no specific provision for the superior’s responsibility under international criminal law standards.

In practice, it is extremely rare for judicial proceedings to hold public officials criminally responsible for their acts of torture and mistreatment, partly because such allegations are generally not taken into consideration and therefore are not investigated (see point 6).

### **3.2 *Incrimination and imprescriptibility***

#### ***Criminalization of torture in domestic law***

Each State party to the Convention must criminalize and punish torture by imposing penalties commensurate with the gravity of the crime and ensure that the law applies to all forms of liability, namely commission, attempt, complicity, instigation and consent. However, as mentioned above (see point 3.1), the legal provisions prohibiting torture in UAE’s domestic law do not provide a definition that includes all constituent elements of article 1 of the Convention and do not take into account the “gravity of the crime”.

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<sup>8</sup> Martial law no. 11/2009, article 9, para. 3.

Article 245 of the Penal Code<sup>9</sup> prohibits public officials from using their authority "[t]o subject another person to cruel treatment, to violate his decency or to cause him bodily harm". While this legal provision does not provide any restrictions related to the purpose of the treatment inflicted, its wording suggests that the act covered by this article is of a lesser gravity and does not *per se* include torture.

The same disposition also provides for a penalty of "[a] minimum of one year's imprisonment and/or a fine of 10,000 dirhams" for acts of "[v]iolating the dignity of a person or causing bodily harm" when its committed by an official or an agent abusing his/her authority.

While arrest and torture by public officials fall under article 242 of the Penal Code and are punishable by "imprisonment" abduction and torture by other individuals fall under article 344 and are punishable by life imprisonment. However, the status of public official is an integral part of the definition of torture and should be an aggravating circumstance of the condemnation.

In addition, article 259 of the same code provides that anyone who uses torture, force or threats to force someone to make false statements in court will be punished with a prison sentence of "up to one year and a fine of up to five thousand dirhams".

The penalties provided for in these articles do not reflect the gravity of the crime of torture, which should be equivalent to the most serious crimes and punishable by appropriate sentences, as provided for in article 4, paragraph 2, of the Convention.

### ***The imprescriptibility of torture***

The Convention does not provide the imprescriptibility of torture. On the other hand, customary international law recognizes, notably since the Furundžija case in 1998, that no limitation period should apply to serious human rights violations, including torture.

As for the UAE Code of Criminal Procedure, it does not provide a specific limitation for the crime of torture. However, article 20 of the same code provides that, with some exceptions<sup>10</sup>, the limitation period for crimes is 20 years.

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<sup>9</sup> Penal Code, article 245: "Any civil servant or agent who abuses the power conferred by his office to commit an act of cruelty that violates the dignity of a person or causes him bodily harm is liable to at least one year's imprisonment and/or a fine of 10,000 dirhams."

<sup>10</sup> Offences against public order, offences relating to blood money, crimes punishable by death and life imprisonment.

In its report, the State party indicates that the Anti-terrorism law provides an exception of the above-mentioned article since there is no period of limitation for acts of torture<sup>11</sup>. However, this section applies restrictively to acts considered to be "terrorist acts".

In addition, it should be noted that the term "torture" is mentioned only once in Law No. 7/2014<sup>12</sup>, only as an aggravating circumstance of a crime, and not as an independent criminal offence. Thus, the imprescriptibility described in article 52 of the Anti-Terrorism Law does not apply to all acts of torture, which therefore continue to be fall under article 20 of the Criminal Procedure Code.

### **Recommendations:**

- 1. Define and criminalize torture in full compliance with the Convention, ensuring that penalties are established by law in proportion to the gravity of the acts;*
- 2. Explicitly state in national legislation that all those who order, commit, acquiesce in, or tolerate torture shall be held fully accountable and liable to prosecution and imprisonment, and shall be removed from their duties;*
- 3. Explicitly state in national legislation that orders from a superior officer shall not constitute a defence and exoneration against acts of torture;*
- 4. Ensure that superior responsibility for torture is explicitly enshrined in domestic law, in accordance with international standards;*
- 5. Explicitly state in national legislation that no exceptional circumstances may be invoked to justify torture or any violation of fundamental rights;*
- 6. Explicitly provide in national legislation that the crime of torture is not subject to any period of limitations.*

## **4 VIOLATION OF PROCEDURAL SAFEGUARDS (Article 2)**

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### **4.1 Violation of legal safeguards in detention**

In General Comment No. 2<sup>13</sup> on the implementation of article 2 by States parties, the Committee recommended a non-exhaustive list of safeguards that should be provided

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<sup>11</sup> Antiterrorism Law No 7/2014, article 52: "As an exception to the provisions of paragraph 2 of Article 20 of the Criminal Procedure Law, criminal action is not subject to any statute of limitations with respect to terrorist offenses."

