

## Access Now submission to the Universal Periodic Review

### UAE, Third Cycle

#### About Access Now

1. Access Now ([www.accessnow.org](http://www.accessnow.org)) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 10 countries around the world, including engagement with stakeholders and policymakers in India, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights online. We engage with an action focused global community, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. Access Now advocates an approach to digital security that promotes transparent and accountable policies that protect human rights, including privacy and freedom of expression. Access Now maintains an office in the Middle East and North Africa region to advance protection of digital rights.
3. Access Now draws attention to several urgent threats to human rights and the open internet in UAE, including blocking of websites and communication services, invasive surveillance and unlawful invasions of privacy, and the illegal detention of peaceful advocates on the basis of the content of their expression.

#### Domestic and international human rights obligations

4. This is the third review for UAE, last reviewed in 2013, under the Universal Periodic Review mechanism (UPR).
5. UAE has not ratified the [International Covenant on Civil and Political Rights](#) (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR).
6. UAE has ratified various international human rights instruments, the [Convention against Torture](#) (CAT), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
7. The UAE has ratified the Arab Charter on Human Rights, committing to protect the rights to freedom of expression and opinion and the right to information. The Charter affirms and protects the right to privacy in two separate articles, 16 and 21.
8. The UAE Constitution protects freedom of expression.

#### Developments of digital rights in UAE

9. UAE is currently detaining human rights advocate Ahmed Mansoor.<sup>1</sup> UN experts label his detention a “direct attack on the legitimate work of human rights defenders in the

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<sup>1</sup> BBC, UN experts call for release of UAE activist Ahmed Mansoor, 28 March 2017, <<http://www.bbc.com/news/world-middle-east-39416734>>.

- UAE.”<sup>2</sup> Mansoor was arrested in 2011, released in less than a year without receiving back his passport being held by authorities, and was jailed again on March 20, 2017.
10. Just before his recent detention, Mansoor worked with civil society to show how he was targeted by expensive tools exploiting unknown vulnerabilities in common smart phones.<sup>3</sup> Researchers showed how an adversary attempted to use sophisticated spyware, sold by the Israel-based NSO Group, to access his private data and communications and track his activities.<sup>4</sup>
  11. Researcher Bill Marczak was “able to trace the spyware back to the Royal Group, a conglomerate run by a member of the Al Nahyan family, one of the six ruling families of the Emirates.”<sup>5</sup> Following their research into the surveillance of Mansoor and his phone, experts found that, in combination with “prior known targeting of Mansoor by the UAE government,” indicators “point to the UAE government as the likely operator behind the targeting.”<sup>6</sup>

### **Interference with the Right to Privacy**

12. The right to privacy is protected in the Arab Charter on Human Rights and major international legal instruments. Communications surveillance interferes with the right to privacy, and therefore should only be executed in strict compliance with international human rights law and under impartial, competent judicial oversight.
13. The Mansoor case raises shows inadequate oversight and unlawful use of surveillance technology by the UAE. Based on available evidence, UAE surveillance does not comply with international human rights law respecting the right to privacy, as articulated by the Human Rights Council<sup>7</sup> and the International Principles on the Application of Human Rights to Communications Surveillance.<sup>8</sup>

### **Interference with Freedom of Expression**

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<sup>2</sup> OHCHR, UN rights experts urge UAE: “Immediately release Human Rights Defender Ahmed Mansoor”, 28 March 2017,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21449&LangID=E>.

<sup>3</sup> See reporting on Ahmed Mansoor and the purchase, development, and use of spyware by UAE to target and track activists, by Nicole Perloth, “Governments Turn to Commercial Spyware to Intimidate Dissidents,” The New York Times, 29 May 2016,

<https://www.nytimes.com/2016/05/30/technology/governments-turn-to-commercial-spyware-to-intimidate-dissidents.html>;

and Nicole Perloth, “iPhone Users Urged to Update Software After Security Flaws Are Found,” The New York Times, 25 Aug. 2016,

<https://www.nytimes.com/2016/08/26/technology/apple-software-vulnerability-ios-patch.html>.

