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The Permanent Mission of the United Arab Emirates to the United Nations Office and other International Organizations in Geneva presents its compliments to the Secretariat of the Special Procedures Branch and with reference to its letter ref. AL ARE 1/2024, dated 10 January 2024, concerning the joint communication regarding 84 individuals, has the honour to forward herewith the response as received from the relevant authorities in the United Arab Emirates.

The Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Special Procedures Branch, the assurances of its highest consideration.



OHCHR REGISTRY

- 8 AVR. 2024

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Enclosure

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**RESPONSE OF THE UNITED ARAB EMIRATES TO JOINT COMMUNICATION NO. AL
ARE 1/2024 FROM SPECIAL PROCEDURES**

I. INTRODUCTION

1. The United Arab Emirates (“UAE”) received a joint communication ref. AL ARE 1/2024 dated 10 January 2024 from several mandate holders concerning an ongoing trial before the UAE courts (the “**Joint Communication**”). Having reviewed this Joint Communication carefully, the UAE presents the following response.
2. The UAE takes this opportunity to express its support for the mandates of the special rapporteurs and their valuable role in the promotion of human rights principles and rules.
3. The UAE respectfully denies the allegations and premature conclusions contained in the Joint Communication. The UAE fully adheres to the rule of law and implements all relevant international standards of protection. The UAE reaffirms its commitment to the highest standards of protection in terms of due process, the rule of law, and justice.

II. THE SCOPE OF THE RESPONSE

4. The UAE’s institutional framework is predicated upon the fundamental principle of the separation of powers in its governance. The judiciary in the UAE is independent and is protected from any form of interference by other powers.
5. As it is incumbent upon the State to safeguard this independence, the Executive cannot pronounce or provide comments on ongoing proceedings. This is particularly so in view of the public nature of the Special Procedures.
6. Moreover, any public comment or discussion by the State may prejudice the right to a fair trial of the defendants in the proceedings in question, who are entitled to a trial free of interference and with the full guarantees provided to them at law, as described in Sections III and IV below.
7. As such, the UAE’s response to the Joint Communication shall demonstrate that the necessary guarantees and protections are adequately safeguarded under UAE law, and that the concerns raised in the Joint Communication are misplaced.

III. FAIR TRIAL GUARANTEES UNDER UAE LAW

8. The concerns raised in the Joint Communication relating to the fairness of the ongoing proceedings are adequately protected against in the UAE’s Constitution (“**Constitution**”) and existing laws.



9. The UAE recognizes and protects the fair trial rights of all individuals under its jurisdiction. In this regard, the presumption of innocence is enshrined in Article 28 of the Constitution which also recognizes the right of the accused to a fair trial and to access legal representation.¹ The general guarantees stipulated by the Constitution are implemented in the Federal Decree by Law No. 38 of 2022 (“**Criminal Procedures Law**”) which articulates an accused’s right to, *inter alia*: (i) engage counsel, including at the expense of the State;² (ii) be timely informed of charges, namely within 24 hours from the arrest,³ or in any event before the trial;⁴ (iii) participate in the investigation,⁵ including by requesting that the Prosecutor summon defense witnesses;⁶ and (iv) the disclosure of evidence during this investigatory phase.⁷ More specifically, at trial, the accused has the right to challenge the evidence and the charges, and present evidence.⁸ As a general rule, the trial is public unless compelling reasons related to the public order or moral require in camera proceedings.⁹ Procedural decisions adopted during the investigation and trial, as well the verdict are subject to appeal and judicial scrutiny.¹⁰
10. Importantly, Article 26 of the Constitution and Article 2(3) of the Criminal Procedures Law contains a clear and mandatory prohibition against torture and degrading treatment.¹¹ The Criminal Procedures Law clarifies that any evidence obtained by way of physical/moral harm, degrading treatment or torture “shall be deemed null and void”.¹²
11. Consistent with the general standards of procedural fairness, the UAE legal framework in this respect protects fair trial rights and constitutional principles from the earliest phase of the criminal proceedings, until the final judgment is rendered. In this context, even taken at their best, any allegations of procedural unfairness in relation to the proceedings in question, cannot be addressed at this stage; they must be considered in view of their impact on the final outcome and the remedies that may be available to rectify them. Without considering the proceedings as a whole it would be inappropriate and unfeasible to speculate as to their prospective overall fairness. This is especially so in light of general fair trial guarantees that are already in place to protect against any procedural irregularities.