<sup>12</sup> Ibidem, article 13/1. b: "The act must be committed by deception or by the use of force or threat to kill or cause serious harm or physical or psychological torture."

<sup>13</sup> Committee against Torture, General Comment No. 2, Implementation of Article 2 by States Parties, (CAT/C/GC/2), adopted 24 January 2008, para. 13.

to all persons deprived of their liberty in order to prevent torture, in addition to the safeguards provided by the Convention.

These safeguards include, inter alia, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, to contact their relatives, the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, including to challenge the lawfulness of their detention or to report acts of torture.

Alkarama received numerous testimonies from lawyers who reported that their clients in detention are often deprived of these fundamental guarantees. Although provided for by law, as highlighted by the State party in its report, these guarantees are in practice ignored by arresting and interrogating officers, but also by the prosecution and by judges.

The absence or the violation of basic legal safeguards in the UAE creates a fertile ground for torture and other ill-treatment and a permissive environment in which fundamental rights are routinely violated.

#### ***4.2 Police custody and pre-trial detention***

According to the Code of Criminal Procedure, the judicial police may arrest an individual if there is sufficient evidence and if the act constitutes a crime or misdemeanor punishable by a penalty other than a fine<sup>14</sup>. Upon arrest, the suspect must be heard by the police officer so that he/she can provide evidence of his/her innocence.

The number of cases documented by Alkarama shows that arrests in the UAE are systematically carried out in violation of these principles. Arrests are systematically carried out without a judicial warrant, without material evidence and without the arrested person being informed of the reason for his arrest; for crimes and offences of a political nature in particular, confessions extracted under torture are generally used as the sole evidence during trials.

The duration of police custody and pre-trial detention established by the Code of Criminal Procedure is, in most cases, not respected. The law provides that the police officers who made the arrest must contact the prosecutor within 48 hours. The prosecutor must decide within 24 hours whether to release or keep the suspect in custody<sup>15</sup>. The latter can be imprisoned for 21 days without charge. It is up to the

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<sup>14</sup> Code of criminal procedure, article 45.

<sup>15</sup> Ibidem, article 47.

court to decide on the extension of this period<sup>16</sup>, which in theory cannot exceed 30 days.

In practice, however, these legal provisions were never respected, and suspects were usually brought before a judicial authority for the first time several weeks or even months after their arrest. In cases of a political nature, it is not uncommon for the arrested person to be held *incommunicado* and without any legal process for up to six months, which amounts to an enforced disappearance.

### **4.3 *The right to challenge the legality of a detention***

There is no possibility under UAE law to challenge police custody or pre-trial detention before a competent judicial authority. The accused can only submit an appeal to the president of the court if the detention is extended<sup>17</sup>.

Alkarama noted that in many cases, these police custody and preventive detention are abusive and are not justified by the need for the preliminary investigation or by the seriousness of the acts attributed to the accused. This is even more preoccupying because acts of torture are generally committed during this period of detention. A prolonged period of detention usually means that the security services have not succeeded in obtaining a confession, which contributes to the intensification of torture during the prolonged period of pre-trial detention.

Although the law guarantees the right to challenge the decision to extend the duration of pre-trial detention, in practice this is meaningless. Detention is extended without the knowledge of the accused, beyond the legal limit, and, in practice, until a confession is obtained.

#### **Recommendations:**

- 7. Ensure that all fundamental safeguards are respected from the outset of police custody;*
- 8. Ensure that each person in police custody is protected by the law from the moment of arrest, regardless of the reasons for the arrest;*
- 9. Put an end to the systematic and uncontested renewal of the period of police custody and pre-trial detention,*
- 10. Incorporate the right to challenge pre-trial detention into national legislation and ensure that the right to challenge the decision to extend detention is respected.*

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<sup>16</sup> Ibidem, article 110, para. 1.

<sup>17</sup> Code of criminal procedure, article 110, para. 3.