<sup>4</sup> Citizen Lab, “The Million Dollar Dissident: NSO Group’s iPhone Zero-Days used against a UAE Human Rights Defender,” 24 Aug. 2016, *available at* <https://citizenlab.org/2016/08/million-dollar-dissident-iphone-zero-day-nso-group-uae>.

<sup>5</sup> Nicole Perloth, “Governments Turn to Commercial Spyware to Intimidate Dissidents,” The New York Times, 29 May 2016, <https://www.nytimes.com/2016/05/30/technology/governments-turn-to-commercial-spyware-to-intimidate-dissidents.html>

<sup>6</sup> Citizen Lab, “The Million Dollar Dissident: NSO Group’s iPhone Zero-Days used against a UAE Human Rights Defender,” 24 Aug. 2016, *available at* <https://citizenlab.org/2016/08/million-dollar-dissident-iphone-zero-day-nso-group-uae>.

<sup>7</sup> See, e.g., A/HRC/RES/34/7, “The right to privacy in the digital age,” 7 April 2017, *available at* [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/34/7](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/34/7).

<sup>8</sup> See <https://www.necessaryandproportionate.net>

14. Additionally, UAE exhibits disregard for the right to freedom of expression in targeting advocates like Mr. Mansoor for his peaceful advocacy.
15. The right to free expression should be protected online as it is offline.<sup>9</sup> The internet is an essential enabler for the exercise of free expression in the 21st century and should be protected and promoted as the right itself.<sup>10</sup>
16. The UAE Cybercrime Law No 5 of 2012 contains overbroad language criminalizing legitimate expression, including content that does “damage” to “the reputation, prestige or stature of the State” or its officers.<sup>11</sup> Its penalties, up to a life in prison, are overly harsh. Likewise, the 2016 amendments to the law appear to target technologies essential to the exercise of human rights online, including virtual private networks.<sup>12</sup> As written, this law fails to meet international legal standards respecting and protecting the right to freedom of expression. In its application, the overbroad law has been used to harshly imprison internet users for protected expression, including peaceful, private conversations.<sup>13</sup>
17. Speaking to this law, Canada recommended in the 2nd Cycle that UAE, “Continue to take steps to uphold freedom of expression by reviewing restrictive articles of its recent Cyber Crime law and consider updating the 1980 Media Law, ensuring that new legislation be aligned with article 19 of the ICCPR.” This excellent recommendation was “noted,” not accepted, by the UAE.
18. Blocking popular and affordable communications services, and surveillance and jailing prominent internet personalities, interferes with the human right to free expression. Currently, voice-over-internet-protocol (VoIP) service Skype is blocked in UAE, as is the voice calling function of popular messaging application WhatsApp.<sup>14</sup> Blanket bans on entire communications services such as these do not satisfy the recognized test for restrictions on freedom of expression.<sup>15</sup>
19. The international community labels this type of blocking of telecommunications networks and services as an “internet shutdown.”<sup>16</sup> Research shows that internet shutdowns and human rights infringements go hand-in-hand.<sup>17</sup> Shutdowns disrupt the free flow of information and

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<sup>9</sup> See A/HRC/RES/32/13, “The promotion, protection and enjoyment of human rights on the Internet,” 18 July 2016, available at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/32/13](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13)>

<sup>10</sup> “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue,” 16 May 2011, available at <[http://www2.ohchr.org/English/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.PDF](http://www2.ohchr.org/English/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.PDF)>.

<sup>11</sup> UAE Cybercrime Law No 5 of 2012, [http://ejustice.gov.ae/downloads/latest\\_laws/cybercrimes\\_5\\_2012\\_en.pdf](http://ejustice.gov.ae/downloads/latest_laws/cybercrimes_5_2012_en.pdf).

<sup>12</sup> <http://icfuae.org.uk/news/new-law-amendment-further-restricts-information-technology-use-uae>

<sup>13</sup> The National, “Man who insulted UAE on social media gets three-year jail term,” 10 January 2016, <http://www.thenational.ae/uae/man-who-insulted-uae-on-social-media-gets-three-year-jail-term>.

