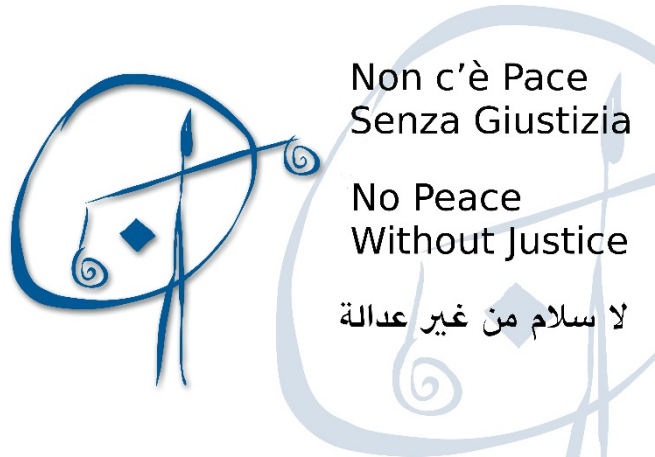


Submission to the UN Universal Periodic Review
43rd Session of the UPR Working Group



UNIVERSAL PERIODIC REVIEW: UNITED ARAB EMIRATES
THE UAE JUDICIAL SYSTEM

For further information, please contact:

Mr. Gianluca Eramo

Email: geramo@npwj.org; Tel. +39 0645436641

Via C. B. Vaccolini, 5, Rome, Italy

<http://www.npwj.org/>

Submission by

Non c'è pace senza giustizia– No Peace Without Justice

October 2022

Table of contents

- A. Introduction
- B. Political use of the judicial power
- C. Use of new technologies and violations on privacy rights
- D. Arbitrary arrests, detentions, and unfair trials
- E. Counselling centres as a means to extend sentences
- F. Death Penalty
- G. Recommendations

A. Introduction

1. Non c'è pace senza giustizia (NPWJ) is an international non-profit organisation established in 1994 that works for the protection and promotion of human rights, democracy, the rule of law and international justice. NPWJ aims to address situations where fundamental and universal principles are often set aside in the name of political stability and presumed cultural incompatibility. NPWJ raises awareness, fosters public debate and spurs mobilisation among democracy advocates; decision-makers and governments to promote human rights, democracy, the rule of law and international criminal justice. NPWJ is in special consultative status with the Economic and Social Council since July 2022
2. In this document, NPWJ outlines urgent concerns on issues that threatened the proper functioning of the UAE justice system and offers recommendations that should be implemented in the country.
3. Paragraphs B and C underline how the use of the judiciary as a tool of oppression, coupled with massive use of new technologies, leads to a phenomenon also known as rule by law, contrary to rule of law.
4. Paragraphs D, E and F focus on specific concerns linked to court rulings and proceeding as well as practices linked to law enforcement that should be tackled as they are disrespectful of human rights.

B. Political use of the judicial power

5. Despite several recommendations stemming from the 3rd UPR cycle, the UAE still has not ratified either the International Covenant on Economic, Social and Cultural Rights (CESCR) or the International Covenant on Civil and Political Rights (CCPR). The signature and enactment of those international legislative instruments would be crucial for improving human rights in the UAE. With regard to human rights defenders, journalists and civil society, no substantial progress in the last four years can be perceived in the protection of their fundamental human rights.
6. NPWJ examined the latest developments in the UAE and evaluated progress related to the 2018 UPR recommendations regarding freedom of opinion and expression, the protection of human rights defenders, and revision of oppressive laws to be in alignment with international standards.
7. The enactment of the Federal Crime and Punishment Law in January 2022, replacing the Penal Code of 1987, has been presented by Emirati authorities as the largest legal reform in the country's history. However, it imposes further limitations on freedom of expression and any form of criticism against the government. Indeed, it did not revise the problematic provisions of the previous code, but replicated them. The new Code did not remove or amend any of the multiple provisions that enable crackdowns on any form of dissent because of their broadness, notably:
 - a. Articles 183 and 184 exacerbates previous provisions by criminalising insulting, mocking, or harming the reputation of the President, the State or its symbols.
 - b. Article 190 punishes with death or life imprisonment instituting, organising, administering, joining or following any type of organisation aimed at undermining national security or interests.
 - c. Article 198 criminalises disseminating or possessing, with the intent of sharing, any news, statements, false or malicious rumours or disruptive propaganda that disturbs public order or spreads terror among the population or harms public interests.
 - d. Article 217 forbids the sharing of any type of information that incites public opinion.