## 5 Counter-terrorism and systematic torture

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### 5.1 *Antiterrorist law and exemptions from common law*

The Anti-Terrorism Act of 2014<sup>18</sup> is cause for concern. It provides an extremely broad and imprecise non-exhaustive<sup>19</sup> list of various acts that constitutes "terrorism", among others, "[inciting] fear in a group of people<sup>20</sup>", "[taking] no action to threaten the sovereignty of the country<sup>21</sup>", and "[declaring] one's opposition to the state or the system that governs it<sup>22</sup>".

Thus, without specifying for example the violent nature of the act, the law significantly expands its scope to include various practices that do not meet the threshold of the "most serious crimes" under international law.

A definition as broad as the one provided by the law is a source of legal uncertainty since it paves the way to abuses.

The Anti-Terrorism Law provides that, in derogation of the provisions of the Code of Criminal Procedure cited above (see section 4.2), the prosecutor may detain the accused for a renewable period of 14 days if the investigations require it, without exceeding 3 months - a period which may be extended by the court<sup>23</sup>. In this last case, the law does not provide for a limit.

This period is particularly excessive by the standards of the Human Rights Committee, which considers 48 hours to be generally sufficient "*[t]o transport the individual and to prepare for the judicial hearing*" and that "*[a]ny delay longer than 48 hours must remain absolutely and be justified under the circumstances<sup>24</sup>*".

In practice, the counterterrorism law allows defendants to be removed totally from the protection of the law with a police custody taking the form of an *incommunicado* detention. These serious shortcomings have encouraged the practice of torture during the preliminary investigation to force suspects to sign police reports containing confessions without even being allowed to read them first.

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<sup>18</sup> Anti-terrorism law no. 7/2014.

<sup>19</sup> Ibidem, article 1: Terrorism offense: « *Any action or inaction criminalized by this Act and any action or inaction constituting a felony or misdemeanor under any other law, if committed for terrorist purposes.* »

<sup>20</sup> Anti-terrorism law, article 36.

<sup>21</sup> Ibidem, article 14

<sup>22</sup> Ibidem, article 15.

<sup>23</sup> Ibidem, article 49.

<sup>24</sup> Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of the person) (CCPR/C/GC/35), adopted 16 December 2014, para. 33.

In addition, article 40 of the law states that the court may, by order of the prosecutor, determine that a person who “appears to pose” a terrorist threat be sent to “Munasaha” (counselling centers or moral rehabilitation). Apart from the ambiguous formulation of this article, it does not provide for any limitation on the length of detention in these centers, so the person continues to be held until the center is convinced that he/she no longer constitutes a threat. When the decision is made by administrative -and not judiciary-authorities, individuals have no right to challenge its legality.

Such a provision clearly paves the way for arbitrary administrative detentions, which are already numerous in the country, and, as a result, for cases of torture and degrading treatment, based on a vague accusation of a “terrorist act”.

## **5.2 Torture in counter-terrorism cases**

The numerous counter-terrorism cases documented by Alkarama have shown that those arrested are systematically removed from the protection of the law while in police custody, denied any contact with the outside world and interrogated without the presence of their counsel.

During these periods of *incommunicado* detention, terrorism suspects are routinely subjected to torture and other ill-treatment. The aim is to force them to sign police reports containing confessions without being allowed to read them or challenge them.

Article 242 of the Penal Code criminalizes a public official who uses force or threats against an accused person to force him to make a statement. However, the number of cases of enforced disappearances, arbitrary detentions, torture and other cruel, inhuman or degrading treatment show that these practices aimed at extracting confessions are an integral part of the preliminary investigation system in the UAE.

Alkarama has submitted to the Special Procedures several cases of victims of torture forced to sign confessions and/or statements that have been considered by the courts as evidence.

Mr. **Bahaa Adel Salman Mattar** and his colleague **Maher Atieh Othman Abu Shawareb**, Jordanian nationals, were arrested in the course of 2015. Both were **held *incommunicado* for three months**. During this time, they were **interrogated under physical and psychological torture**. Mr. Mattar reporter having been stripped of his clothes and beaten all over his body, forced into stress positions for hours, and threatened with harm to his family - whose fate was unknown. Mr. Abu Shawareb was **beaten to the point that he fell unconscious**, threatened with rape, and prevented from taking his medication.

Due to the severe injuries he suffered under torture, Mr. Abu Shawareb had to be transferred to the hospital several times for urgent treatment, where he underwent three operations. He was **forced to sign confessions, while blindfolded, which were used against him in 2017**<sup>25</sup>.