¹ Constitution, Article 28.

² Criminal Procedures Law, Article 4.

³ See Criminal Procedures Law, Articles 97 and 102.

⁴ Criminal Procedures Law, Article 159.

⁵ Criminal Procedures Law, Article 98; Federal Decree Law No. 34 of 2022 Regulating the Legal Profession and Legal Consultation Profession (“**Decree Law on Legal Profession**”), Article 27.

⁶ Criminal Procedures Law, Article 86.

⁷ Criminal Procedure Law, Article 98; Decree Law on Legal Profession, Article 27.

⁸ Criminal Procedure Law, Articles 166 and 167.

⁹ Criminal Procedure Law, Article 162.

¹⁰ Criminal Procedure Law, Article 230; Criminal Procedure Law, Article 244.

¹¹ Constitution, Article 26.

¹² Criminal Procedure Law, Article 2(3)



12. These guarantees apply equally to all persons,¹³ in order to safeguard the integrity of the proceedings and to ensure a just and fair outcome without discrimination. In this respect, the process and the outcome are mutually constitutive. It is not only inappropriate for the State to provide any comment at this stage, in a manner that may prejudice or influence the proceedings, but it is also premature, as the outcome of the proceedings are as yet unknown.

IV. THE PRINCIPLE OF LEGALITY UNDER UAE LAW

13. The Joint Communication raises certain concerns over the application of Federal Law No. 7 of 2014 (the “**Counter-Terrorism Law**”) and Federal Law No. 28 of 2019 establishing the Munasaha Centres in the present proceedings as violating the principle of legality.
14. The UAE affirms that the principle of legality is constitutionally protected in various Articles of the Constitution. Pursuant to Article 26 of the Constitution, “[n]o person may be arrested, searched, detained or imprisoned except in accordance with the provisions of the law”,¹⁴ and Article 27 provides that “[c]rimes and punishments shall be defined by the law” and “[n]o penalty shall be imposed for any act of commission or omission committed before the relevant law has been promulgated”.¹⁵ In addition, Article 112 of the Constitution specifically affirms the general principle of non-retroactivity of criminal law.¹⁶
15. The UAE implements all of its laws, at every stage and in every forum, in accordance with its Constitution, including these principles.

V. THE PROTECTION OF THE FREEDOM OF EXPRESSION UNDER UAE LAW

16. The Joint Communication raises concerns over the protection of freedom of expression in the UAE. These concerns are unfounded and misguided.
17. It is a misconception to characterize the subject matter giving rise to the Joint Communication as predominantly implicating the freedom of expression. In fact, the matters contemplated in the Joint Communication implicate a broader range of considerations, including the national security of the UAE. And so, while Article 30 of the Constitution guarantees freedom of expression,¹⁷ this freedom is not absolute. It is subject to the State’s discretion to determine the limits necessary to balance its legitimate interests in protecting its national security and public order. Such considerations fall within the State’s general margin of appreciation. As aptly set out in Article 29 of the UDHR:

¹³ Constitution, Article 25.

¹⁴ Constitution, Article 26.

¹⁵ Constitution, Article 27.

¹⁶ Constitution, Article 112.

¹⁷ Constitution, Article 30.



In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.¹⁸

18. It is through this lens that the concerns raised in the Joint Communication should be considered.
19. The Joint Communication appears to suggest that in the present case, there is insufficient evidence to demonstrate the legitimate interest balanced against this freedom, in connection with the crimes alleged in the ongoing proceedings. The UAE respectfully submits that such a grave allegation, unfounded in fact or evidence, as to the conduct of the State judiciary cannot be put forward in this manner, particularly not at this premature stage when the proceedings, including any defences, judicial interpretation, and appeals, have yet to conclude.

VI. FINAL REMARKS

20. The UAE appreciates the efforts of the mandate holders in this regard and is grateful for the opportunity to respond to the concerns raised in the Joint Communication.

¹⁸ UDHR, Article 29(2).