- e. Article 222 keeps in its entirety the criminalisation of publicly declaring “hostility to the state or the governance system or disloyalty to its leadership”.
8. The broad and vague wording of these articles opens a great margin for interpretation for decision-makers and is in breach of the principle of legality. Such provisions can be easily exploited to discretionarily target those expressing legitimate criticism against public institutions, thus violating the right to freedom of expression. This amounts to a use of the judiciary as a tool of oppression leading to a phenomenon also known as rule by law, contrary to rule of law.
9. NPWJ assesses that **recommendations 141.112, 141.115, 141.116, 141.117, 141.120, 141.121 and 141.125** have not been implemented. Non-compliance with rule of law and human rights standards represents an obstacle for achieving full respect of the freedom of opinion and expression and goes against fundamental rights and freedoms protected by the UN Charter, the CESCR and CCPR.
10. The January 2022 reform of the Penal Code represents a legal tool to continue harassing and intimidating human rights defenders and journalists. NPWJ assesses that **recommendations 141.127, 141.128, and 141.129** have not been implemented yet by the UAE. Rather, human rights defenders, journalists and political critics from civil society and academia continue to be oppressed and harassed by UAE authorities.

C. Use of new technologies and violations of privacy rights

11. In recent years, it has emerged from human rights groups, media investigations and parliamentary inquiries that the UAE engaged in the use of new technologies, such as the secret use of spyware, and exploited opportunities offered by the information society to find new ways to harass and limit freedom of expression, right to privacy and freedom of opinion. UAE authorities were found to be among the ten governments involved in the employment of Pegasus spyware, with more than 10,000 persons of interest to the UAE affected by the spyware, including journalists, human rights defenders and government critics.¹
12. The case of Ms Alaa al-Siddiq, an Emirati activist who served as executive director of the non-profit ALQST, is emblematic of the allegations. In September 2021, it was revealed that Ms Al Siddiq was surveilled through spyware, before being killed in a car accident. Allegedly, her phone was hacked by UAE authorities through Pegasus spyware between 2015 and 2020, making her one of the first Pegasus victims.²
- 11 Another representative case concerns Dubai ruler’s ex-wife, Princess Haya. In a ruling by the Family Division of the High Court in London in 2021 on the divorce settlement between Princess Haya bint Al Hussein of Jordan and her husband Sheikh Mohammed bin Rashid Al Maktoum, it was ascertained that in July and August 2020 UAE agents hacked the telephones of Princess Haya and five of her associates, including her lawyer Baroness Shackleton, a serving member of the UK House of Lords.³
- 12 Even more alarming is the finding of UAE authorities’ involvement in the murder of journalist Jamal Khashoggi on 2 October 2018. In December 2021, new evidence showed that an Emirati

¹ “Digital Violence: How the NSO Group Enables State Terror,” <https://forensic-architecture.org/investigation/digital-violence-how-the-nso-group-enables-state-terror> ; Stephanie Kirchgaessner, Paul Lewis, David Pegg, Sam Cutler, Nina Lakhani and Michael Safi, “Revealed: Leak Uncovers Global Abuse of Cyber-Surveillance Weapons,” *The Guardian*, 18 July 2021, <https://www.theguardian.com/world/2021/jul/18/revealed-leak-uncovers-global-abuse-of-cyber-surveillance-weapon-nso-group-pegasus>

² Stephanie Kirchgaessner, “New evidence suggests spyware used to surveil Emirati activist Alaa Al-Siddiq,” *The Guardian*, 24 September 2021, <https://www.theguardian.com/world/2021/sep/24/new-evidence-suggests-spyware-used-to-surveil-emirati-activist-alaal-siddiq#:~:text=Citizen%20Lab%20set%20up%20a,%2C%E2%80%9D%20Marczak%20told%20the%20Guardian..>

³ Hamzeh Noami, “Pegasus Spyware Maker Ends Contract with UAE After UK High Court’s Hacking Ruling,” *CNN*, 7 October 2021, <https://edition.cnn.com/2021/10/07/middleeast/pegasus-uae-hacking-intl/index.html>

government agency effectively infected the phone of Mrs Hanan Elatr, Khashoggi's widow, with Pegasus spyware while she was in UAE custody in April 2018.⁴

- 13 These undue interferences with personal data targeting critical voices against the Emirati authorities represent a serious violation of privacy rights and amount to a new and sophisticated form of harassment and intimidation. NPWJ signals that this seriously compromises the accomplishment of the recommendations from the latest UPR concerning the creation of a safe environment for activists, journalists and human rights defenders. **Recommendations 141.130 and 141.31** have not yet been implemented. NPWJ encourages the UAE to revise its policies and legislations in line with international standards, with special regard to the protection of rights for human rights defenders and civil society.