Mr. **Rami Shafer Abdel Jalil Al Mrayat** was subjected to the same treatment. Jordanian national, he was detained without access to a lawyer or his family and was **severely tortured during the first weeks of his detention**. He was insulted and beaten several times and was not allowed to sit or sleep for the first week after his arrest. He was also tortured with the electric chair. Finally, he was **forced to sign a confession** in which he admitted to spying on the UAE for Iran<sup>26</sup>.

The case of **Mr. Osama Al Najjar** is an example of the violation committed by the use of article 40 of the anti-terrorism law. Son of Husain Al Najjar, one of the convicted defendants in the UAE 94 trial, he became active on social media defending the UAE 94 and spreading the bias of the judgments in the case. He was arrested as a result and was detained at the State Security services locals, where he was **held *incommunicado*, interrogated and tortured for four days**. Six months later, he had his first hearing before the State Security Chamber of the Federal Supreme Court in Abu Dhabi - a specialized court whose jurisdiction includes state security issues, including terrorism. He was convicted and served his full three-year prison sentence in 2017, when he was transferred to a counseling and rehabilitation center ("Munasaha") because he was still considered a terrorist threat. The length of his detention was not determined by the court<sup>27</sup>.

Following her visit to the UAE, the UN Special Rapporteur on the independence of judges and lawyers stated that she had received credible information and evidence of various types of torture and ill-treatment of individuals in detention including, inter alia, *"[p]rivation of daylight; exposure to intense light 24 hours a day; being blindfolded and threatened; being held in very small cells without windows or toilets; being forced to ask permission and being forced to undress to use the toilet; exposure to extreme*

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<sup>25</sup> Alkarama, "UAE: UN Working Group declares the detention of two Jordanian IT professionals arbitrary", 22 August 2008, <https://www.alkarama.org/en/articles/uae-un-working-group-declares-detention-two-jordanian-it-professionals-arbitrary> (accessed on 8 June 2022)

<sup>26</sup> Alkarama, "UAE: Jordanian citizen arbitrarily detained for over 4 years despite UN call for release", 13 August 2015, <https://www.alkarama.org/en/articles/uae-jordanian-citizen-arbitrarily-detained-over-4-years-despite-un-call-release> (accessed on 8 June 2022)

<sup>27</sup> Alkarama, "Human rights organizations call upon UAE to release blogger Osama Al Najjar, who remains administratively detained in "counseling center" one year after completing prison sentence", 16 March 2018, <https://www.alkarama.org/en/articles/human-rights-organisations-call-upon-uae-release-blogger-osama-al-najjar-who-remains> (accessed on 8 June 2022).

*temperatures; beatings; nail-pulling and beard-pulling; being drugged; sexual assault and threats of sexual assault; and insults*<sup>28</sup>”.

### **5.3 Enforced disappearance and *incommunicado* detention**

*Incommunicado* detention is a common practice, particularly when State Security Service arrests people for political reasons. Places of detention are not known and detention can last for several months or, even years in cases involving foreigners.

The UAE Security Service appears to follow a clear pattern: people are victim of enforced disappearance or *incommunicado* detention for months before reappearing and being tried on political charges. Torture is usually used during the initial period of detention and during interrogation to extract confessions that are then used as evidence in unfair trials.

In all the cases documented by Alkarama, in which torture was perpetrated against those in police custody, all were placed outside the protection of the law and held *incommunicado*.

Furthermore, families who address to the authorities who have arrested their loved ones often face the authorities’ denial. They refuse to acknowledge people’s arrest and detention and provide no information about their fate and whereabouts. This denial persists throughout the period of police custody, at the end of which the defendant "reappears", bearing traces of the torture suffered in order to extract a confession. The cases mentioned above (see section 5.2) follow the same *modus operandi* that other cases also illustrate.

Mr. **Mohamad Ismat Mohamad Shaker Az**, a Syrian computer engineer, was arrested on September 26, 2013 by the agents of the security forces without knowing the reasons for his arrest and the charges against him. It was only after four months of *incommunicado* detention that he was allowed to contact his family. He was **first brought before the prosecutor** in June 2014, and **his trial did not begin** until November 8, 2014, **more than a year after his detention**<sup>29</sup>. The case was the subject of a Working Group’s Opinion, recognizing the arbitrary nature of the detention<sup>30</sup>.

