

## UPR Pre-Sessions

### *Statement*

#### **Thematic: Fight against terrorism, fair trial and independence of the judiciary**

Dear representatives of the permanent missions,

My name is Falah Sayed, I work at MENA Rights Group, a legal advocacy NGO based in Geneva that defends and promotes the rights and fundamental freedoms in the MENA region.

My statement will address human rights abuses committed under the guise of fighting terrorism, fair trial and independence of the judiciary in the UAE.

#### **Fight against terrorism**

During its last UPR, the UAE agreed to guarantee that the anti-terrorism and cybercrime laws are not an obstacle to legitimate activities of citizens, human rights defenders and the media. This recommendation has clearly not been implemented by the UAE.

The State Security Apparatus (SSA) is the main entity responsible for dealing with terrorism and state security issues. It is responsible for systematic and widespread human rights abuses, and has been responsible for the crackdown on peaceful dissent since 2011, to such an extent that today, civic space has become virtually not existent in the UAE. It was for instance, responsible for the detention of the well-known UAE94 in 2011.

The SSA law has never been made public. The 2003 version that was made available by EDAC, allows the SSA to act without any institutional, judicial, or financial oversight. The SSA reports directly to the President of the UAE and is granted very broad powers:

- gather and analyse information, including on any political activity;
- “monitor social phenomena”;
- the President of the SSA can place suspects in custody for up to 3 months;
- decisions of the SSA President are binding for all security apparatuses, and they can establish security offices in any federal ministry, government office, embassies and consulates.

The SSA has been able to rely on the broad definition and vague wording of “terrorism” in the CT law to target human rights activism and peaceful dissent.

Additionally, the CT law provides the Minister of Presidential Affairs and the UAE Council of Ministers with the authority to label any organization or individual as terrorists. In 2021, four members of the UAE94 living in exile, including Mr. Hamad al-Shamsi, were listed as terrorists.

Finally, and importantly, it must be noted that the CT law provides a legal basis for the detention of individuals beyond the completion of their prison sentence under the pretext of “rehabilitation” system. There is therefore a serious concern over the use of Munasaha centres to indefinitely extend the incarceration of convicted individuals beyond the times provided for in their sentences. According to EDAC, there are 56 prisoners of conscience detained based on this law.

**Fair trial**

During the last cycle, the UAE accepted to ensure the right to a fair trial for all without discrimination, in particular, reject evidence obtained by torture, and ensure that all arrests are subject to judicial oversight without exception. This recommendation has clearly not been implemented either.

In fact, there is still a clear pattern of detained individuals are kept in secret locations, with no access to legal counsel as the law itself does not foresee the possibility to appoint a lawyer from the time of arrest, only during trial. Even then, the right to meet with their lawyer is severely limited (permission must be given, meetings must take place in plain sight, meetings are supervised and last a very short amount of time) – and this access is often restricted.

Additionally, the State Security Prosecution (SSP) can place individuals in custody for up to 90 days which is a clear violation of the right to be brought promptly before a judge. When brought before the SSP, they are charged under broad and vague provisions. Once charged before the competent courts, access to files and information is severely restricted. Several accounts of pressures being exerted from the executive branch over the work of judges has also been documented, including pressures and threats on lawyers who are involved in cases of HR defenders.

Moreover, confessions extracted under torture by the SSA are routinely used to charge those arrested by the SSA and are later admitted as evidence to ensure convictions. On many accounts, these confessions are used as the sole evidence in these trials in accordance with the Code of Criminal Procedure.

**Independence of the judiciary**

Alongside the right to a fair trial, the UAE has supported a recommendation to strengthen the independence of its judiciary. This recommendation is also far from being implemented.

First of all, the Federal Public Prosecution's Office falls under the supervision and control of the Minister of Justice and its members are appointed by the UAE President. This grants great control to the executive branch over judiciary.

Both the Abu Dhabi Federal Court of Appeal and the State Security Chamber of the Federal Supreme Court are placed under the control of the executive branch: judges of the Abu Dhabi Federal Court of Appeal are appointed by the President, upon the recommendation of the Minister of Justice, himself appointed by the UAE President. The decisions of this court can only be appealed before the State Security Chamber of the Federal Supreme Court, composed of judges also appointed by the UAE President. There is a clear disregard for the separation of powers in the UAE, which undermines the right to be tried by an independent and impartial tribunal.

**Closing and recommendations:**

- We recommend that the UAE guarantees that the fight against terrorism is not used as a ground to repress public dissent and amends its laws on CT with a view to respect the principle of legality in criminal law and provide for clear, precise, and predictable offences.
- Publish and amend the SSA law to ensure the SSA is subject to independent judicial oversight and that the fundamental rights of suspects are respected.
- We recommend that the UAE respect the international legal standards of fair trial and ensure procedural guarantees and reject evidence obtained under torture.
- We recommend that the UAE expressly ensures the independence of its judiciary from the executive branch