D. Arbitrary arrests, detentions and unfair trials

14. The UAE state security apparatus systemically targets human rights defenders through arbitrary arrest and detention, issuing long and unfair sentences and extending detention even after sentences have terminated, despite **recommendations 141.126, 141.143, 141.142, 141.111.**⁵
15. Federal State Security Law No. 2 of 2003 allows Emirati authorities to detain individuals for up to 90 days without bringing them before the Public Prosecutor⁶ and search individuals without a warrant.
16. Article 26 of the UAE Constitution prohibits arbitrary arrest and detention⁷. Moreover, according to Article 344 of the Penal Code, “[w]hoever illegally kidnaps, arrests, detains or deprives a person of his freedom, whether by himself or through another by any means without lawful justification, shall be punished by [a] term [of] imprisonment.”⁸ Despite these legal safeguards, 2021 media and official reports revealed that UAE authorities carried out arrests without informing the individual of the charge, particularly in cases of alleged violations of state security regulations. People were held incommunicado and without charges because of their political views or affiliations.⁹
17. Prisoners of conscience are among those who have been directly targeted by these arbitrary practices. Although they have committed no crime, they are often convicted of spurious charges, such as Article 40 of Law No. 1 of 2014 on Combatting Terrorism Offences and detained indefinitely. The arrest and detention of prisoners of conscience occurs without any specific charges being brought and without any judicial warrant for arrest, thus violating the UAE's Criminal Procedural Law.¹⁰
18. In July 2011, human rights activist Ahmed Mansoor was convicted of insulting the status and prestige of the UAE for his political activism. He has been held in solitary confinement for nearly four years and has been denied access to lawyers.¹¹ This demonstrates that the illegal and

⁴ Yonah Bob, “UAE Put NSO’s Pegasus on Khashoggi’s Wife’s Phone,” The Jerusalem Post, 21 December 2021, <https://www.jpost.com/israel-news/article-689387>

⁵ “Release Prisoners of Conscience who Have Completed Their Sentence,” The Gulf Centre for Human Rights, 10 June 2022, <https://www.gc4hr.org/news/view/3040>

⁶ “The SSA: An Authority Above Law,” Emirates Detainees Advocacy Centre, 3 July 2021, <https://en.edacrights.com/post/108>

⁷ “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”.

⁸ Federal Law No (3) of 1987 on Issuance of The Penal Code, <https://legaladviceme.com/legislation/117/uae-federal-law-3-of-1987-promulgating-penal-code>

⁹ U.S. State Department, 2021 Country Reports on Human Rights Practices – United Arab Emirates, 2021, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/united-arab-emirates/>

¹⁰ “Release Prisoners of Conscience who Have Completed Their Sentence,” The Gulf Centre for Human Rights, 10 June 2022, <https://www.gc4hr.org/news/view/3040>

¹¹ “UAE: Prominent Jailed Activist in Danger,” Human Rights Watch, 19 July 2021, <https://www.hrw.org/news/2021/07/19/uae-prominent-jailed-activist-danger>

inhumane practice of arbitrarily arresting, detaining, and sentencing human rights defenders and political opponents has yet to be eradicated in the UAE.

19. Access to fair and transparent trials within the UAE is not guaranteed. Despite the overly broad, imprecise and ambiguous wording of criminal provisions included in the 2014 Emirati Law on Combatting Terrorism were object of several recommendations in the previous UPR cycle, the 2021 penal code shows the UAE did not address these recommendations.
20. On 17 February 2020, the State Security Chamber of the Federal Supreme Court upheld the conviction of five Lebanese men on terrorism charges in a trial that did not meet international fair trial standards. During three of the proceedings, the court used confessions that were extracted under duress as evidence. The defendants were detained incommunicado for months and were denied access to lawyers during their interrogations. During the trial, one of the men's lawyers who had previously represented him was not allowed to attend the sessions and was replaced by a court-appointed lawyer. The verdict against the men is final and cannot be appealed.¹²