In addition to its obligation to absolutely prohibit torture and cruel, inhuman or degrading treatment, the State party is obliged to take measures against

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<sup>28</sup> Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to the United Arab Emirates, A/HRC/29/26/Add.2, para.52.

<sup>29</sup> Alkarama, "Shock and anger must translate into real action: UN secretary-general condemns cases of reprisals in report presented to human rights council", 19 September 2019, <https://www.alkarama.org/en/articles/shock-and-anger-must-translate-real-action-un-secretary-general-condemns-cases-reprisals> (accessed on 8 June 2022).

<sup>30</sup> Working Group on Arbitrary Detention, Opinion adopted at the 78th session, 19-28 April 2017, Opinion No. 21/2017 concerning Mohamad Ismat Mohamad Shaker Az (United Arab Emirates), 15 July 2017 A/HRC/WGAD/2017/21.

*incommunicado* detention and to ensure that procedural safeguards are respected from the outset of detention. Any failure to meet these obligations, as well as the toleration of the practice of *incommunicado* detention, constitutes a violation of the Convention and engages the responsibility of the State.

### **Recommendations:**

11. *Amend the domestic legislation to bring the definition of terrorism in line with the one provided by international standards taking into account the gravity - and cumulative elements- of this crime<sup>31</sup>;*
12. *Ensure the respect of the fundamental rights of persons arrested in connection with terrorism-related cases;*
13. *Revise Law No. 7/2014 on the fight against terrorism to end incommunicado and secret detention of individuals suspected of terrorism;*
14. *Ensure that any person with a legitimate interest (e.g. relatives of the person deprived of liberty, their representatives or their lawyers) has access to information about the custody of terrorism suspects;*
15. *Amend article 40 of the Anti-Terrorism Act to ensure that an individual who has served his or her sentence is released.*

## **6 IMPUNITY OF PERPERTRATORS (Article 12, 13, 14, 15)**

### **6.1 Lack of an effective complaint mechanism**

Article 12 of the Convention requires States parties to conduct a thorough, prompt and impartial investigation of every allegation of torture, even in the absence of a complaint from the victim. Such investigations must be followed by the prosecution of the perpetrators and any other officials who participated in the commission of the crime, for example, by acquiescence or complicity.

Article 41 of the UAE Constitution provides that "[e]veryone may file a complaint with the competent authorities, including the courts, for any violation of the rights and freedoms set forth in this chapter".

In its report, the State party refers to these legal provisions and also mentions the existence of complaint mechanisms, but does not provide concrete data on complaints filed with the competent authorities. In addition, the UAE did not provide any

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<sup>31</sup> Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Sheinin, Human Rights Council, 2009, UN Doc A/HRC/10/3/Add.2 para. 6; see also Promotion and Protection of Human Rights. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc off CES, 2005, UN Doc E/CN.4/2006/98 at para 50.

information on the redress and compensation measures provided by the state, the number of requests for redress and compensation submitted, the number of requests granted, and the amount of compensation actually provided in each case.

## **6.2 Denial of judicial authorities and refusal to investigate**

In recent years, more than 200 complaints of torture and ill-treatment have been presented to the judiciary, but none of them have been received, registered and, consequently, no investigation has been opened<sup>32</sup>.

The testimonies collected by Alkarama, corroborated by the report of the Special Rapporteur on the independence of judges and lawyers<sup>33</sup>, show that prosecutors and magistrates systematically reject allegations of torture brought to their attention and refuse to open an investigation.

The case of **Dr. Naser Bin Ghaith**, which was the subject of an Opinion by the Working Group on Arbitrary Detention<sup>34</sup>, illustrates the authorities' refusal to take into account these allegations. At his first hearing before the State Security Chamber of the Federal Supreme Court, Dr. Bin Ghaith **stated that he had been subjected to torture, such as prolonged solitary confinement, while in detention and that he was held incommunicado without these allegations being taken into account by the judge.**

The case of Mr. **Ahmad Ali Mekkaoui**, a Lebanese citizen, is also an illustrative example. The latter was arrested on October 13, 2014 by State Security and, after two brief contacts with his wife by phone, **was kept without any access to the outside world for seven months.** During this period, **he was kept in solitary confinement, subjected to severe beatings on his head and body,** and was also raped anally with an iron bar as a result of which he had to undergo three surgeries to repair the injuries. Mr. Mekkaoui was forced to sign a written confession indicating that he belonged to a terrorist group in the United Arab Emirates affiliated with Lebanese Hezbollah. Although **he informed the prosecutor that his confession was extracted under torture, his allegations were not investigated and he was sentenced to 15 years in prison**<sup>35</sup>.

