

ICJHR submission to the Office of the UN High Commissioner for Human Rights on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms in the United Arab Emirates

Geneva, 23 September 2016

Following the Human Rights Council resolution 31/30 dated March 24, 2016 that requested the High Commissioner to prepare a report on the negative effects of terrorism on the enjoyment of human rights and fundamental freedoms, the International Centre for Justice and Human Rights (ICJHR) in Geneva contributes with this report aiming to provide an adequate assessment of the reality in the United Arab Emirates (UAE), which reflects a clear overlapping between the fight against terrorism and the protection of the fundamental freedoms and rights of political opponents and human rights defenders, notably the right to fair trial guarantees before an independent and impartial judiciary.

1. General introduction

The Emirati authorities have expressed their complete willingness to protect human rights, human dignity as well as fundamental freedoms and asserted in several occasions that their counter-terrorism fight would not undermine these rights and freedoms. In this regard, the ICJHR recalls that the United Arab Emirates:

- Accepted, during the Universal Periodic Review before the Human Rights Council in 2013, 100 recommendations out of 180, agreed partially upon 7 others and took into consideration 50 recommendations, thus only rejecting 10 recommendations.
- Followed the Human Rights Council resolution 31/30 dated March 24, 2016, which states that “the goals of the fight against terrorism and the protection and promotion of human rights are not conflicting goals but are fully complementary and mutually reinforcing”.
- Supported the United Nations (UN) Counter-Terrorism Strategy taken by the UN General Assembly in its resolution on September 7, 2006, which sets measures “to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.”

However, given the reality of the situation in the United Arab Emirates, we note that the authorities did not respect their commitments to conciliate the fight against terrorism and the protection of human rights and fundamental freedoms. Moreover, the Emirati authorities did not tolerate the existence of pluralism and diversity. By

implementing restrictive laws, they put a halt to freedom of assembly, prohibited further association, dissolved the already existing organisations and confiscated their belongings. Instead, they showed a tendency to harass and criminalize political opponents, human rights defenders and activists on the pretext of counter-terrorism and, as they undermined fundamental rights and freedoms, did not fulfil the promises they made before the Human Rights Council.

2. The 2014 Anti-Terrorism Act and the violation of the requirements of the rule of law and human rights imperatives

According to the 2015 report of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms, Mr. Martin Scheinin, the prohibition of a terrorist conduct must be undertaken by a national or international prescription of law: “the prohibition must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct”.

However, the Federal Law No. 7 of 2014 on Combating Terrorist Offences content is vague and ambiguous as it allows the State Security Apparatus to arrest opponents, reformists, human rights activists and bloggers. For example, article 15 of Law No.7 provides for a sentence of temporary imprisonment for “whoever declares (...) its opposition to the State, or to the ruling system therein or his non-allegiance to its leadership”.

The UN Special Rapporteur on the Independence of Judges and Lawyers, Ms. Gabriela Knaul has also confirmed the ambiguous and unclear nature of Law No.7 and declared that the text violated international human rights standards.

3. Violation of the right to privacy and private life

3.1. Monitoring of phone calls

Emirati human rights activist and 2015 Martin Ennals Award winner, Ahmed Mansoor has reported lately that his cell phone, an iPhone 6, was hacked and his conversations and activities were monitored. The Apple foundation intervened to emphasize the necessity for more secure phones in order to prevent eavesdropping.

In fact, the UAE authorities have invested large amounts of money in establishing spying and tracking centres and commissioned worldwide experts to do so. Moreover, the Abu Dhabi Monitoring and Control Centre (ADMCC) has launched the 'Falcon Eye' system to monitor and supervise the calls, communications, activities and movements of people.

In 2015, the Emirati government also purchased, from some British companies, modern systems for the interception of communications and eavesdropping on cell

phones, including what is known as the "IMSI-catchers", and has bought from the British company "BAE" other Internet Monitoring Systems.

Still, the state's investment in spying and monitoring systems has not been codified appropriately and will not undermine human rights and fundamental freedoms. The intrusion into people's privacy and private lives is considered to be arbitrary without appropriate safeguards: the control of an impartial and independent judiciary and the right to judicial remedy for victims of eavesdropping.