<sup>14</sup> The National, “Skype blocked again in the UAE,” 25 June 2017 <http://www.thenational.ae/uae/technology/skype-blocked-again-in-the-uae>.

<sup>15</sup> See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, 30 March 2017, available at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/22](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/22)>.

<sup>16</sup> “Fighting Internet Shutdowns” (Access Now) <<https://www.accessnow.org/internet-shutdowns>>

<sup>17</sup> Sarah Myers West, “Research Shows Internet Shutdowns and State Violence Go Hand in Hand in Syria,” Electronic Frontier Foundation, 1 July 2015,

create a cover of darkness that allows state and non-state actors to persecute vulnerable groups without scrutiny. They also drastically harm the economy, especially by impacting mobile money transfers.

20. A growing body of jurisprudence declares shutdowns to violate international law. In 2015, experts from the United Nations (UN) Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS), and the African Commission on Human and Peoples' Rights (ACHPR), issued an historic statement declaring that internet "kill switches" can never be justified under international human rights law, even in times of conflict.<sup>18</sup> In 2016, the Human Rights Council referred to internet shutdowns in its consensus Resolution 32/13, which "*condemns unequivocally* measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and calls upon all States to refrain from and cease such measures".<sup>19</sup>
21. The internet has enabled significant advances in health, education, and creativity, and it is now essential to fully realize human rights including participation in elections and access to information. Shutdowns and blocking of internet services delay and deter the benefits of these advances and economic development more broadly, by obstructing trust in the digital economy, undermining access to information, and frustrating personal communications and resources needed for crisis response.

## Recommendations

22. UAE can improve its human rights record and treatment of digital rights in several areas. We accordingly recommend that the government of UAE:
  - a. Release from custody Ahmed Mansoor and any others imprisoned for peaceful advocacy and the exercise of the human right to freedom of expression;
  - b. Uphold freedom of expression by repealing restrictive articles of the Cyber Crime Law;
  - c. Ratify the ICCPR and ICESCR;
  - d. Amend the Constitution and pass regulations affirming and protecting the human right to privacy;
  - e. Publicly disclose any procurement of or contracts to purchase, maintain, develop, install, service, or operate surveillance technology;
  - f. Ensure use of surveillance technology is only used when it is necessary and proportionate to a legitimate aim, subject to meaningful oversight, and only authorized

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<<https://www.eff.org/deeplinks/2015/06/research-shows-internet-shutdowns-and-state-violence-go-hand-hand-syria>> accessed 18 February 2016.

<sup>18</sup> Peter Micek, (Access Now 4 May 2015) 'Internet kill switches are a violation of human rights law, declare major UN and rights experts' <<https://www.accessnow.org/blog/2015/05/04/internet-kill-switches-are-a-violation-of-human-rights-law-declare-major-un>> accessed 18 February 2016.

<sup>19</sup> A/HRC/RES/32/13 (18 July 2016), available at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/32/13](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13)>.

via warrant by an independent, impartial, and competent judicial authority, upon a finding of legality, necessity, and proportionality;<sup>20</sup>

- g. Commit to refrain from slowing, blocking, or shutting down internet and telecommunications services, including voice-over-internet-protocol (VoIP) and messaging applications, particularly during elections and public assemblies;
  - h. Improve cooperation with United Nations treaty mechanisms and issue standing invitations to UN special procedures such as the UN special rapporteurs on the rights to freedom of expression and opinion, the right to and privacy;
  - i. Enact laws and telecommunications regulations protecting access to information and preventing network discrimination, also known as Net Neutrality; and
9. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now is grateful to make this submission.
10. For additional information, please contact Access Now General Counsel Peter Micek ([peter@accessnow.org](mailto:peter@accessnow.org)).

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<sup>20</sup> Requirements for communications surveillance to satisfy international human rights law are described in the International Principles on the Application of Human Rights to Communications Surveillance (<https://necessaryandproportionate.org/principles>)