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<sup>32</sup> Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to the United Arab Emirates, A/HRC/29/26/Add.2, para 53.

<sup>33</sup> Ibidem.

<sup>34</sup> Working Group on Arbitrary Detention, Opinion adopted at the 80th session, 20-24 November 2017, Opinion No. 76/2017 concerning Nasser Bin Ghaith (United Arab Emirates), 5 January 2018 A/HRC/WGAD/2017.

<sup>35</sup> Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at the 79 session, 21-25 August 2017, A/HRC/WGAD/2017.

In practice, the perpetrators of torture are not prosecuted, nor are those who order, incite, consent to, or acquiesce in such acts. This alarming impunity constitutes a violation of the State party's obligation to investigate and prosecute those responsible for such acts under the Convention.

In another case reported to the Special Rapporteur<sup>36</sup>, a judge ordered a medical commission to investigate allegations of torture and ill-treatment. The media reported, however, that the resulting report proved the allegations to be false. This document was never brought to the knowledge of the defence lawyer nor presented in court. It is important to mention at this point that, according to the Committee, an investigation is not in itself sufficient to demonstrate that the State party has fulfilled its obligations under article 12 if it can be shown that the investigation was not conducted impartially.

The issue of impunity was also raised by several countries during the UAE's third cycle of the UPR in 2018. Of all the recommendations made none were accepted by the UAE<sup>37</sup>, which clearly highlight its political lack of will to eradicate these practices and implement the Convention.

### **6.3 *Lack of independence of the judiciary***

According to the Code of Criminal Procedure, it is the duty of the Public Prosecutor's Office to investigate crimes and initiate criminal proceedings<sup>38</sup>, supervise punitive institutions and places of pre-trial detention<sup>39</sup>, and appeal to the Supreme Court, either directly or upon request, against final judgments, regardless of the court that issued them, if the appeal is based on a violation, misapplication, or misinterpretation of the law<sup>40</sup>.

As already illustrated by several cases cited above, acts of torture are in most cases committed during secret or pre-trial detention. Despite requests from victims and their families during the investigation or trial phase, investigations are rarely carried out.

This is partly due to the influence of the executive branch and the national security service on the authorities responsible for ordering investigations. Although article 94 of the Constitution, sole legal provision that enshrines the independence of the judiciary in domestic law, recognizes the independence of judges<sup>41</sup>, they cannot, under these circumstances, make impartial decisions.

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<sup>36</sup> Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to the United Arab Emirates, A/HRC/29/26/Add.2, para 53.

<sup>37</sup> UPR United Arab Emirates (3rd cycle-29th session), thematic list of recommendations.

<sup>38</sup> Code of criminal procedure, article 5.

<sup>39</sup> Ibidem, article 6.

<sup>40</sup> Ibidem, article 256.

<sup>41</sup> Constitution, article 94: "*Justice is the basis of government. In the exercise of their functions, judges are independent and are influenced only by the laws and their own conscience.*"

## **6.4 Admissibility as evidence of confessions extracted under torture**

Article 15 of the Convention provides that "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that a statement was made".

Although the penalty of imprisonment is provided in article 242 of the Penal Code against a public official who resorts to torture himself or through an intermediary in order to extract a confession from an accused person, there is no provision in Emirati legislation which enshrines the inadmissibility of such confessions as evidence in courts.

The UAE legal system places great importance on confessions, which are generally accepted as the sole evidence in trials, despite the allegations of torture made by the accused, even before judges.

The numerous cases submitted by Alkarama to the Special Procedures show a common practice of extracted confessions under torture in terrorism-related cases. In these cases, victims testified that they were forced to sign police reports without being given the right to read them beforehand (see section 6.2). Despite challenging the police reports at their first appearance before a judicial authority, their allegations were never taken into account and many were convicted solely on the basis of confessions extracted under torture.

Furthermore, it should be noted that despite the high number of allegations of confessions obtained under physical duress, there has not yet been a judgment declaring evidence obtained under torture or other ill-treatment to be invalid.