3.2. Case example

Here are two examples of legislation restricting or violating the right to privacy:

- The Federal Law No. 3 of 2012 on the establishment of the national electronic security authority allows, in urgent cases, to control or hack the communications' network, information systems and e-mails of any person or entity who is proven to be participating in any action that may affect the security of the state or its ideology, its economy, its heritage or culture, its international peace and regional or international relations.
- In its article 75, the Code of Criminal Procedure of the Public Prosecution authorizes the regulation and monitoring of letters, packages, telegrams of the post offices and the recording of conversations, including wired and wireless whenever it is necessary and without informing the person concerned. It also foresees the Public Prosecution from being sued for violating the privacy of those concerned by spying on their private lives and their confidentiality of correspondence.

4. Violation of the right to freedom of expression online and offline

Unfair trials have been reported in the United Arab Emirates in several occasions. The main targets are usually bloggers who were arrested for their social media presence. Mr. Ossama Al Najjar, a blogger and human right activist, was arrested by the State Security Apparatus and sentenced on November 25, 2014, to three years of imprisonment and a fine of Dh500,000 for posting a tweet defending his father, Mr. Hussein al-Najjar, and proving his innocence of all charges. All his social media accounts were also closed and his electronic devices, confiscated.

The series of unfair trials also included bloggers Mohammed Salem Al Zumer, Walid Al Shehhi and Saud Klib as well as Mr. Shezanne Cassim, an American citizen who spent nine months behind bars in the United Arab Emirates in 2013 for allegedly threatening the national security after making a parody video about life in Dubai.

On February 15, 2015, the UAE security services arrested three sisters, Ms. Asma Khalifa al-Suwaidi, Ms. Mariam Khalifa al-Suwaidi and Ms. Alyazia Khalifa al-Suwaidi,

for tweeting about their brother Mr. Eissa al-Suwaidi, who had been sentenced as part of the UAE94 trial. After months of enforced disappearance, the State Security Apparatus freed them. Following the intervention of the ICJHR before the UN Commission on Enforced Disappearances to investigate about the arrest of the three sisters, the Emirati authorities responded that they had been imprisoned because of their belonging to a "terrorist organization," according to article 22, paragraph 2, of the Anti-Terrorism law.

The case of Dr. Nasser Bin Ghaith emphasizes the constant repression by the Emirati authorities and violation of the right to freedom of expression of human rights activists and political opponents in the country. Dr. Nasser Bin Ghaith was brought before the State Security Chamber of the Federal Supreme Court in Abu Dhabi on April 4, 2016, after nearly eight months of enforced disappearance and was unfairly tried for false charges based solely on his peaceful activities, including tweets he had posted about the human rights situation in Egypt, and for attending meetings during his travels in the region with some peaceful political activists, who the UAE government described as members of "terrorist organizations". He was also ill-treated and tortured during his disappearance. The State Security Apparatus did not tolerate Dr. Nasser Bin Ghaith online activities and his positions against the current regime in Egypt, they therefore arrested him and convicted him on false and unfounded charges.

Moreover, the UAE government also criminalized and punished Secure VPN users under the Federal Law No. 12 of 2016, which amended the Decree of Federal Law No. 5 of 2012 on Combating Cybercrimes. In addition, many legal websites dealing with national human rights issues and violations were withheld by the authorities, including EMASC, UAE71, Arabi21, Noonpost, AlAraby, Middle East Eye, as well as other Arab and international websites of civil society organizations.

Indeed, the United Arab Emirates, as provided in the Federal Law No.5 of 2012 persists on persecuting whoever expresses a dissenting opinion or publishes news or caricatures online that are challenging the Emirati policies, inciting for sedition, threatening the state security or damaging the reputation of the state's institutions, politicians or symbols.

5. Violation of the right to freedom of association

The Anti-Terrorism legislation is used in the UAE to target any movement that has a political or social agenda, as demonstrated in March 2011 with the arrest and conviction of the signatories of the petition calling for the election of a national council that would have legislative and monitoring powers. The group of reformists known as the "UAE94", in addition to the "Al Manara group" were persecuted and criminalized, their rights violated, on the grounds of the state security protection. By doing so, the Emirati authorities' main intention was to prevent the UAE population from exercising their political and civil rights through the use of security tools and Anti-terrorism legislation.

6. Absence of an independent judiciary and empowerment of the Public Prosecution and the State Security Apparatus: a threat for human rights and freedoms

The existence of an autonomous and fair judiciary would prevent any misuse of the measures on combatting terrorism, thus, would not undermine the rights and freedoms of the people. However, the UN Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, reported during her visit to the UAE in 2014 the lack of separation between the judiciary and the executive powers. She furthermore noted the absence of independence of the Supreme Council of the Federal Court, which is headed by the Minister of Justice. Those two observations are, as she declared, in clear breach of the Basic Principles on the Independence of the judiciary, as adopted in 1985 by the UN General Assembly resolutions 40/32 and 40/146.