E. Counselling centres as a means to extend sentences

21. On 4 January 2019, the UAE authorities issued Federal Decree-Law No. 28 establishing the National Counselling Centre. UAE authorities have utilised counselling centres to suppress opposition and arbitrarily detain individuals for indefinite periods of time.
22. Counselling centres find their legal basis in the Anti-Terrorist Crimes Law No. 7 of 2014, which allows for the administrative detention of anyone who poses a terrorist threat. However, the definition of a terrorist threat uses broad and imprecise language that lacks criteria in defining the minimum threshold for which a person may be deemed dangerous or likely to commit a terrorist crime. Moreover, the Anti-Terrorist Crimes Law does not specify the number of times the extension of detention is allowed. As such, detainees can be imprisoned indefinitely based on the loose criteria that they pose a terrorist threat.¹³
23. Under Article 10 of the National Counselling Centre Law, the Public Prosecutor may issue an order to detain people for a period of 15 days without requiring a court to rule if the individual was referred by competent authorities. In conjunction with Article 48 of the Anti-Terrorist Crimes Law, the Public Prosecutor may subject any person convicted of a terrorist offense to the counselling program.¹⁴
24. Although Article 4 of Law No. 28 states the objective of the National Counselling Centre is to combat and confront terrorism, the law does not provide additional details about the programs, support, procedures or methods of rehabilitation to be used.¹⁵
25. The UAE authorities are taking advantage of laws of terrorism and counselling to prevent opponents of the government from leaving prison after the termination of their sentences. Many prisoners of conscience are held after their sentences have been served because allegedly they pose a threat to state security and are in need of reform and rehabilitation. As such, many are sent to the Counselling Centre. Currently, there are 40 prisoners of conscience detained in Counselling Centres despite having completed their sentences.¹⁶ Moreover, the UAE authorities

¹² "United Arab Emirates: Further Information: Supreme Court Confirms Verdict in An Unfair Trial," Amnesty International, 31 March 2020, https://www.amnesty.org/en/documents/mde25/2000/2020/en/?utm_source=annual_report&utm_medium=pdf&utm_campaign=2021&utm_term=english

¹³ "Counselling Centres in the UAE: A Legalise Administrative Detention," Emirates Detainees Advocacy Centre, 16 August 2021, <https://en.edacrights.com/post/140>

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ "Authorities Continue to Hold Prisoners of Conscience Past Their Sentences and Arrest Human Rights Lawyers," The Gulf Centre for Human Rights, 3 August 2022, <https://www.gc4hr.org/news/view/3082>

have chosen not to release any members of the UAE94¹⁷ group at the end of their sentences but transfer them to the Counselling Centre. Many of them were due to be released in 2022..

26. UAE authorities have claimed the objective of counselling centres is to provide guidance and reform to those who pose a terrorist threat. However, since the implementation of the program, no detainee has been “rehabilitated” and therefore released.¹⁸
27. Although UAE authorities established the National Counselling Centre as a place for detainees to be sent to receive rehabilitation, detainees are still being held in regular prisons. According to a report by Emirates Detainees Advocacy Centre, any person detained in Al-Razeen prison who is placed in a counselling centre is transferred to another ward within the same prison. Any detainee in Al Wathba prison placed in a counselling centre is transferred to Abu Dhabi Reserve prison, a prison designated for temporary detention in criminal offences. In reality, there are no independent counselling centres in existence in the UAE. Rather, their sole purpose is to detain indefinitely those who speak out against the government.¹⁹

F. Death Penalty

28. Concerning **recommendation 141.99** the UAE continues to create laws for which life imprisonment and the death penalty are possible sentences. Due to the vague and ambiguous language of the law, political critics and human rights defenders are likely to be targeted by UAE authorities. Article 174 provides a sentence up to life in prison for anyone who commits an act against a foreign country that could damage political relations with the UAE. If, however, the court determines that a harm did occur, then a possible death sentence may be imposed.

G. Recommendations

29. In light of the above, NPWJ recommends the UAE:
30. Develop a robust legal framework for the promotion and protection of human rights by ensuring that constitutional and national legislation are fully compliant with international human rights standards, including by a comprehensive review of the Penal Code and all other relevant legislation;
31. Incorporate an absolute prohibition of torture in Emirati legislation in line with the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment;
32. Ratify all human rights treaties, particularly, CCPR and CESR;
33. Ratify the Rome Statute of the International Criminal Court and enact implementing legislation to incorporate Rome Statute crimes in Emirati law and provide for cooperation with the Court;
34. Implement an immediate moratorium on all executions imposed by federal courts and ensure full compliance with the restrictions prescribed in particular in Article 6 of the ICCPR, while all necessary measures are being taken to abolish death penalty;
35. Repeal all legislation regarding the use of counselling centres and immediately release prisoners of conscience whose sentences have already been served;
36. Immediately cease government interference in citizen privacy rights through the use of secret spyware.

¹⁷ The UAE94 group is composed of human rights defenders, judges, academics and students who have exercised their right to freedom of expression and freedom of association

¹⁸ “Counselling Centres ... A Misleading Name,” Emirates Detainees Advocacy Centre, 23 September 2022, <https://en.edacrights.com/post/473>

¹⁹ “Counselling Centres in the UAE: A Legalise Administrative Detention,” Emirates Detainees Advocacy Centre, 16 August 2021, <https://en.edacrights.com/post/140>