### **Recommendations:**

- 16. Provide concrete statistics on judgments in which confessions extracted under torture and other cruel, inhuman, and degrading treatment have been declared inadmissible by judicial authorities;*
- 17. Ensure that allegations of torture and ill-treatment are admissible at all stages of the judicial process;*

18. *Ensure that all complaints are followed by an independent and impartial investigation and that complainants, their families, and their lawyers are not subjected to reprisals;*
19. *Reform the judicial system to ensure its independence from the executive branch;*
20. *Provide concrete statistics on the initiation and outcome of investigations into allegations of torture made by defendants;*
21. *Align the current legislation with the provisions of article 15 of the Convention to explicitly enshrine the inadmissibility in judicial proceedings of evidence obtained under torture and other cruel, inhuman, and degrading treatment;*
22. *Review all cases in which convictions have been handed down without evidence on the sole basis of preliminary investigation reports containing confessions extracted under torture.*

## **7 VIOLATIONS COMMITTED IN YEMEN**

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### **7.1 *Systematic torture in clandestine prisons***

Since 2015, the UAE has led the coalition with Saudi Arabia to restore the legitimate government of Yemen and fight against the militias of the "Ansar Allah" movement (also known as the "Houthis").

Five years of conflict have created the world's worst humanitarian crisis in Yemen. The war-torn country is also the scene of enforced disappearances, arbitrary arrests and detentions, ill-treatment and torture of detainees by all parties to the conflict, including forces affiliated with the United Arab Emirates.

At least 18 clandestine prisons were identified in southern Yemen in 2017, run by the UAE or by Yemeni forces created and trained by Gulf countries<sup>42</sup>. These prisons are placed in various buildings, including the headquarters of security agencies, private residences, former nightclubs, former recreational facilities, and deserted hotels<sup>43</sup>.

As with secret prisons in the UAE, torture and ill-treatment are common in Yemeni prisons during the interrogation of detainees to extract information, statements and confessions.

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<sup>42</sup> Maggie Michael, "In Yemen's secret prisons, UAE tortures and US interrogates; Human Rights Watch, *Yemen: UAE backs abusive local forces*", The Associated Press, 22 June 2017, <https://apnews.com/4925f7f0fa654853bd6f2f57174179fe> (accessed on 8 June 2022).

<sup>43</sup> Ibidem.

Torture methods reported by victims and witnesses include constant beatings, sexual abuse, and “grilling”, a method of torture in which the victim is tied to a spit like a roast and spun in a circle of fire. According to families and lawyers, approximately 2,000 people have disappeared in these prisons<sup>44</sup>.

## **7.2 Violations committed by UAE-supported armed groups**

Since 2015 the UAE has actively trained, funded, and supplied arms to various armed groups, supporting the proliferation of such groups such as the Security Belt<sup>45</sup>. Established in 2016 to restore order in Aden, the belt operate under the command of the Yemeni Minister of Interior, but the state claims that its operations were outside the control of the Yemeni government since its formation<sup>46</sup>.

The UAE-controlled “Security Belt” militia has been implicated in cases of enforced disappearances and arbitrary detentions in clandestine prisons. Called “the masked ones” by witnesses, these armed forces proceed to warrantless arrests in the street, at workplaces, and often in homes at night. Family members are threatened with weapons<sup>47</sup>. In the majority of cases, these arrests are followed by enforced disappearances and the local authorities refuse to acknowledge the detention or to disclose information about the fate of these detainees who are cut off from the outside world. Often, this situation continues for months.

In secret prisons, described by one detainee as “prisons of no return<sup>48</sup>” witnesses reported torture including electric shocks, forced nudity, sexual abuse, threats, and caning. Children were held in the same cells as adults<sup>49</sup>.

In Aden, the absence of the rule of law has allowed UAE affiliated armed groups to commit such abuses and to operate solely on the basis of their interests, outside the control of the government<sup>50</sup>. Instructions from the prosecutor's office to release detainees are generally not respected. Terrorism cases are not subject to national jurisdiction<sup>51</sup>, and are investigated by a parallel system of the coalition that is not subjected to the law.

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<sup>44</sup> Ibidem.

<sup>45</sup> Amnesty International, “Yemen war: No end in sight”, 14 March 2019, <https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war/> (accessed on 9 June 2022)

<sup>46</sup> Security Council, Letter dated January 27, 2020, from the Panel of Experts on Yemen addressed to the President of the Security Council, January 27, 2020, S/2020/70, para. 25.

<sup>47</sup> Amnesty International, rapport: “God only knows if he’s alive » Enforced disappearance and detention violations in southern Yemen”, 2018, <https://www.amnesty.org/en/documents/mde31/8682/2018/en/> (accessed on 9 June 2022).