The Federal Supreme Court, by rendering final judgments that don't allow any appeal, hinders the right to a fair trial. Moreover, its dependence to the executive power make its decision subjective to the UAE public policies and reflects in its decision-making the government counter-terrorism strategy.

The well-known case of "the Al Manara group" illustrates the issues raised by this system: 34 people were convicted on terrorist charges and accused of attempting to establish an Islamic State caliphate in the UAE. The judgment included sentences from three years to up to life imprisonment and two were even tried in absentia. Moreover, four of them were ordered to be deported after serving their sentences. In the Court's judgement, Judge Mohammed Al-Jarrah Al-Tunaiji said the following: "The United Arab Emirates is the world leader in the implementation of the Federal Law No. 1 of 2004 on combating terrorism; this court has dealt with many similar cases and has set the principles and provisions to interpret legislation and laws".

On May 30, 2016, the UAE State Security District of the Federal Supreme Court acquitted several defendants in a similar case after nearly two years of arbitrary detention. One of the accused, Mr. Salim al Aradi, was convicted on charges of "supporting terrorist organizations". During the trial, and after three months of hearings, the Public Prosecution withdrew all the accusations related to terrorism against him and fabricated other false allegations claiming that Mr. Al Aradi had taken hostile action against Libya by sending humanitarian supplies to some organizations and collecting donations without the permission of the UAE Government. After their acquittal, the authorities were reluctant to release them and kept them under the custody of the security forces before finally freeing them.

According to the UN Special Rapporteur on the Independence of Judges and Lawyers, the lack of safeguards within the Public Prosecution can affect the right to private life, privacy and confidentiality. She reported that, in the UAE, the concentration of such tasks in the hands of the Public Prosecutor may preclude the independence and fairness of the criminal investigations and proceedings. In fact, the Public Prosecutors

of the United Arab Emirates have never abided by the Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Havana from August 27 to 7 September 1990.

Furthermore, the Public Prosecutor has never investigated neither the torture and ill-treatment allegations nor the enforced disappearances committed against the UAE94 group, which testimonies were found in letters leaked by the prisoners and notarized.

In other similar situations such as the cases of Mr. Kamal Aldharat, Mr. Salim Al Aradi and Mr. Moza Alabdouli, who were forcibly disappeared, abused and arbitrarily detained for their human rights' activities online and offline, the prosecution did not make any inquiry into their cases.

Data gathered by the ICJHR indicates that the State Security Apparatus has de facto control over the General Prosecution in matters dealing with opponents and human rights activists. In addition, foreign judges working in the UAE are under great pressure due to their precarious working situation as they are often faced with the threat of the withdrawal of their work and residence permits, thus deeply hindering their neutral and independent work status.

With regards to the severe human rights violations committed by the Emirati government against prisoners of conscience on the grounds of the fight against terrorism and in the name of national security, the International Centre for Justice and Human Rights in Geneva reiterates its call upon the United Arab Emirates to take into consideration the following recommendations to:

1. Release promptly and unconditionally all political opponents, human rights defenders and bloggers, which detention seems to condemn their lawful and peaceful human rights activities, and put an end to the repression and criminalisation of all human rights defenders and political opponents.
2. Conduct an immediate and impartial investigation by an independent commission on the allegations of torture, ill-treatment, enforced disappearances and arbitrary detention undergone by the prisoners and bring all those involved in these violations before a fair judiciary and enable the victims of torture and ill-treatment of their right to appeal, redress and repair the damage they have been subject to.
3. Review the Anti-Terrorism Law and amend the articles that may affect fundamental freedoms and rights.
4. Reconsider the UAE Security Legislations that interfere with the private life and make them consistent with international human rights standards and the

Johannesburg Principles on National Security, Freedom of Expression and Access to Information adopted in South Africa on October 1, 1995.

5. Set a neutral and impartial judiciary that includes the judges of the Public Prosecution and works in accordance with the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors, under the supervision of a judicial assembly separate from the executive power.
6. Implement immediately all the pledges made by the United Arab Emirates before the Human Rights Council in 2013, following the Universal Periodic Review, including the establishment of an independent national human rights institution meant to advise the government, receive public complaints, investigate and promote UAE's cooperation and acceptance of the international human rights mechanisms as well as to continue the dialogue with the civil society institutions and create a permanent forum to facilitate the dialogue and provide greater mutual understanding as, well as build the capacity of the associate of the Ministry of Interior in the field of human rights and study the accession to UN agreements.

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