<sup>48</sup> Human Rights Watch, “Yemen: UAE Backs Abusive Local Forces”, 22 June 2017, <https://www.hrw.org/news/2017/06/22/yemen-uae-backs-abusive-local-forces> (accessed on 9 June 2022).

<sup>49</sup> Ibidem.

<sup>50</sup> Security Council, Letter dated January 27, 2020, from the Panel of Experts on Yemen addressed to the President of the Security Council, January 27, 2020, S/2020/70, para. 107.

<sup>51</sup> Human Rights Watch, “Yemen: UAE Backs Abusive Local Forces, 22 June 2017”, <https://www.hrw.org/news/2017/06/22/yemen-uae-backs-abusive-local-forces> (accessed on 9 June 2022).

The situation is similar in Hadramout. Hadramout's "elite forces", as part of the fight against al Qaeda and the Islamic State, are officially part of the Yemeni army, although salaries, training, weapons, logistical information and intelligence are provided by the UAE - as acknowledged in front of the UN Group of Experts on Yemen.

As in Aden, the UAE and "elite forces" operate unofficial detention centers in Mukalla, with the main center at al-Rayyan airport.

Many of these cases of arbitrary detentions, enforced disappearances, and torture have been denounced by the population, former detainees, and families, particularly after a 2016 governor's circular, also addressed to the coalition, which stated that no force should make arrests without a prosecutor's order<sup>52</sup>. In 2017, more than 130 detainees were transferred from al-Rayyan airport to al-Mukalla central prison<sup>53</sup>.

### **7.3 *Impediment to justice***

As mentioned above, the actions of armed groups do not fall under the authority of the government and are governed by a parallel system created by the coalition that does not respond to national (or international) laws.

The lack of rule of law and judicial oversight over the actions of the security forces, the lack of power of the Yemeni government, and the threats to witnesses and victims make this a perfect scenario for impunity.

The UAE has continually denied any involvement in the secret detentions, despite all evidence - including the opinion of the UN Panel of Experts on Yemen. In its January 2020 report, the Panel acknowledged the UAE's responsibility: "*[C]onsidering its close relationship with the Security Belt Forces, the United Arab Emirates has an obligation to ensure respect for international humanitarian law, including by exerting its influence over the Security Belt Forces to prevent and end violations*<sup>54</sup>".

By denying any involvement in the violations committed by the armed groups, the UAE continues to ignore the demands of Yemeni government bodies, which are inquiring about those detained and demanding that the violations be properly investigated.

The true extent of the violations and the exact number of victims is unknown. Families dare not to speak out because of threats, fear of reprisals, and a sense of impunity

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<sup>52</sup> Ibidem.

<sup>53</sup> Ibidem.

<sup>54</sup> Security Council, Letter dated January 27, 2020, from the Panel of Experts on Yemen addressed to the President of the Security Council, para 101.

that had prevailed for years. Former detainees were threatened with arrest or death if they spoke out about the torture they suffered after their release<sup>55</sup>.

**Recommendations:**

*23. End clandestine and secret detentions;*

*24. Conduct an independent, impartial, and thorough investigation about violations committed by UAE officers and members of the armed forces who were under its command;*

*25. Ensure the prosecution of all perpetrators of torture and degrading treatment.*

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<sup>55</sup> Amnesty International, rapport: "God only knows if he's alive: Enforced disappearance and detention violations in southern Yemen", 2018, <https://www.amnesty.org/en/documents/mde31/8682/2018/en/> (accessed on 9 June 2022).

## **8 CONCLUSION**

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This report has attempted to highlight the widespread and systematic use of all forms of torture in the United Arab Emirates.

To date, the human rights situation remains fragile and preoccupying throughout the country. The flaws in the implementation and transposition of the Convention's provisions, the lack of respect for the guarantees, when they exist in national legislation, and the impunity of the perpetrators of violations contribute to widespread abuses which only worsen the situation.

Throughout its work, Alkarama has observed that a large proportion of the acts of torture committed in the country have been committed by different State actors, whether it be the security forces without any reaction of magistrates or prosecutors. Impunity, as a result of the authorities' refusal to take into account allegations and order investigations, has created a breeding ground for these practices.

Alkarama hopes that a constructive dialogue between the Committee and the United Arab Emirates will allow to respond to the concerns raised.